

**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)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

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I. INTRODUCTION AND SUMMARY

Puerto Rico Telephone Company, Inc. (“PRT”) hereby submits these reply comments in response to the opposition to PRT’s petition for reconsideration filed by San Juan Cable LLC d/b/a OneLink Communications (“OneLink”). PRT’s petition for reconsideration seeks to provide sorely needed and congressionally mandated support for insular areas and the people of Puerto Rico. This request calling upon the Commission to provide long overdue assistance is backed by numerous and diverse consumer and minority groups who agree that the Commission must end its practice of “treat[ing] the people of Puerto Rico as second-class citizens” and who “question[] whether the FCC has lived up to its commitment to ensure that Latinos have comparable access to telecommunications services.”¹ The request is further supported by another telecommunications provider in Puerto Rico that, like PRT, must overcome the unique challenges and burdens of providing telephone service to insular areas.

To ensure that insular funds are used for and to the benefit of the people of Puerto Rico, PRT has committed to using such funds to improve service in Puerto Rico. PRT specifically proposed build-out commitments, for example offering to commit to apply the insular funding for the provision, maintenance, and upgrading of broadband facilities, with a priority of extending broadband capabilities to lines that are not broadband-capable today.² In addition,

¹ Comments of 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, Minority Media and Telecommunications Council, National Conference of Puerto Rican Women, National Puerto Rican Coalition at 1, 12, WC Docket No. 05-337 (filed June 14, 2010) (“CWA *et al.* Comments”).

² See Letter from Nancy J. Victory, Counsel, Puerto Rico Telephone Company, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 & WC Docket No. 05-337 (filed Apr. 12, 2010).

PRT, for its part, has expended \$595 million on telecommunications infrastructure over the last three years, of which \$395 million has been spent on wired infrastructure.

OneLink now emerges for the first time on reconsideration as the one and only opponent of insular funding. To be factually clear, however, OneLink has not invested its own money to bring telephone service to poor customers in Puerto Rico. OneLink does not serve even one LifeLine customer and has never provided even a single person a Link-Up connection. Nor is there any reason to believe that OneLink will do so in the future. Instead, as discussed below, its sole interest is purely to block broadband and video competition from PRT to its entrenched cable service in urban San Juan.

As documented in PRT's petition and confirmed below, the Commission should expeditiously grant reconsideration and begin the long overdue and well warranted support for wireline telephony in insular areas.

II. RECONSIDERATION IS STRONGLY SUPPORTED BY DIVERSE CONSUMER, LATINO, AND MINORITY GROUPS AS WELL AS THE TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO.

OneLink stands alone in opposition to PRT's petition for reconsideration. By contrast, ten national organizations, including representatives from the Latino community, support PRT's petition and demand that the Commission stop treating the people of Puerto Rico as second-class citizens.³ Moreover, the Telecommunications Regulatory Board of Puerto Rico (the "TRB") stands behind PRT's petition and disagrees with OneLink's unreasonable interpretation of Congress's mandate in Section 254.⁴

³ CWA *et al.* Comments at 1.

⁴ Reply Comments of the Telecommunications Regulatory Board of Puerto Rico, WC Docket No. 05-337 (filed Jun. 22, 2010) ("TRB Reply Comments").

The national organizations, “which include representatives from a broad range of the Latino community, are deeply concerned that the *Order* does not uphold the Commission’s duty to ensure that all people of the United States have access to telecommunications services.”⁵ These groups conclude that “the *Order* unlawfully treats the people of Puerto Rico as second-class citizens” and “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.”⁶ PRT agrees that the Commission must end its practice of “arbitrarily treat[ing] Puerto Rico differently than the rest of the nation”⁷ by granting the petition for reconsideration.

Similarly, the TRB, strongly supports PRT’s petition. From its position as the statutorily-designated agency in charge of regulating telecommunications and information services in Puerto Rico, the TRB has significant experience with the unique challenges involved in serving insular areas. The TRB finds it to be “undisputed” that Puerto Rico does not have reasonably comparable telecommunications and information services to the mainland United States.⁸ Indeed, the TRB’s most recent data show that wireline penetration rate in Puerto Rico significantly lower than in the rest of the United States.⁹ The TRB also concludes that the *Order* will impermissibly widen the existing digital divide between Puerto Rico and the United States, leaving Puerto Rico behind while the rest of the nation garners the economic, educational, and other benefits of broadband.¹⁰

⁵ CWA *et al.* Comments at 2.

