

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF PR WIRELESS, INC.

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SUMMARY

The people of Puerto Rico have a statutory entitlement to access to telecommunications services and information services that are reasonably comparable to those available in urban areas.

The unfortunate truth, however, is that many consumers throughout Puerto Rico do not have such access.

One reason for this is that a large portion of the population in Puerto Rico is poor. Income levels are disproportionately low, when compared to the mainland of the United States, unemployment rates are disproportionately high, and a comparatively large percentage of families in Puerto Rico subsist below the poverty line. These circumstances conspire to make it impossible for many citizens on the island to afford telephone service.

Another reason for this lack of access to telecommunications services and information services in Puerto Rico lies at the doorstep of the Commission. Although the Commission recognized years ago that sufficient insular high-cost mechanisms are needed in Puerto Rico, the Commission has failed to take the steps necessary to ensure that low-income consumers in Puerto Rico have access to comparable services.

The record now before the Commission in this rulemaking proceeding has highlighted the fact that the Commission's latest proposal to bring relief to the people of Puerto Rico is nothing more than a minuscule "solution" to a substantial problem, and therefore is no solution at all. The Commission's proposal to provide a subsidy for one-time line extension costs not only is anti-competitive (because it would favor wireline service providers), but also is irrelevant. The proposed Link-Up modification would do nothing to address the fact that many consumers in Puerto Rico do not have sufficient income to pay the monthly costs of telecommunications services.

The Commission should take more decisive action in order to comply with its statutory mandate to provide sufficient universal service support to Puerto Rico and other insular areas. PR Wireless supports the proposal made by Puerto Rico Telephone Company that the Commission should reconsider its decision not to extend high cost loop support to non-rural insular areas. The Commission also should take an even more direct step, by adopting PR Wireless's proposal to increase the level of discounts available in Puerto Rico and other similarly situated insular areas pursuant to a modified form of the Enhanced Lifeline and Link-Up programs. Such a step would help address the underlying economic causes of low telephone subscribership in Puerto Rico while avoiding excessive burdens on the Universal Service Fund.

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PR Wireless, Inc. (“PR Wireless”), by its undersigned counsel, hereby submits Reply Comments in response to the Commission’s Notice of Proposed Rulemaking seeking comment regarding the Commission’s proposal to provide additional Link-Up support “to help offset special construction charges incurred by consumers when facilities must be built to provide them with access to voice telephone service.”¹

As noted in its Comments,² PR Wireless is an Eligible Telecommunications Carrier (“ETC”) in Puerto Rico doing business under the “Open Mobile” brand. PR Wireless has taken a leading role in increasing the availability of wireless service on the island. As a result of its con-

¹ *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, 2010 WL 1535603 (rel. Apr. 16, 2010) (“*Order*” and “*NPRM*”) at para. 3. Reply comments are due not later than June 21, 2010. *Wireline Competition Bureau Announces Deadlines for Comments on Puerto Rico Second NPRM Regarding Additional Link-Up Support*, WC Docket No. 03-109, Public Notice, DA 10-821, 2010 WL 1891757 (rel. May 11, 2010).

² Comments of PR Wireless, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, filed June 7, 2010 (“PR Wireless Comments”) at 1-2.

sumer-friendly pricing structure and its diligent Lifeline outreach efforts, PR Wireless has more than 100,000 Lifeline customers. Although PR Wireless currently has just under 10 percent of overall market share, these more than 100,000 customers represent approximately 40 percent of Lifeline customers served by *all* wireline and wireless carriers in Puerto Rico.

I. INTRODUCTION.

Both PR Wireless and Puerto Rico Telephone Company, Inc. (“PRTC”), the only parties filing comments in response to the *NPRM*, have demonstrated that economic hardships faced by citizens in Puerto Rico warrant special consideration in the formulation of the Commission’s universal service policies, but that, even though the Commission has a statutory mandate to ensure that sufficient support is provided, the agency over the years has fallen short of fulfilling this statutory obligation.

Even worse, as explained by PR Wireless and PRTC in their comments, the Commission in the *NPRM* has now proposed to take a bargain-basement approach to addressing its universal service mandate in Puerto Rico. Its proposed increase of the cap on Link-Up support to cover special construction charges is a woefully inadequate “thin reed”³ that will do little to improve the access of consumers in Puerto Rico to affordable telephone and broadband services.

The record in this and related proceedings demonstrates convincingly that stronger and more effective measures are needed. Both PR Wireless and PRTC have proposed solutions that will better serve Puerto Rico consumers without overburdening the Universal Service Fund (“USF”) while the Commission develops its plans to shift USF funding to support the agency’s broadband goals.

³ Comments of PRTC, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, filed June 7, 2010 (“PRTC Comments”) at 3.

