

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

In the Matter of)
)
High-Cost Universal Service Support) WC Docket No. 05-337
)

COMMENTS OF PR WIRELESS, INC.

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Dated: June 14, 2010

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Summary

PR Wireless believes the Commission erred by not adopting a non-rural high-cost universal service support mechanism for insular areas, including Puerto Rico. As PRTC argues on reconsideration, the Commission has an unambiguous statutory duty to ensure the availability of telecommunications services to residents of insular areas, which are listed distinctly from rural and high-cost areas. The Commission erred by concluding that circumstances have changed, and despite misleading changes in the way telephone penetration data have been gathered, the island continues to lag far behind the mainland United States in terms of both wireline and wireless telephony.

PR Wireless agrees with PRTC that the precipitous decline in high-cost support available in Puerto Rico has harmed the island's residents. To address the continuing lag in availability of telecommunications services, the Commission should establish a non-rural support mechanism that makes additional support available to PRTC. This support should be available on a per-line basis to all competitive ETCs ("CETCs") serving customers in the same areas. Moreover, because of the special challenges of constructing facilities and providing affordable telecommunications services, support under the new insular mechanism should be protected by a new exemption to the Interim CETC Cap that applies to insular areas. Such support should also be shielded from any phase-outs of CETC support or other transitional measures as the Commission considers ways to reduce the size of the high-cost fund in implementing the National Broadband Plan.

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PR Wireless, Inc. (“PR Wireless”, “the Company”), by its undersigned counsel and pursuant to the Wireline Competition Bureau’s *Public Notice* dated May 21, 2010,¹ hereby submits comments on Puerto Rico Telephone Company’s (“PRTC”) petition for reconsideration (“PRTC Petition”) of the Commission’s *Order* declining to adopt a new high-cost mechanism for non-rural insular carriers (“*Order*”).²

I. INTRODUCTION AND BACKGROUND

PR Wireless is an Eligible Telecommunications Carrier (“ETC”) in Puerto Rico doing business under the Open Mobile brand. The company has been eligible for support from the High Cost and Low Income Programs of the federal Universal Service Fund (“USF”) since 2007. The company is a leader in utilizing federal USF support to make wireless telephone service accessible in rural, high-cost areas, and affordable to low-income citizens.

The territory of Puerto Rico presents severe challenges to efforts by carriers and regulators to increase telephone subscribership. Puerto Rico is entering its fifth consecutive year

¹ *Comment Sought on the Puerto Rico Telephone Company, Inc. Petition for Reconsideration of the Commission’s Universal Service High-Cost Universal Service High-Cost Insular Support Order*, WC Docket No. 05-337, DA 10-910 (WCB rel. May 21, 2010) (“*Public Notice*”).

² *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, Order and Notice of Proposed Rulemaking, FCC 10-57 (rel. Apr. 16, 2010) (“*Order*”).

of negative GDP growth.³ The territory has a median income level barely more than a third of the level of the mainland United States, and over 40% of Puerto Rican families are below the poverty level. Puerto Rico's unemployment rate is nearly double that of the mainland. In large part because of these challenges, telephone penetration – wireless in particular – lags far behind that of the mainland U.S.

Faced with these challenges, PR Wireless has taken a leading role in increasing the availability of wireless service on the island. While there are five other wireless providers on the island, only PR Wireless is fully committed to a pay-in-advance, no-contract business model with unlimited local calling. Thanks to its consumer-friendly pricing structure and its diligent Lifeline outreach, PR Wireless has more than doubled its subscriber base in the last two years.

These successes notwithstanding, Puerto Rico remains far behind the mainland United States in terms of telephone penetration. This is particularly true with respect to wireless telephone penetration, which is 64.3 percent in Puerto Rico compared to 90 percent in the mainland United States.

II. DISCUSSION

PR Wireless believes the Commission erred by not adopting a non-rural high-cost universal service support mechanism for insular areas, including Puerto Rico. As PRTC argues on reconsideration, the Commission has an unambiguous statutory duty to ensure the availability of telecommunications services to residents of insular areas, which are listed distinctly from rural and high-cost areas. The Commission erred by concluding that circumstances have changed, and despite misleading changes in the way telephone penetration data have been gathered, the island

³ Source: Global Insight, February 2010.

continues to lag far behind the mainland United States in terms of both wireline and wireless telephony.

