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

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

REPLY COMMENTS OF PR WIRELESS, INC.

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 reply 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

The initial comments show that there is a wellspring of support within the Puerto Rican community for creating an insular mechanism to improve the dire situation regarding access to telecommunications in Puerto Rico. In addition to PR Wireless, comments in support of PRTC's Petition were filed by a broad-ranging coalition of organizations including Communications Workers of America, Dialogue on Diversity, the Hispanic Institute, Hispanic Technology and Telecommunications Partnership, Labor Council for Latin American Advancement, Latinos in Information Sciences and Technology Association, League of United Latin American Citizens,

[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*").

Minority Media and Telecommunications Council, National Conference of Puerto Rican Women, and the National Puerto Rican Coalition (collectively referred to as the "Organizations"). The Organizations' comments properly noted that the *Order* "leaves Puerto Rico, which has, by far, the nation's poorest population and lowest telephone and broadband penetration rates, to fall even further behind the rest of the United States."

The only comments in opposition were filed by San Juan Cable, LLC ("San Juan Cable") a competitor of PRTC that is not an eligible telecommunications carrier ("ETC"). In the face of broad popular support within Puerto Rico for an insular mechanism, San Juan Cable has taken upon itself to declare that the continued denial of insular support to Puerto Rico is in the "public interest." Moreover, San Juan Cable made the remarkable assertion that such a mechanism would benefit only PRTC, when wireline ***and wireless*** penetration data show that a great many Puerto Ricans would stand to benefit from the increased availability of high-cost support on the island. In fact, San Juan Cable's opposition seems to be driven by its fear of being left behind as other companies take on the obligations that come with being ETCs and use support to usher in a new era of communications and information technology in Puerto Rico. While not unfounded, this fear is not a valid basis for refusing to establish the insular support mechanism that is so desperately needed by the citizens of Puerto Rico.

II. DISCUSSION

A. The Commission Has a Statutory Obligation to Ensure the Comparability of Rates and Services in Insular Areas to Those in Urban Areas.

The Organizations' comments demonstrated that the Commission has a clear statutory duty to address the lack of telecommunications services in insular areas. As both the Organizations and PRTC point out, Section 254(b)(3) of the Communications Act of 1934, as

amended ("Act") lists insular areas separately from rural and high-cost areas.[3] 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 rates that are reasonably comparable to rates charged for similar services in urban areas.")[4]

Under this statutory provision, if the Commission finds that consumers in an insular area lack access to telecommunications services comparable to those available in urban areas, then the Commission "shall" adopt policies that address this lack of access.

San Juan Cable's argument that the word "insular" was "taken out of context" is bewildering.[5] The context in which "insular" was used in the statute is clear: consumers in those areas should have access to telecommunications and information services on a par with urban areas. As the Commission correctly concluded in its *Insular NPRM*: "[T]hrough section 254(b), Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services."[6] If there is another context in which insular is used in the statute, San Juan Cable has not identified it.

San Juan Cable's assertion that PRTC does not meet the definition of "rural telephone company" employs circular reasoning and ignores the nature of the proposed insular mechanism.[7] PRTC has not claimed to be a rural telephone company, nor has it asked the

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[3] Organizations' Comments at p. 3; PRTC Petition at p. 4.

[4] 47 U.S.C. § 254(b)(3) (emphasis added).

[5] San Juan Cable Comments at p. 11.

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

[7] San Juan Cable Comments at p. 15.

Commission to extend the definition of rural telephone company to cover PRTC. Rather, the request is to establish a separate mechanism for *non-rural* telephone companies in *insular* areas. As the Commission's *Order* acknowledges, the proposed insular mechanism was to be "patterned after, but distinct from, the existing mechanism for rural telephone companies."[8] To claim that an insular mechanism "patterned after" the rural mechanism is not properly applied to companies that don't meet the definition of rural telephone companies is merely a truism. Given the Commission's clear authority under Section 254 to establish an insular high-cost support mechanism to address the pervasive lack of access to telecommunications services on the island, San Juan Cable's parsing of the definition of "rural telephone company" is unpersuasive.

B. Puerto Rico Lags Far Behind the Rest of the United States in Access to Wireline and Wireless Telephone Service.

As PR Wireless demonstrated in its comments, the Commission relied on faulty data in finding that overall telephone penetration in Puerto Rico is only "somewhat" lagging behind the U.S. mainland (91.9 percent vs. 98.2 percent). 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 the U.S. Census questionnaire was changed in 2008[9] 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. 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)

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[8] *Order* at ¶ 13 (internal quotation marks omitted).

[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).

from 2007 to 2008 was only 1.54 percent.[12] Wireless subscribership on the island lags even more than wireline subscribership. Only 64.3 percent of the Puerto Rico population has wireless telephone service[13] compared to 90 percent on the mainland (based on 2008 figures).[14]

The Organizations agree that "Puerto Rico's telephone penetration rate under any measure lags far behind the mainland U.S."[15] And while San Juan Cable twists itself into logical pretzels to justify the Commission's reliance on faulty apples-to-oranges penetration data, it does not deny that wireline telephone penetration lags far behind the mainland U.S.[16] Nor does San Juan Cable deny that Puerto Ricans are lacking in access to wireless telephone service.[17] Looking at each statistic, the inescapable conclusion is that Puerto Ricans have far less access to telecommunications services than people on the mainland U.S.