II. DISCUSSION.

In the following sections PR Wireless discusses the record now before the Commission, which demonstrates that income levels, poverty levels, and unemployment levels in Puerto Rico—together with the deteriorating state of the island’s economy—require action by the Commission to effectively promote and enhance the availability of affordable telecommunications services on the island. This need for Commission action is underscored by the substantial gap in overall telephone penetration rates in Puerto Rico, compared to the mainland of the United States, and the even larger gap in the penetration rates for wireless services.

PR Wireless also discusses the scope of the Commission’s statutory responsibility regarding the protection and advancement of universal service in insular areas, and contrasts this mandate with the Commission’s failure to take the actions needed to improve the availability and affordability of telecommunications services in Puerto Rico.

Finally, PR Wireless discusses how the record establishes the shortcomings of the Commission’s current proposal in the *NPRM*. Because of these shortcomings, PR Wireless advocates that the Commission should pursue alternative approaches.

A. The Substantial Economic Challenges Faced by the People of Puerto Rico Emphasize the Importance of Sufficient Universal Service Assistance.

Two facts stand out in any assessment of economic conditions and the availability of telecommunications services in Puerto Rico. The first is that virtually every economic indicator demonstrates that many citizens in Puerto Rico are economically disadvantaged, especially in comparison to consumers residing on the mainland. The second is that many citizens in Puerto Rico do not have access to affordable voice or broadband services.

1. Puerto Rico Is Plagued by Crippling Economic Conditions.

As both PR Wireless and PRTC have documented in their comments, income levels in Puerto Rico are exceptionally low, while unemployment and poverty levels are alarmingly high. Median income and per capita income levels in Puerto Rico are well below income levels on the mainland.⁴ Puerto Rico's unemployment rate of 17.2 percent is well above the 9.9 percent unemployment rate on the mainland.⁵ Over 40 percent of all families in Puerto Rico live below the poverty line, compared to less than 10 percent of families on the mainland.⁶ PRTC has also explained that the cost of living in Puerto Rico is disproportionately high in comparison to the cost of living on the mainland.⁷

The worsening economic conditions in Puerto Rico have come under scrutiny by a White House task force, which President Obama has asked to advise the Federal Government on economic development and other issues in Puerto Rico. At a forum conducted by the task force in March, "participants complained that funding caps on federal programs due to the territory's commonwealth status put Puerto Rico at a disadvantage to other parts of the United States in a time of economic crisis[.]"⁸ and Jose Villamil, an economist and community leader who attended the task force meeting, observed that "[t]he situation we are in is much worse than a recession. The economy has lost its capacity to generate economic growth"⁹

⁴ PR Wireless Comments at 3 (showing that the median income for households in Puerto Rico is 36 percent of the median income for households on the mainland, and that per capita income in Puerto Rico is 37 percent of per capita income on the mainland); PRTC Comments at 10 (pointing out that "Puerto Rico has the lowest per capita income as compared to any U.S. state").

⁵ See PR Wireless Comments at 3 (citing April 2010 unemployment statistics).

⁶ See *id.*; PRTC Comments at 10.

⁷ PRTC Comments at 10 & n.26.

⁸ *White House Task Force Hears Puerto Rico Grievances*, REUTERS, Mar. 3, 2010, accessed at <http://www.reuters.com/article/idUSTRE6225HU20100303>.

⁹ *Id.* (internal quotation marks omitted). Puerto Rico is now in its fifth consecutive year of negative GDP growth. PR Wireless Comments at 1.

Today's economies are not likely to thrive without the availability of ubiquitous voice and broadband network infrastructure, and without the ability of consumers to access affordable voice and broadband services. The importance of these networks and services cannot be overstated,¹⁰ and this importance is magnified in areas such as Puerto Rico, where the economy is in crisis, where income levels are meager, and where many citizens live in poverty.

2. Consumers in Puerto Rico Do Not Have Adequate Access to Voice and Broadband Services.

Telephone penetration levels in Puerto Rico are unacceptably low. Even if the Commission's calculation is treated as accurate, an overall telephone penetration rate of 91.9 percent in Puerto Rico¹¹ is not a basis for the Commission to avoid serious efforts to address access to telecommunications services by the island's residents. Moreover, as both PR Wireless and PRTC have explained, the Commission's calculation is faulty and overstated.¹² In reality, it is not accurate for the Commission to conclude that overall telephone rates in Puerto Rico have increased from 80.6 percent to 91.9 percent from 2007 to 2008 (and from 73.6 percent to 91.9 percent from 2006 to 2008).¹³

In fact, line count data for Puerto Rico compiled by the Universal Service Administrative Company ("USAC") show that the growth in the total number of lines in use (both wireline and wireless) from 2007 to 2008 was only 1.54 percent.¹⁴ This level of growth contradicts the Com-

¹⁰ See, e.g., Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) at xi (observing that "broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling new industries and unlocking vast new possibilities for existing ones.").