PR Wireless agrees with PRTC that the precipitous decline in high-cost support available in Puerto Rico has harmed the island's residents. To address the continuing lag in availability of telecommunications services, the Commission should establish a non-rural support mechanism that makes additional support available to PRTC. This support should be available on a per-line basis to all competitive ETCs ("CETCs") serving customers in the same areas. Moreover, because of the special challenges of constructing facilities and providing affordable telecommunications services, support under the new insular mechanism should be protected by a new exemption to the Interim CETC Cap that applies to insular areas. Such support should also be shielded from any phase-outs of CETC support or other transitional measures as the Commission considers ways to reduce the size of the high-cost fund in implementing the National Broadband Plan.

A. The Commission Should Follow Through on Its Tentative Decision to Adopt an Insular High-Cost Universal Service Support Mechanism.

The Commission has a clear statutory duty to address the lack of telecommunications services in insular areas. As PRTC correctly points out, Section 254(b)(3) of the Communications Act of 1934, as amended ("Act") lists insular areas separately from rural and high-cost areas.⁴ The statute states that the Commission "shall" base its universal service policies on the principle 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 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

⁴ PRTC Petition at p. 4.

rates that are reasonably comparable to rates charged for similar services in urban areas.”)⁵

Given the use of the word “shall” in the first sentence of Section 254(b), the statute binds the Commission to ensure the availability of comparable telecommunications services and rates in insular areas.

In 2005, the Commission affirmed this obligation and acknowledged that statutory goals were not being met in Puerto Rico, tentatively concluding that an insular high-cost mechanism was needed.⁶ Yet, five years later, and nine years after Congress directed the Commission to ensure the availability of telecommunications services in rural, insular, and high-cost areas comparable to those in urban areas, the Commission has yet to follow through on its tentative conclusion. The Commission’s departure from its earlier decision was based largely on the mistaken conclusion that circumstances have “changed” in Puerto Rico. They haven’t – at least not enough to warrant such a drastic change in course.

Although the Commission found that overall telephone penetration in Puerto Rico is only “somewhat” lagging behind the U.S. mainland (91.9 percent vs. 98.2 percent), wireless subscribership on the island lags significantly more at 64.3 percent⁷ compared to 90 percent on the mainland (based on 2008 figures).⁸ Furthermore, as noted in the PRTC Petition, it is misleading to speak of an increase from 73.8 percent in 2005 to 91.9 percent in 2008, because

⁵ 47 U.S.C. § 254(b)(3) (emphasis added).

⁶ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746, ¶ 33 (2005).

⁷ Puerto Rico Telecommunications Regulatory Board, “Total de Líneas Inalámbricas por cada 100 Habitantes en Puerto Rico Años 2000 – Marzo 2010,” accessed at <http://www.jrtrp.gobierno.pr/documentos/Estadisticas/2009/informe%202009.asp>.

⁸ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report (rel. May 20, 2010) at ¶ 155.

the U.S. Census questionnaire was changed in 2008⁹ to include consideration of cell phones.¹⁰ In 2007, only around 80 percent of households had telephone service.¹¹ The “jump” up to 91.9 percent in a single year was due largely, if not entirely, to the change in survey methodology.

Moreover, the changed methodology inappropriately combines two figures that are measured very differently: wireline penetration is measured in terms of the percentage of households in which telephone service is available, whereas wireless penetration consists of the number of mobile wireless subscribers divided by the total population. To combine the figures is to compare apples to oranges, illogically using the household as the unit of measure for a wireless service that moves with subscribers as they travel. Indeed, measuring the availability telephone service in terms of the number of wireline and wireless connections divided by the overall population, the penetration rate in December 2008 was 86.1 percent, far below the 92.9 percent census figure.¹² In sum, the 2008 figure is an unhelpful composite of two different statistics which, standing alone, show Puerto Rico trailing far behind the mainland United States.