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ TRB Reply Comments at 5.

⁹ *Id.*

¹⁰ *Id.* at 9-11.

III. THE ONLY OPPONENT OF RECONSIDERATION (ONELINK) DOES NOT PROVIDE SERVICE OR INVEST FUNDS FOR UNSERVED AREAS OR PERSONS AND ITS OPPOSITION IS PART OF AN ANTI-COMPETITIVE CAMPAIGN TO IMPEDE VIDEO COMPETITION.

A. OneLink Presents An Incomplete Picture Of The Difficulties Of Providing Universal Service In Puerto Rico Because It Does Not Provide Telephone Service To Rural Or Poor Areas.

Not surprisingly, OneLink is unfamiliar with the difficulties faced by PRT in providing telephone service to the residents of Puerto Rico. OneLink is a cable and Internet provider in Puerto Rico with the advantages of being able to cherry-pick the most profitable markets and to provide service only to those customers. OneLink serves only San Juan and the surrounding urban municipalities of Bayamon, Guaynabo, Trujillo Alto, Carolina, Toa Baja, Toa Alta and Cataño, while specifically carving out poor communities in these areas, such as public housing projects, from its territory.¹¹ As such, OneLink knows little about the economics of serving poor rural areas. And because it is not an eligible telecommunications carrier, it does not have a universal service obligation, and is not eligible for universal service support.¹² Unlike OneLink, PRT, is an eligible telecommunications carrier committed to serving its customers in Puerto Rico indiscriminately. Indeed, PRT provides service today to 134,146 Lifeline customers using its wireline network. As a percentage of its total residential customer base, few, if any, carriers serve more Lifeline customers than PRT. PRT also averages its rates across density zones which

¹¹ See *Puerto Rico Telephone Co. h/n/c Claro TV v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. CC-2009-380 at 43 (P.R. Sup. Ct. Jun. 9, 2010) (“At present, OneLink is the only cable TV provider in the metropolitan area [of San Juan] and in the towns of Toa Alta and Toa Baja. This is without including public housing projects, which OneLink does not serve.”) (translated from Spanish).

¹² To be eligible for universal service support under section 254, a carrier must be designated as an “eligible telecommunications carrier” or “ETC” by a state commission or the Commission, *see* 47 U.S.C. § 214(e)(2), (6), must offer telecommunications services that are supported by the federal universal service mechanisms, and must advertise the availability of those services in media of general distribution within the service area for which it has received ETC designation, *see* 47 U.S.C. § 214(e)(1).

makes its service even more affordable. In contrast, the burden of providing universal service to all customers that could feasibly be reached in its service area is entirely foreign to OneLink. Thus, OneLink is no position to comprehend the unique challenges of providing universal telephone service in insular areas like Puerto Rico,¹³ or to claim that the absence of a universal service mechanism for insular areas somehow serves the public interest.¹⁴ As shown in the petition for reconsideration, PRT faces unique challenges and burdens in providing universal telephone service in Puerto Rico. These challenges include significantly higher operational costs compared to other carriers, higher operational costs associated with the topography and climate in Puerto Rico, and a customer base with the lowest per capita income in the United States which precludes raising rates.¹⁵ The Commission ignored these important considerations when it refused to create an insular support mechanism, and OneLink is no position to dispute them.

B. OneLink’s Opposition Is Motivated By Its Anti-Competitive Desire To Block A New Entrant To Puerto Rico’s Cable Television Market.

OneLink is one of three incumbent cable operators in Puerto Rico, each of which has long held the only local “franchise” to provide cable service to distinct, non-overlapping areas of the Island. In December 2008, however, PRT filed an application with the Telecommunications Regulatory Board of Puerto Rico (the “Board”) for a franchise that would permit it to compete with the incumbents by offering its own, rival video subscription service. Although the Board immediately initiated a proceeding to review PRT’s application, that proceeding, as well as PRT’s ultimate entry into the cable television market, has been frustrated by a barrage of litigation by OneLink. Indeed, OneLink has repeatedly sought to block and delay PRT’s entry

¹³ OneLink Opp. 24-26.

¹⁴ *Id.* at 26-34.

¹⁵ PRT Petition 16-20.

into the Puerto Rico cable market. It opposed and succeeded in defeating an initial franchise application made by PRT's affiliate, Coqui.Net Corporation. And when PRT filed its current franchise application in December 2008, OneLink responded with an onslaught of litigation against the Board and PRT.

