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

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In the Matter of)
High-Cost Universal Service Support) WC Docket No. 05-337 79300
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Lifeline and Link-Up) WC Docket No. 03-109

ORDER AND NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner McDowell issuing a statement and Commissioner Clyburn approving in part, concurring in part, and issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. ORDER 4
A. Background 4
1. Statutory and Regulatory Background 4
2. The Puerto Rico NPRM 13
3. Universal Service Developments in Puerto Rico 16
B. Discussion 21
1. Section 254 of the Act Does Not Require the Commission to Establish an Insular High-Cost Support Mechanism 22
2. The Commission's Universal Service Programs Provide Support that Is Sufficient to Ensure Reasonably Comparable Service and Affordable Rates in Puerto Rico 26
3. The Application of the Commission's Forward-Looking Cost-Based Model for Determining Non-Rural High-Cost Support Adequately Addresses PRTC's Circumstances 37
4. Comprehensive Reform and the National Broadband Plan 43
III. ADDITIONAL LOW-INCOME SUPPORT NOTICE OF PROPOSED RULEMAKING 47
A. Background 47
B. Discussion 49
IV. CONCLUSION 53
V. PROCEDURAL MATTERS 54
A. Procedural Matters Related to the Order 54
1. Paperwork Reduction Analysis 54
2. Final Regulatory Flexibility Act Certification 55
3. Congressional Review Act 56
B. Procedural Matters Related to the Notice of Proposed Rulemaking 57

1. Paperwork Reduction Analysis.....	57
2. Initial Regulatory Flexibility Act Certification.....	59
C. <i>Ex Parte</i> Presentations.....	62
D. Comment Filing Procedures.....	63
VI. ORDERING CLAUSES	68
APPENDIX A: List of Commenters	
APPENDIX B: Proposed Rules	

I. INTRODUCTION

1. In this Order, we conclude that dramatic increases in telephone subscribership in Puerto Rico over the last several years make it unnecessary to adopt a new high-cost support mechanism for non-rural insular carriers as proposed by Puerto Rico Telephone Company (PRTC).¹ In 2005, the Commission considered creating a separate high-cost universal service support mechanism for non-rural insular areas.² At that time, telephone subscribership in Puerto Rico (a non-rural insular area) was 73.8 percent, far below the national average of 94.8 percent.³ By 2008 – the most recent year for which data are available – subscribership in Puerto Rico had jumped to 91.9 percent.⁴ During the same period, Puerto Rico has experienced significant growth in disbursements from federal universal service support programs due in large part to changes the Commission made to its rules. Total high-cost support for Puerto Rico has risen from less than \$140 million in 1998 to more than \$215 million in 2008, an increase of nearly 54 percent,⁵ and low-income support has jumped from \$1.16 million in 2001 to \$23.4 million in 2008.⁶ Although subscription rates in Puerto Rico are still lower than the national average (98.2 percent in 2008), the substantial growth in universal service support and the commensurate increase in telephone subscribership represent significant changed circumstances since we issued the NPRM in 2005.

2. In light of these positive developments, we find that the existing non-rural high-cost support mechanism, operating in conjunction with the Commission’s other universal service programs, is successfully increasing telephone subscribership in Puerto Rico and satisfies the requirements of section 254 of the Communications Act of 1934, as amended (the Act), with respect to Puerto Rico.⁷ Telephone subscribership in Puerto Rico is not yet at the same level as in the mainland United States, but the data before us indicate that the gap is closing rapidly and may well be eliminated entirely in the near future.

¹ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19744-19748, paras. 30-38 (2005) (*NPRM*) (seeking comment on PRTC’s proposal). See also Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (filed Jan. 14, 2004) (PRTC Petition); Puerto Rico Telephone Company White Paper: Proposed Interim Insular Mechanism, CC Docket No. 96-45 (filed May 6, 2005) (PRTC White Paper); Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, WC Docket No. 05-337 (filed Mar. 27, 2006) (PRTC Comments).

² *NPRM*, 20 FCC Rcd at 19746, para. 33.

³ *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf (2009 *Universal Service Monitoring Report*).

⁴ *Id.*

⁵ See *infra*, para. 16.

⁶ See *infra*, para. 17.

⁷ 47 U.S.C. § 254. Section 254 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

The Commission, moreover, recently adopted a Joint Statement on Broadband that recommends comprehensive reform of universal service,⁸ and delivered to Congress a National Broadband Plan that recommends, among other things, transitioning legacy high-cost universal service support to a new high-cost program that would support broadband as well as voice services.⁹ We believe that the public would be best served by our focusing on comprehensive universal service reform, rather than developing a new non-rural insular high-cost support mechanism within the existing legacy universal service system. As we comprehensively reform universal service and implement the National Broadband Plan recommendations, we will strive to further increase telephone subscribership rates in Puerto Rico and to ensure that high-quality voice and broadband services are available in insular areas.