The existing mechanisms have done little to address the gap between the availability of telephone service in Puerto Rico compared to the mainland. By ratcheting down the levels of high-cost support available to ETCs in Puerto Rico, the existing USF mechanism has all but ensured that this lag will persist if serious steps are not taken to address it. Currently, the PRTC study area receives approximately \$4.00 in monthly support per line.¹³ PRTC’s other study area,

⁹ See 2008 Puerto Rico Community Survey, accessed at <http://www.census.gov/acs/www/Downloads/Special/PRico/QuestE08PR.pdf>.

¹⁰ See PRTC Petition at p. 13.

¹¹ 2007 American Community Survey 1-Year Estimates, Puerto Rico Community Survey, Data Set C25043 (Tenure by Telephone Service Available).

¹² See USAC Fourth Quarter Appendices – 2009, Appendix HC19 (CETC Reported Lines by Incumbent Study Area – Interstate Common Line Support).

¹³ See USAC Second Quarter Appendices – 2010, Appendix HC09 (Interstate Common Line Support Projected by State by Study Area).

PRTC-Central, receives approximately \$5.00 per line. In 2001, the two study areas received approximately \$7.00 and \$12.00 per line, respectively.¹⁴

Because CETCs are limited to the amount of support the ILEC receives on a per-line basis, CETCs now have less support available for the construction of network facilities to reach out to unserved and underserved areas of Puerto Rico. Given the persistent lag in wireless telephone penetration on the island compared to the mainland, the decrease in availability of per-line support has directly contradicted the statutory directive to ensure that residents of insular areas have telecommunications services and rates comparable to those available in urban areas.

B. Any Support Made Available Under an Insular Mechanism Must Be Made Available on a Competitively Neutral Basis and Be Exempted From the Interim CETC Cap and Other Cost-Saving Measures.

1. The Identical Support Rule Must Be Preserved Under Any Insular Mechanism the Commission Adopts.

Long ago, the Commission properly ruled that providing identical “per-line” support to all competitors is competitively neutral.¹⁵ Specifically, the Commission found that concluded that “[u]nequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor’s ability to provide service at rates competitive to those of the incumbent.”¹⁶ The Commission elaborated:

While the CLEC may have costs different from the ILEC, the CLEC must also comply with Section 254(e), which provides that “[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Furthermore, because a competing eligible telecommunications carrier must provide service and advertise its service throughout the entire service area, consistent with section 254(e), the CLEC cannot profit by limiting service to low cost areas. If the CLEC

¹⁴ See USAC Second Quarter Appendices – 2001, Appendix HC01 (High Cost Support Mechanism Support by Study Area).

¹⁵ *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”)

¹⁶ *Id.* at 20480.

can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC. The presence of a more efficient competitor will require that ILEC to increase its efficiency or lose customers.¹⁷

In keeping with the Commission's previous finding that identical support is essential to competitive neutrality, it is critical that CETCs in Puerto Rico have access to the same per-line support made available to wireline carriers under the requested insular high-cost mechanism. As the support to PRTC has fallen over the years, so has the per-line support available to CETCs. The lack of needed support harms the ability of CETCs to bring service to consumers and to meet their universal service build-out commitments to the Telecommunications Regulatory Board of Puerto Rico ("TRB"). Thus, it is essential to ensure that insular support is made available not only to the incumbent, but also to competitive carriers for purposes of ensuring that consumers in Puerto Rico have access to competitive service offerings on par with the mainland United States.

2. Puerto Rico and Other Insular Areas Should Be Exempted From the Interim CETC Cap.

To achieve the full benefit of an insular high-cost support mechanism, competitors must be allowed to receive support that is necessary to construct networks and provide the supported services in insular areas. To that end, the Commission should adopt a modification of its Interim CETC Cap rule to ensure that insular areas are not deprived of sufficient support under the requested insular mechanism. Specifically, the Commission should modify the definition of "Covered Locations" to include Puerto Rico and other insular areas.