In particular, OneLink launched a series of legal actions in Puerto Rico state court asserting that OneLink should have the right to intervene as a party in PRT's franchise proceeding.¹⁶ That litigation froze the Board's franchise review proceedings, leaving the Board, PRT, and PRT's potential subscribers in limbo. Recently, the Puerto Rico Supreme Court affirmed the Court of Appeals' determination that OneLink, whose true interest is to limit the market and competition, could not hide behind the public interest to insist on a right to intervene in another company's franchise request.¹⁷

Unsatisfied with the course of the state-court litigation, OneLink separately sued in federal district court to enjoin the Board's 2008 grant of "special temporary authority" for PRT to perform a limited test of its video service to the homes of 200 PRT employees. On OneLink's application for a temporary restraining order, the district court issued an initial decision finding that OneLink had a likelihood of success on the merits because the test appeared to constitute the

¹⁶ See *San Juan Cable LLC h/n/c OneLink Commcn's v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. K PE 2009-0600 (904) (P.R. Sup. Ct.); *San Juan Cable LLC h/n/c OneLink Commcn's v. Puerto Rico Telephone Co. y Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. CC-2010-0146 (P.R. Sup. Ct.); *Puerto Rico Telephone Co. y Junta Reglamentadora de Telecomunicaciones de Puerto Rico v. San Juan Cable LLC h/n/c OneLink Commcn's*, No. CC-2009-0380 (P.R. Sup. Ct.); see also *See San Juan Cable LLC h/n/c OneLink Commcn's v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. KPE09-4510 (P.R. Sup. Ct.).

¹⁷ See *Puerto Rico Telephone Co. h/n/c Claro TV v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. CC-2009-380 (P.R. Sup. Ct. Jun. 9, 2010).

provision of cable service prior to the grant of a cable franchise authorizing such service.¹⁸ The Court then invited the parties to address the remaining factors relevant to assessing whether an injunction should issue, but PRT voluntarily discontinued the test rather than consume time and resources with sideshow litigation. After the Board confirmed discontinuance of the special temporary authority test, the District Court dismissed OneLink's action as moot.

OneLink returned to federal court on March 25, 2009. This time, OneLink asked the court to reopen its mootness determination on the ground that PRT was allegedly engaging in construction activities such as wiring previously deployed terminals and clearing debris from the rights of way around terminals. OneLink claimed that such activities were an improper "continuation" of the special temporary authority. The District Court heard argument and testimony on the matter and declined to reopen the earlier judgment dismissing OneLink's initial lawsuit.¹⁹ The District Court noted that OneLink was free to file a new complaint if it chose. Of course, OneLink did so, which led to an action now on appeal to the U.S. Court of Appeals for the First Circuit.

Not yet satisfied, on April 7, 2009, OneLink filed a complaint with the Board repeating the same allegations it had previously made in federal court.²⁰ OneLink even went so far as to

¹⁸ *San Juan Cable LLC v. Telecom. Regulatory Bd. of Puerto Rico*, 598 F. Supp. 2d 233 (D.P.R. 2009).

¹⁹ *San Juan Cable LLC v. Puerto Rico Telephone Co., Inc.*, 623 F. Supp. 2d 189 (D.P.R. 2009).

²⁰ Emergency Motion for Order to Show Cause, *In re: Investigation Into Puerto Rico Telephone Company's Development, Construction and Operation of a Cable System in Violation of Law 213*, Case No. JRT-2009-CCG-0001 (Telecom. Reg. Bd. of P.R. Apr. 7, 2009).

file a complaint with the Puerto Rico Justice Department's anti-monopolistic office requesting an investigation of PRT for alleged anti-competitive practices.²¹

In light of its litigious history, OneLink's opposition is merely the latest attempt to use its lawyers to suppress competition in Puerto Rico's cable television market. In other words, OneLink's filing in this proceeding is nothing more than an incumbent's anti-competitive hostility toward a new entrant. None of the issues in this proceeding are relevant to OneLink's business. Indeed, OneLink has no legitimate interest at stake, has never before filed anything in this docket, and will not be adversely affected if the Commission grants PRT's reconsideration petition. The only interest OneLink has in this proceeding is in ensuring that PRT does not receive the financial support it needs to provide the residents of Puerto Rico with universal telephone service.