3. Although we decline to establish the universal service high-cost support mechanism proposed by PRTC, we acknowledge that there may be a significant number of low-income consumers in Puerto Rico who lack access to voice telephone service because they are unable to afford line connection charges. Therefore, in the companion NPRM, we address this situation and propose targeted rule changes to help eligible consumers in Puerto Rico take better advantage of existing universal service low-income support programs. Specifically, we ask whether we should 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. By removing a remaining impediment to affordable voice telephone service, we would hope to further close the gap in telephone subscribership between the Commonwealth and non-insular areas.

II. ORDER

A. Background

1. Statutory and Regulatory Background

4. Universal service has been “a basic goal of telecommunications regulation” since Congress first enacted the Communications Act in 1934.¹⁰ Indeed, that goal was codified in section 1 of the Act, which directs the Commission “to make available, so far as possible, to all the people of the United States, * * * a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹¹

5. In the monopoly environment in which local telephone service historically had been offered, this universal service mandate was implemented through a system that included implicit subsidies (such as those resulting from mandatory geographic rate averaging requirements) designed to balance rates in low-cost and high-cost areas.¹² In 1996, however, Congress amended the Communications Act to introduce competition into local telephone markets.¹³ Congress recognized that the advent of local competition necessarily would threaten existing implicit universal service subsidies. New competitors

⁸ *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para 3 (rel. Mar. 16, 2010) (*Joint Statement on Broadband*).

⁹ See Pub. L. No. 111-5, 123 Stat. 115 (2009); *FCC Sends National Broadband Plan to Congress*, FCC News Release (dated Mar. 16, 2010). Federal Communications Commission, *Connecting America: The National Broadband Plan*, Ch. 8 (rel. March 16, 2010) (*National Broadband Plan*).

¹⁰ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 405 (5th Cir. 1999) (“*TOPUC*”); see also *Rural Telephone Coalition v. FCC*, 828 F.2d 1307, 1315 (D.C. Cir. 1988) (noting that universal service – making telephone service “available to all Americans at reasonable charges” – is “an important FCC objective”).

¹¹ 47 U.S.C. § 151.

¹² *TOPUC*, 183 F.3d at 406.

¹³ 1996 Act (codified at various sections of Title 47 of the United States Code).

would “cherry pick” the incumbents’ customers in lower-cost areas by undercutting the above-cost rates incumbents had charged there to support affordable rates in higher-cost areas. Congress therefore enacted section 254 of the Communications Act, requiring the Commission to “replace the [existing] patchwork of explicit and implicit subsidies with specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”¹⁴

6. Congress delegated to the Commission broad discretion to balance various universal service “principles” in designing the required “predictable and sufficient” universal service mechanism.¹⁵ Of particular relevance here is the principle that consumers throughout the country should have access to services that are comparable in quality and price to those available to consumers in urban areas. That principle is set out in section 254(b)(3),¹⁶ which reads:

RURAL AND HIGH COST AREAS.—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 * * * 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.

7. The Commission first implemented this statutory principle in the 1997 *Universal Service First Report and Order*.¹⁷ In that order, the Commission continued and expanded the existing Lifeline program designed to ensure that low-income consumers could afford access to telephone service in all regions of the country.¹⁸ In doing so, the Commission discarded a pre-existing limitation on the Lifeline program that made federal subsidies contingent on the presence of matching state-level programs.¹⁹ As a consequence of that prior limitation, Lifeline subsidies had not previously been available in a number of states and territories, including Puerto Rico.²⁰ The new program, by contrast, ensured that “a baseline amount of federal support [w]ould be available” everywhere, regardless of whether the state or territorial regulator generated support of its own.²¹ As a result, the Commission extended Lifeline subsidies to certain rural, insular, and high cost areas – including Puerto Rico – that had not previously enjoyed such support. The Commission also expanded the Lifeline program by requiring all eligible telecommunications carriers to provide subsidized service to qualifying customers.²²

¹⁴ *TOPUC*, 183 F.3d at 406 (internal quotation omitted).

¹⁵ *Id.* at 411.

¹⁶ 47 U.S.C. § 254(b)(3).

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*), *aff’d in part and reversed in part*, *TOPUC*, 183 F.3d 393.

¹⁸ *Id.*, at 8793-94, paras. 27-28. The Lifeline program provides subsidies to telephone companies to reduce monthly charges to qualifying low-income subscribers, while the Link-Up program subsidizes initial connection charges for qualifying subscribers. *Id.*, at 8957-60, paras. 341-345.