In adopting the Interim CETC Cap, the Commission adopted two exceptions: (1) carriers that submit their own costs could receive support that is not subjected to the cap and is instead calculated on the basis of their cost studies; and (2) carriers serving customers in tribal areas –

¹⁷ *Id.* (internal citations omitted).

termed “Covered Locations” – may receive uncapped per-line support based on any customers with billing addresses in such locations.¹⁸

In weighing whether to adopt a limited exception for tribal areas, the Commission decided in favor of the exception because of its finding that there continue to be low telephone penetration rates in many Tribal lands, and that providing uncapped high-cost support to carriers serving Tribal lands would not result in these carriers’ merely providing complementary telephone service but instead would enable them to bring telephone service to new subscribers on Tribal lands.¹⁹

A similar exception is justified in Puerto Rico. As discussed in Section II.A., *supra*, there is ample evidence to conclude that telephone penetration in Puerto Rico remains unacceptably low such that affirmative steps must be taken to enhance the availability of telephone service. As with tribal areas, large numbers of consumers in Puerto Rico are lacking either wireline or wireless telephone service. According to the PRTC Petition, more than 200,000 households are without wireline service.²⁰ And according to TRB statistics, roughly 35% of the island’s population remained without wireless telephone service as of December 2008.²¹ In Puerto Rico, there are a great many people for whom a wireless phone represents their only mode of telephone service.

¹⁸ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8848 (2008) (“*Interim Cap Order*” or “*Order*”) (“Covered Locations are tribal lands or Alaska Native regions as those terms are defined in section 54.400(e) of the Commission’s rules. See 47 C.F.R. 54.400(e) (tribal lands or Alaska Native regions are ‘any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.’)”)

¹⁹ See *Interim Cap Order*, 23 FCC Rcd at 8848 (para. 32).

²⁰ See PRTC Petition at p. 14.

²¹ See *supra* n.6.

An uninterrupted flow of high-cost support is critical to the efforts of CETCs to provide wireless telephone service to the large number of residents who have no wireless service, and to the roughly eight percent of households that have no telephone service at all. Accordingly, PR Wireless urges the Commission to modify the Covered Locations exception to ensure that CETCs in Puerto Rico and similarly affected insular areas receive uncapped support under any new insular high-cost support mechanism.

3. Support Under the Insular High-Cost Mechanism Should Be Protected From Any Phase-outs or Caps Connected With the National Broadband Plan.

In its *Notice of Inquiry and Notice of Proposed Rulemaking* released in April, the Commission requested comment on ways to transition away from legacy high-cost support mechanisms toward the creation of new mechanisms to implement the National Broadband Plan. Specifically, the Commission proposed “to contain growth in legacy high-cost support mechanisms as a critical first step to transitioning to a more efficient and accountably funding mechanism, recognizing that consumers across America ultimately pay for universal service.”²² Among the possible measures are capping all ILEC support on a per-line basis,²³ shifting rate-of-return carriers to incentive regulation,²⁴ eliminating Interstate Access Support,²⁵ and phasing out high-cost support for CETCs over a five-year period.²⁶ However, the Commission requested

²² *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, *Notice of Inquiry and Notice of Proposed Rulemaking*, FCC 10-58 (rel. April 21, 2010)(“*NPRM*”) at ¶ 50.

²³ *See id.* at ¶ 52.

²⁴ *See id.* at ¶ 55.

²⁵ *See id.* at ¶ 57.

²⁶ *See id.* at ¶ 61.

comment on “whether there are any unique circumstances in insular areas that would necessitate a different approach.”²⁷

Clearly, the low wireline and wireless telephone penetration numbers, in addition to the low income levels and other socioeconomic characteristics, constitute unique circumstances requiring a different approach in Puerto Rico. On a per-line basis, high-cost support to both incumbents and competitors on the island has been reduced drastically in the last 10 years, and an insular mechanism is needed to address the persistent lack of access to telecommunications service. Once such a mechanism is in place, the new sources of support must be shielded from any phase-outs or other transitional plans to reduce legacy support.

PR Wireless will provide additional comments and data in response to the *NPRM*, but at this time PR Wireless stresses the importance of ensuring the continuity of support – for both incumbents and competitors – once an insular high-cost support mechanism is established.

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²⁷ See *id.* at ¶ 50.

III. CONCLUSION

For all of the reasons set forth above, PR Wireless requests that the Commission reconsider its decision against adopting an insular high-cost support mechanism for Puerto Rico. PR Wireless further requests that the Commission ensure that the support under such a mechanism be available on a per-line basis to CETCs, and that the new mechanism be protected from both the Interim CETC Cap and any phase-downs or caps adopted as the Commission works to implement the recommendations of the National Broadband Plan.

Respectfully submitted,

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