C. PRT Has Made Substantial Infrastructure Investments In Puerto Rico, Consistent With Its Commitment To The Commission.

OneLink also is in no position to second-guess the substantial infrastructure investments PRT has made in order to provide the residents of Puerto Rico with improved telecommunications and information services. Contrary to OneLink's claims,²² PRT and its parent company, América Móvil, have made substantial infrastructure investments consistent with the company's commitment to investing \$1 billion over five years "to improve service in Puerto Rico."²³ These investments have led to vast improvements to the infrastructure necessary to provide telephone and information services throughout Puerto Rico. Nevertheless, in light of

²¹ *San Juan Cable LLC d/b/a OneLink Commcn's v. Puerto Rico Telephone Co., Inc.*, No. QLM 2010 0010.

²² OneLink Opp. 6-10, 27-32.

²³ *Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico (TELPRI)*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, ¶ 36 (2007).

the extraordinarily high costs that PRT continues to face, these improvements ultimately are insufficient to bring the people of Puerto Rico full access to wireline infrastructure that is “reasonably comparable” to that of the mainland.

PRT has spent \$595 million on improving services to Puerto Rico, approximately two-thirds—or \$395 million—of which has been invested in its wireline networks.²⁴ PRT’s investment in its wireline network has led to a number of significant improvements:

- adding fiber optic infrastructure and equipment;
- installing plug-in cards to complete customer circuits;
- expanding the ADSL network;
- expanding and modernizing current line modules with VoIP capabilities;
- expanding digital electronic cross connectors to the wireline network;
- adding indoor video DSLAMS;
- rehabilitating cable and replacing essential facilities,
- installing and replacing power equipment, battery banks, and emergency generators;
- installing distribution and feeder cables and all other outside plant to provide service to new residential areas;
- and replacing or repairing outside plant damaged due to accidents, major outages, and emergency situations.

OneLink’s attempt to discredit PRT’s investment in a network that accommodates Internet protocol television (“IPTV”), in addition to high speed Internet access and voice telephony service, is unfounded and inconsistent with Commission policy.²⁵ Section 706(a) of

²⁴ See Letter from Michael G. Jones, Counsel, América Móvil, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-113, America Movil Annual Progress Report for the Deployment of Infrastructure Used to Provide Basic Telephone and Broadband Service in Puerto Rico (filed Dec. 31, 2009, Jul. 8, 2009, and Apr. 4, 2008).

²⁵ See OneLink Opp. 9.

the Communications Act (“Act”) requires that the Commission and state regulatory agencies shall encourage the deployment of “advanced telecommunications capability” to all Americans “by remov[ing] barriers to infrastructure investment.”²⁶ Section 706(c) in turn defines “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and *video* telecommunications using any technology.”²⁷

Similarly, the Commission has long recognized that “[t]he public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. . . . [O]ur policies do not impede the deployment of modern plant capable of providing access to advanced services.”²⁸ And, as the Commission has explained, broadband deployment and entry into the video market are “inextricably linked.”²⁹ As many telephone companies have been upgrading their facilities in order to provide video services, they are increasing the availability of the broadband Internet access services that can be offered over those same facilities to their consumers.³⁰ As a consequence, PRT’s investment in a higher-bandwidth network that can accommodate video is exactly the type of “convergence in communications services and technologies [that] creates

²⁶ 47 U.S.C. § 1302(a).

²⁷ 47 U.S.C. § 1302(d)(1) (emphasis added).

²⁸ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Report and Order, 16 FCC Rcd 11244, ¶ 200 (2001).

²⁹ *Exclusive Service Contracts for Provision of Video Services In Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, ¶ 20 (2007).

³⁰ See *id.* ¶ 19.

extraordinary opportunities to improve American life and benefit consumers.”³¹ Indeed, by supporting multi-use wireline infrastructure construction in unserved areas of Puerto Rico, the Commission can minimize the amount of universal service support that it needs to distribute to these areas.³²

PRT’s investment in its wireless infrastructure also is consistent with the statutory goal of ensuring that the residents of Puerto Rico have access to both wireless and wireline services. To serve its wireless customers, PRT necessarily must continue to invest in its network. PRT’s investment in its wireless infrastructure has greatly expanded and improved wireless network architecture; it has improved the capacity of existing switches for voice and data management and has led to the installation of new voice and data equipment at new and existing radio base stations. Despite these improvements, the residents of Puerto Rico deserve to have access to both wireline and wireless services just as the rest of the nation does. Wireline and wireless services offer consumers unique benefits. Wireless broadband, for example, “may not be an effective substitute in the foreseeable future for consumers seeking high-speed connections at prices competitive with wireline offers.”³³ Thus, investment in both wireline and wireless networks remains critical.