¹⁹ *Id.*, at 8957-58, 8961-62, paras. 341, 348-349.

²⁰ *Id.*, at 8960, para. 346 & n.876.

²¹ *Id.*, at 8961, para. 348.

²² *Id.*, at 8961, para. 347. 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 FCC, *see* 47 U.S.C. § 214(e)(2), (6), and must offer services that are supported by the federal universal service mechanisms and advertise the (continued...)

8. Additionally, the Commission took action to establish a high-cost mechanism that would carry out the objective of section 254(b)(3) that consumers in (high-cost) non-urban areas have access to telephone service at rates comparable to those charged in (low-cost) urban areas. The Commission concluded that support from that mechanism eventually should be determined on the basis of the forward-looking economic cost of providing service.²³ At the same time, the Commission established different timelines for achieving that goal based on whether the eligible telecommunications carrier was “rural” or “non-rural.”²⁴ The Commission stated that, for non-rural carriers, it would begin providing support based on forward-looking economic costs starting January 1, 1999.²⁵ For rural carriers, by contrast, the Commission determined that further study was needed to develop accurate forward-looking cost modeling techniques.²⁶ Thus, although reaffirming its commitment eventually to move away from embedded cost-based universal service mechanisms,²⁷ the Commission decided that, for rural carriers, “support will not begin to be based on forward-looking economic cost until further review.”²⁸ In the meantime, support for rural carriers would continue, under pre-existing mechanisms, to be based on their embedded costs.²⁹

9. PRTC argued to the Commission before adoption of the *Universal Service First Report and Order* that all insular carriers should be treated as rural carriers – and thus receive support on the basis of embedded costs – even if (like PRTC) they are too large to meet the definition of a rural carrier. PRTC was then the twelfth largest telephone company in the nation, with more than 1.13 million access lines and annual operating revenues of \$1 billion.³⁰ Nevertheless, PRTC asserted that the extreme weather and terrain conditions and high shipping costs in insular areas made the cost characteristics of even large insular carriers more like those of rural carriers.³¹

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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).

²³ *Universal Service First Report and Order*, 12 FCC Rcd at 8888, para. 199.

²⁴ Under the Commission’s rules, whether a telephone company is “rural” or “non-rural” depends primarily on its size, and does not necessarily reflect the geographic nature of the territory it serves. See 47 C.F.R. §§ 51.5 (definition of “rural telephone company”), 54.5 (cross-referencing, for universal service purposes, the section 51.5 definition of “rural telephone company”). The definition of “rural telephone company” that the Commission adopted, for universal service purposes, mirrors the definition of “rural telephone company” found in section 3(37) of the Communications Act. See 47 U.S.C. § 153(37); *Universal Service First Report and Order*, 12 FCC Rcd at 8943-44, para. 310.

²⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 8792-93, 8889, paras. 26, 203. The Commission subsequently moved the date on which non-rural carriers were to begin receiving support under the new forward-looking cost-based mechanism to January 1, 2000. See 47 C.F.R. § 54.309. In addition, the Commission adopted an interim “hold harmless” provision that temporarily insulated carriers from any support reductions as a result of the transition to the new non-rural high-cost mechanism. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 14 FCC Rcd 20432, 20473-79, paras. 77-88 (1999); 47 C.F.R. § 54.311. This interim hold harmless support was phased down beginning January 1, 2001. 47 C.F.R. § 54.309(d). PRTC received at least some high-cost loop support under the hold harmless provision until 2003. *2009 Universal Service Monitoring Report*, Table 3-22.

²⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 8792-93, 8889, paras. 26, 203.

²⁷ *Id.*, at 8900, para. 227.

²⁸ *Id.*, at 8889, para. 203.

²⁹ *Id.*, at 8934, 8938-39, paras. 291, 299.

³⁰ *Id.*, at 8946, para. 315 & n.791.

³¹ *Id.*, at 8946, para. 315.

10. The Commission rejected PRTC's request that it be treated as a rural carrier. The agency stressed that its decision to postpone the application of a forward-looking economic cost model for rural carriers was based, at least in part, on their small size and consequent inability to achieve the same economies of scale and scope as non-rural carriers.³² The Commission determined that, as a "large telephone compan[y]," PRTC "should possess economies of scale and scope to deal efficiently with the cost of providing service" in its area.³³ PRTC did not seek judicial review of that decision. However, a judicial challenge by others to the forward-looking economic cost model that the Commission ultimately adopted for non-rural carriers was rejected by the Tenth Circuit.³⁴