¹¹ See *Order* at para. 1.

¹² See, e.g., PR Wireless Comments at 4; PRTC Petition for Reconsideration, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, filed Apr. 27, 2010, at 13.

¹³ *Order* at para. 20 (Table: Telephone Penetration Rates (Percent), 2005-2008).

¹⁴ This calculation was derived utilizing data collected and published by USAC. See USAC Fourth Quarter Appendices – 2008, Appendix HC19 (CETC Reported Lines by Incumbent Study Area – Interstate

mission’s conclusion regarding the level of overall telephone penetration in 2008. In addition, PR Wireless has measured the availability of telephone service in Puerto Rico based on the number of wireline and wireless connections divided by overall population, and arrived at a penetration rate of 86.1 percent (as of the end of 2008).¹⁵

Moreover, notwithstanding the growing importance of wireless communications and the increasing reliance by consumers on wireless services,¹⁶ wireless penetration in Puerto Rico lags far behind penetration levels on the mainland.¹⁷ PRTC also points to a staggering gap in broadband availability—while 60 percent of households on the mainland have access to high-speed Internet access connections, only 24 percent of households in Puerto Rico have such access.¹⁸ PRTC also indicates that “wireline infrastructure is not ubiquitously available in Puerto Rico.”¹⁹

The bottom line is that consumers in Puerto Rico do not have sufficient access to voice and broadband services. In large part, this is due to the fact that the impoverishment of the general population makes these services unaffordable for many consumers. As PR Wireless discusses in the next section, the Commission has a responsibility to address this problem, and it is past time for the agency to step up to the plate.

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

¹⁵ Comments of PR Wireless, WC Docket No. 05-337, filed June 14, 2010 (“PR Wireless Reconsideration Comments”), at 5.

¹⁶ See, e.g., *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, FCC 10-81 (rel. May 20, 2010) at para. 339 (stating that “[t]he number of adults who rely exclusively on mobile wireless for voice service has increased significantly in recent years”).

¹⁷ PR Wireless Comments at 4 (wireless penetration is 64.3 percent in Puerto Rico, compared to 90 percent on the mainland).

¹⁸ PRTC Comments at 8.

¹⁹ *Id.* (footnote omitted).

B. The Commission’s Universal Service Policies for Puerto Rico Have Fallen Short of the Commission’s Statutory Mandate.

PR Wireless has pointed to the fact that the Commission “has an unambiguous statutory duty to ensure the availability of telecommunications services to residents of insular areas”²⁰ This availability of services must be “reasonably comparable” to services available in urban areas.²¹ PR Wireless agrees with PRTC’s indication that, pursuant to the Act, every citizen, including those residing in insular areas, has a right to communications services.²²

As both PR Wireless and PRTC have demonstrated, the Commission’s universal service policies with respect to Puerto Rico have failed to carry out the statutory mandate. Although the Commission tentatively concluded five years ago that an insular high-cost mechanism was necessary to ensure that consumers in Puerto Rico could have access to telecommunications services that are reasonably comparable to those available in urban areas, the Commission has now decided not to act on this tentative conclusion.²³

Instead of acting to establish an insular high-cost mechanism for Puerto Rico, the Commission has taken steps to reduce significantly the level of high-cost support available to ETCs, thus handicapping the ability of both incumbent local exchange carriers and competitive ETCs to

²⁰ PR Wireless Reconsideration Comments at 2. *See* Section 254(b)(3) of the Communications Act of 1934 (“Act”), 47 U.S.C. § 254(b)(3) (stating that “[c]onsumers 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 . . .”).

²¹ *See* PRTC Comments at 1-2.

²² *Id.* at 2 (citing *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service*, Report and Order and Notice of Proposed Rulemaking, Statement of Commissioner Michael J. Copps, 21 FCC Rcd 7518, 7663 (2006)).

²³ PR Wireless Reconsideration Comments at 4 (citing *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746 (para. 33) (2005)).

construct and deploy network infrastructure for the provision of service in unserved and under-served areas on the island.²⁴

PR Wireless agrees with PRTC that the Commission has now compounded this “extraordinary history of neglect”²⁵ by refusing to adopt in the *Order* the high-cost support mechanism proposed by PRTC and by merely proposing “minor enhancements” to the telephone service initiation program that will do little to improve access for low-income consumers in Puerto Rico.²⁶ PR Wireless discusses the inadequacies of the proposal made in the *NPRM* in the following section.