³¹ *Connecting America: The National Broadband Plan* at 59 (rel. Mar. 16, 2010) available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“*National Broadband Plan*”) (“Increasingly, broadband is not a discrete, complementary communications service. Instead, it is a platform over which multiple IP-based services—including voice, data and video—converge. As this plan outlines, convergence in communications services and technologies creates extraordinary opportunities to improve American life and benefit consumers.”).

³² *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, ¶ 36 & Appendix C, OBI Technical Paper 1 at 33-35 (rel. Apr. 21, 2010) (“*Connect America NOF*”).

³³ *National Broadband Plan* at 41.

Moreover, in its litany of baseless attacks on PRT’s infrastructure investments, OneLink fails to acknowledge the fundamental purpose of high-cost universal service support, which “has always been to help ensure that consumers have access to telecommunications services in areas where the cost of providing such services would otherwise be prohibitively high.”³⁴ Unlike OneLink, which serves limited metropolitan areas while specifically carving out poor areas like public housing projects from its territory,³⁵ PRT provides services to the entire island and, in doing so, faces extraordinarily high costs. Despite PRT’s continuing infrastructure investment in Puerto Rico, the unique demographics of Puerto Rico create significant challenges to deploying wireline infrastructure that OneLink fails to appreciate. At bottom, loop support is still needed to complement PRT’s substantial investment commitment in order to bring Puerto Rico’s wireline network up to par with the rest of country.

IV. ONELINK’S LEGAL ARGUMENTS LACK MERIT.

OneLink’s anti-competitive animus and unfamiliarity with the universal service statutory scheme cast a long shadow over the unfounded legal arguments in its opposition. Indeed, OneLink’s flawed interpretation of Section 254 is rooted in its desire to suppress competition rather than to ensure universal service to the residents of Puerto Rico. Section 254 of the Act, by its terms, requires the Commission to adopt a specific insular mechanism that supports comparatively high loop costs in Puerto Rico and to ensure that insular areas such as Puerto Rico are provided telecommunications and information services “reasonably comparable” to those available in urban areas.

A. OneLink’s Interpretation Of Section 254 Would Read “Insular” Out Of The

³⁴ *Connect America NOI* ¶3.

³⁵ *See Puerto Rico Telephone Co. h/n/c Claro TV v. Junta Reglamentadora de Telecomunicaciones de Puerto Rico*, No. CC-2009-380 at 43 (P.R. Sup. Ct. Jun. 9, 2010).

Statute.

OneLink claims that PRT's interpretation of Section 254 takes the word "insular" out of context.³⁶ In OneLink's view, Section 254 merely espouses principles for the Commission to follow without dictating the means by which the Commission is to achieve the goal of reasonably comparable rates and services for insular areas. In short, OneLink argues that the word "insular" in Section 254 is mere surplusage that should not dictate the Commission's implementation of the universal service command. OneLink's interpretation of the statute thus is untenable both because it reads the word "insular" entirely out of the statute and because it is inconsistent with the Commission's creation of separate rural and high-cost funds to effectuate the statutory command.

"It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word."³⁷ "No clause, sentence or word shall be construed as superfluous, void or insignificant if a construction can be found which will give force to and preserve all the words of the statute."³⁸ In other words, the Commission cannot give effect to some words of a statute, but ignore others.

OneLink's interpretation of Section 254 cannot be squared with these bedrock principles of statutory construction. Section 254 provides that the Commission "shall" base its universal service support mechanisms on the principle that consumers in "insular" areas should have

³⁶ OneLink Opp. 11.

³⁷ *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (internal quotation marks and citation omitted); *see also United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read "to give effect, if possible, to every clause and word of a statute").

³⁸ 2A Norman J. Singer, *Sutherland Statutory Construction* § 46.06 (6th ed. 2000) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . .").

access to telecommunications services that are reasonably comparable to those in urban areas.³⁹ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas. The Commission has chosen to comply with the statute by adopting specific high cost funding mechanisms to address the unique needs of only two of the three regions identified in the statute—rural and high cost areas. OneLink’s interpretation of Section 254 is not only inconsistent with elementary principles of statutory construction, it also cannot be squared with the fact that the Commission itself has chosen to give effect to the words “rural” and “high cost” by adopting separate and distinct mechanisms for these areas.

B. The “Evolving” Nature Of Telecommunications Does Not Excuse The Commission’s Failure To Ensure That Consumers In Insular Areas Have Access To “Reasonably Comparable” Telecommunications And Information Services.