In sum, Puerto Rico trails far behind the mainland United States whether one looks at wireline telephone service or wireless. The Commission should reject attempts by the opposing commenter to obfuscate the picture by adding the two together and calling the result an increase.[18]

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

[13] Puerto Rico Telecommunications Regulatory Board, "Total de Líneas Inalámbricas por cada 100 Habitantes en Puerto Rico Años 2000 – Marzo 2010," accessed at http://www.jrtpr.gobierno.pr/documentos/Estadisticas/2009/informe%202009.asp.

[14] *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.

[15] Organizations' Comments at p. 6.

[16] *See* PRTC Petition at p. 14.

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

[18] It is telling that San Juan Cable devotes only a brief paragraph to the discussion of telephone penetration, avoiding altogether the subject of the change in the way penetration data were collected during the relevant time periods. *See* San Juan Cable Comments at p. 23.

C. The Proposed Insular Mechanism Would Benefit All Puerto Ricans.

Contrary to San Juan Cable's assertion that the proposed insular mechanism "will benefit only PRTC[,]"[19] the benefits of such a mechanism extend far beyond any one company or technology. Under the Commission's current rules which provide identical support to CETCs, the same additional per-line support would be available to all of PRTC's competitors who take on the regulatory responsibility of being designated as ETCs. Those responsibilities include providing the nine supported services and functionalities listed in Section 54.101 of the FCC's rules, offering discounts under the state and federal Low-Income support programs, using high-cost support to construct and operate telecommunications facilities to reach communities throughout the island, and reporting regularly to the Telecommunications Regulatory Board of Puerto Rico ("TRB") on the use of high-cost funds and several other compliance items.[20] It was San Juan Cable's choice to select a business model that does not envision receiving support and undertaking these obligations. Because of that choice, San Juan Cable would not benefit from an insular high-cost support mechanism, and its opposition to such a mechanism is therefore expected.

The additional support is badly needed by CETCs on the island to fill a gap that has existed since high-cost loop support for Puerto Rico was shut off in 2001. As PR Wireless discussed in its comments, the PRTC study area currently receives approximately $4.00 in monthly support per line.[21] PRTC's other 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,

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[19] San Juan Cable Comments at p. 7.

[20] *See* Junta Reglamentadora de Telecomunicaciones de Puerto Rico, Reglamento Sobre Servicio Universal at Sections 9.2, 9.3.

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

respectively.[22] 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. In addition to constructing new facilities and modifying existing facilities to increase coverage, more high-cost support is needed for the operation and maintenance of wireless transmission, switching, and backhaul facilities in the many areas of Puerto Rico where customer revenues alone would be insufficient to support those facilities. Unless sufficient support is provided, PR Wireless and other CETCs could be forced to cease operation of network facilities in some areas where they are found no longer to be supportable, to the detriment of consumers.

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. The availability of additional per-line support will enable wireless CETCs on the island to speed the construction of their networks and enhance the reach and quality of their wireless coverage to communities throughout Puerto Rico. Therefore, the benefits of an insular mechanism would clearly extend beyond any particular carrier or technology. On the contrary, such a mechanism would benefit all of Puerto Rico.

D. The Commission's Proposal to Make More Link-Up Support Available Is Inadequate and Does Not Justify Denying Additional High-Cost Support to the Island.

As the Organizations correctly noted, the Commission has proposed a solution to Puerto Rico's lack of access to telecommunications that "falls well short of the Commission's statutory

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

mandate under Section 254 to support infrastructure deployment in insular areas."[23] In its comments on the *NPRM* attached to the *Order*, PR Wireless discussed the inadequacy of the Commission's proposal to provide an additional $50 in Link-Up support to cover "special construction charges" to qualifying low-income consumers.[24]

Though not expressing any apparent enthusiasm for the Commission's proposal itself, San Juan Cable chastises PRTC for opposing the Link-Up half-measure, suggesting that PRTC should have embraced the additional discounts as a means of solving at least part of the problem of access to telecommunications.[25] Yet, as PR Wireless' comments demonstrated, the Link-Up proposal is not even a half-measure when it comes to wireless service, for which there is no tariffed special construction charge. As PR Wireless pointed out, the appropriate tool for increasing the reach of telecommunications facilities is by making additional high-cost support available to all ETCs on the island. This was confirmed in the Commission's *Insular NPRM*, in which the Commission found:

> We believe that our tentative conclusion to adopt a non-rural insular mechanism is appropriate because, as PRTC has explained, newly available universal service funds will enable PRTC to construct new network and loop infrastructure to unserved areas, update its existing facilities, improve quality of service, maintain affordable rates, and educate and solicit potential first-time telephone customers.[26]

Clearly, the Link-Up proposal does not come close to addressing the needs of the large numbers of Puerto Ricans who lack access to affordable wireline or wireless telephone service. Problems

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[23] Organizations' Comments at p. 7.

[24] *See* Comments of PR Wireless, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, filed June 7, 2010.

[25] *See* San Juan Cable Comments at p. 33 ("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.")

[26] *Insular NPRM, supra*, 20 FCC Rcd at 19746, ¶ 34.

of affordability are best addressed by providing additional monthly Lifeline discounts. Problems of insufficient facilities are best addressed by providing additional high-cost support.

Accordingly, the suggestion that supplemental Link-Up is a solution to the lack of access to telecommunications in Puerto Rico is without merit.

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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