C. The Commission Should Abandon Its Proposal for Link-Up Support and Instead Adopt Alternative Support Mechanisms.

PR Wireless supports PRTC’s position that the Commission’s proposal for additional Link-Up support is riddled with problems, many of which were also discussed by PR Wireless in its Comments.

A likely explanation for the low overall telephone penetration rates, as well as low wireless penetration rates, in Puerto Rico is the fact that many of the island’s citizens are poor. As the record in this proceeding has illustrated, and as the Commission has acknowledged, there are many low-income consumers in Puerto Rico who simply cannot afford telephone service.²⁷

The proposal in the *NPRM* falls far short of adequately addressing this problem. A principal reason for this is that “unlike the Commission’s high cost mechanisms, the amounts dis-

²⁴ *Id.* at 5-6.

²⁵ PRTC Comments at 2.

²⁶ *Id.* at 3.

²⁷ *NPRM* at para. 49 (indicating that “there may be a significant number of low-income consumers in Puerto Rico who remain unable to afford access to voice telephone service”). See PR Wireless Comments at 6 (stating that, although wireless ETCs are using high-cost disbursements to extend networks and expand service offerings in Puerto Rico, “[t]he more basic problem is that many consumers who are within the reach of any telephone network cannot afford the monthly bill”).

bursed under the Link Up program are not recurring revenue.”²⁸ PR Wireless agrees with PRTC’s explanation that the narrow scope of the existing Link-Up program accounts for the fact that disbursements under the program have been relatively low.²⁹ PRTC concludes that, “[i]ndeed, the proposed modest discount seems absurd when compared to the \$50 million in loop support that the Commission took away from Puerto Rico in 2001.”³⁰

A further problem with the Commission’s Link-Up discount proposal is that it is not competitively neutral. As PR Wireless explained in its Comments, the proposal inherently favors wireline providers because of its exclusive focus on special construction charges.³¹

Because the Commission’s proposed modifications to the Link-Up program are inadequate to address the pressing needs of low-income consumers in Puerto Rico, PR Wireless renews the suggestion made in its Comments that the Commission abandon its proposed approach. Instead, the Commission should adopt the insular Lifeline and Link-Up mechanism discussed in PR Wireless’s Comments, under which additional Insular Lifeline support, in the amount of \$15 per month, would be made available in Puerto Rico,³² together with an Insular Link-Up discount of an additional \$50 to cover 100 percent of charges between \$60 and \$110.³³ As PR Wireless observed in its Comments, such an approach would be effective in narrowing the gap that exists between Puerto Rico and the mainland regarding access to communications services.³⁴

²⁸ PRTC Comments at 11. *See* PR Wireless Comments at 5 (pointing out that “a supplemental discount that is limited to the service connection charge does nothing to assist consumers who cannot afford a monthly bill after the currently available Lifeline discount is applied”).

²⁹ PRTC Comments at 11-12.

³⁰ *Id.* at 12.

³¹ PR Wireless Comments at 6.

³² *Id.* (stating that such a discount “would significantly increase the ability of low-income families to pay for monthly wireless service”).

³³ *Id.* at 5.

³⁴ *Id.* at 3.

Finally, PR Wireless also supports PRTC's argument that the Commission, rather than adopting its "thin reed" Link-Up proposal, "should instead reverse its decision not to award high cost loop support to non-rural insular areas."³⁵ PR Wireless agrees with PRTC's view that the availability of high-cost loop support would be a more effective means of ensuring that the people of Puerto Rico will receive comparable access to telecommunications and information services.³⁶

III. CONCLUSION.

The rulemaking initiated by the Commission is an important step in the agency's efforts to address the challenges involved in improving access to communications services in Puerto Rico. The Commission, however, now has before it a record that convincingly demonstrates that the agency's proposal for modifying the Link-Up discount program will not provide the many low-income consumers in Puerto Rico with a reasonable opportunity to subscribe to telecommunications services that are comparable to those available in urban areas.

More effective action by the Commission is needed. In addition to supporting PRTC's proposal that the Commission extend high cost loop support to non-rural insular areas, PR Wireless also urges the Commission to increase the level of discounts available pursuant to a

³⁵ *Id.* at 5.

³⁶ PR Wireless, however, disagrees with PRTC's analysis in one important respect. PRTC argues that the Commission's current "identical support" rule fails to provide competitive ETCs with sufficient incentives to invest in network infrastructure. PRTC Comments at 9 & n.23. As PR Wireless has explained, the Commission has endorsed the identical support rule as a competitively neutral means of promoting competitive entry and the efficient delivery of affordable services. *See* PR Wireless Reconsideration Comments at 6-7.

modified form of the Enhanced Lifeline and Link-Up program, and to make these discounts available in Puerto Rico and in other insular areas with similar circumstances.

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