OneLink latches onto the word “evolving” in the definition of “universal service” to argue that it justifies a result where consumers in Puerto Rico have no access to wireline service so long as wireless service is an available alternative.⁴⁰ Unsatisfied with the suppression of competition in Puerto Rico, OneLink has apparently now decided that the suppression of wireline service to the residents of Puerto Rico is somehow consistent with the principles of universal service. Simply put, OneLink’s interpretation is irreconcilable with the text, structure, and purpose of Section 254.

Congress intended to ensure that insular areas have “reasonably comparable” “telecommunications and information services” as those available in urban areas.⁴¹ The availability of only one type of service, such as wireless service, does not meet the statute’s

³⁹ 47 U.S.C. § 254(b).

⁴⁰ OneLink Opp. 13-14.

⁴¹ 47 U.S.C. § 254(b)(3).

command that “reasonably comparable” services be made available in Puerto Rico. If urban areas have access to *both* wireline and wireless services, then insular areas are entitled to “reasonably comparable” wireline *and* wireless service under Section 254(b)(3). Ensuring insular areas have access to the full complement of services available in urban areas is neither “fundamentally at odds with the evolving nature” of universal service nor would it “turn back the clock and make landline telephone service the sole focus of universal service support.”⁴² It would simply effectuate Congress’s will.

The best evidence of the absurdity of OneLink’s argument is that the Commission recently adopted wireline service as the proper benchmark for the “reasonably comparable” assessment in the *Qwest Remand Order*. The Commission determined in the *Qwest Remand Order* that “rural rates are ‘reasonably comparable’ to urban rates under section 254(b)(3) if they fall within a reasonable range of the national average urban rate” using costs of *wireline* providers.⁴³ This definition, which OneLink completely ignores, fatally undermines the Commission’s conclusion that wireless substitution may satisfy the “reasonably comparable” mandate of Section 254(b)(3). The Commission’s adoption of two logically inconsistent standards to measure “reasonably comparable” service for similarly situated regions of the

⁴² OneLink Opp. 14-15.

⁴³ *High-Cost Universal Service Support, Federal-Joint Board on Universal Service, Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier*, Order on Remand and Memorandum Opinion and Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 10-56, ¶¶ 52-53, 63 (rel. Apr. 16, 2010).

country cannot be reconciled with the Administrative Procedure Act's ("APA") requirement of "reasoned decisionmaking."⁴⁴

C. Reconsideration Is Warranted To Correct Errors Of Law And Fact In The Order.

As shown above, the Commission's failure to adopt any universal service mechanism to address the needs of Puerto Rico conflicts with the Communications Act and fundamental principles of administrative law. Reconsideration is therefore appropriate under the Commission's rules where, as here, an order rests on erroneous conclusions of law or fact.⁴⁵ For too long the Commission's overall universal service policy approach in Puerto Rico has harmed the island by treating the people of Puerto Rico as second-class citizens and encouraging the erosion of Puerto Rico's wireline infrastructure. Despite the significant investment PRT has made in wireline infrastructure in Puerto Rico, not all communities have access to this infrastructure, which will ultimately be critical to successful broadband deployment in Puerto Rico. Without the explicit consideration of the unique nature of insular areas through an insular mechanism as required by Section 254, the people of Puerto Rico will continue to be left behind. The Commission should grant the petition for reconsideration to correct its longstanding neglect of the people of Puerto Rico.

⁴⁴ *Air Line Pilots Ass'n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (holding that a "DOT Order presents an interpretation of the EPP which is internally inconsistent and therefore unreasonable and impermissible under *Chevron*"); *Gen. Chem. Corp. v. United States*, 817 F.2d 844, 846 (D.C. Cir. 1987) ("We find the Commission's analysis . . . to be internally inconsistent and inadequately explained, and thus we conclude that its ultimate finding . . . was arbitrary and capricious and not supported by substantial evidence on the record considered as a whole."); *cf. NCTA v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (describing "[a]gency inconsistency" as a possible "reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the [APA]").

⁴⁵ *See* 47 CF.R. § 1.429.

V. CONCLUSION

For the reasons set forth herein and in the petition for reconsideration, PRT urges the Commission to reconsider its decision to deny PRT's proposal to create an interim insular funding mechanism pursuant to its statutory duty under Section 254.

Respectfully submitted,

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June 22, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2009 I caused a true and correct copy of the foregoing to be served by first-class mail on the following:

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