11. In 2003, the Commission again addressed the question of whether its treatment of PRTC complied with the universal service statute. PRTC had reiterated its claim that the Commission should "treat it as a 'rural' carrier rather than as a 'non-rural' carrier" for purposes of high-cost support "because it serves an insular area."³⁵ The Commission declined PRTC's request a second time, noting that it had previously rejected the same argument in the *Universal Service First Report and Order* and that PRTC had offered no evidence that would justify reconsideration of that earlier decision.³⁶ The Commission also rejected PRTC's attempt to attribute low subscribership levels in Puerto Rico to the alleged inadequacy of the high-cost support mechanism – finding that PRTC "ha[d] not shown that the low subscribership levels in Puerto Rico are related to local rate levels or that providing additional non-rural high-cost support would have any direct impact on subscribership."³⁷ To the contrary, the Commission observed that low subscribership in Puerto Rico appeared largely to be due to low income levels in the Commonwealth – problems better addressed through low-income programs such as Lifeline and Link-Up.³⁸ PRTC again did not seek judicial review of the Commission's ruling.

12. A year later, the Commission addressed for a third time PRTC's argument that, because it serves an insular area, it should be treated as a rural carrier rather than a non-rural carrier for purposes of high-cost universal service support.³⁹ Noting that it already had considered the issue in both the *Universal Service First Report and Order* and the *Remand Order*, and finding that PRTC had "presented no facts" warranting a different outcome, the Commission once again rejected PRTC's request.⁴⁰ As in the *Remand Order*, the Commission declined "at this time" to address PRTC's alternative request that the

³² *Id.*

³³ *Id.*

³⁴ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1205-07 (10th Cir. 2001) (*Qwest I*). While upholding the cost model the Commission adopted, the court in *Qwest I* remanded portions of the non-rural high-cost support regime to the Commission for, among other things, better explanation and definition of how the regime ensures support that is "sufficient" and "reasonably comparable." *Id.*, at 1201-02.

³⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22636, para. 138 (2003) (*Remand Order*), remanded in part, *Qwest Communications International Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*). Alternatively, PRTC also argued that the Commission should "create a separate category of 'non-rural insular' carriers" for purposes of high-cost support. *Remand Order*, 18 FCC Rcd at 22637, para. 139. The Commission did not rule on that alternative request in the *Remand Order*. *Id.*

³⁶ *Remand Order*, 18 FCC Rcd at 22637-38, paras. 139-40.

³⁷ *Id.*, at 22638, para. 140.

³⁸ *Id.*, at 22638, para. 140, n.451.

³⁹ *Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 19 FCC Rcd 23824 (2004) (*Reconsideration Order*).

⁴⁰ *Id.*, at 23831-32, para. 20.

agency create a separate “non-rural insular” category for high-cost support.⁴¹ PRTC did not seek judicial review of the *Reconsideration Order*.

2. The Puerto Rico NPRM

13. In December 2005, the Commission, in response to the Tenth Circuit’s decision in *Qwest II*, issued a notice of proposed rulemaking that broadly sought comment on the design and definition of its non-rural high-cost support mechanism.⁴² In that *NPRM*, the Commission also sought comment on PRTC’s request for a separate universal service mechanism for non-rural insular carriers, which would be “patterned after, but distinct from, the existing mechanism for rural telephone companies.”⁴³

14. The Commission tentatively concluded that the adoption of a separate non-rural insular mechanism, in combination with the agency’s existing low-income support programs (Lifeline and Link-Up), would help combat low subscribership in Puerto Rico, which PRTC claimed was falling rather than rising and had allegedly dipped below 70 percent.⁴⁴ The Commission tentatively concluded that section 254(b)(3) “provides [it] with authority to establish” such a mechanism.⁴⁵

15. On December 22, 2008, PRTC filed a petition for a writ of mandamus seeking an order directing the Commission to act on the *NPRM* by “adopt[ing] a universal service support mechanism for insular areas.”⁴⁶ The Commission and PRTC subsequently reached an agreement under which the Commission would “release a final order that addresses the insular support questions raised in the *NPRM* no later than April 16, 2010.”⁴⁷

3. Universal Service Developments in Puerto Rico

16. Telecommunications consumers in Puerto Rico have seen significant increases in universal service support levels since the Commission first began implementing the universal service mandates of section 254 and, in particular, since the *NPRM* was issued in 2005. Today, for example, Puerto Rico ranks third (after Mississippi and Alaska) in terms of net universal service dollar flows (*i.e.*, disbursements less contributions).⁴⁸

17. Although PRTC itself has seen a reduction in some forms of support,⁴⁹ overall high-cost support flowing to carriers in Puerto Rico has increased significantly. Total high-cost support for Puerto

⁴¹ *Id.*

⁴² *NPRM*, 20 FCC Rcd at 19732, 19735-4, paras. 1, 7-29. In an Order on Remand from *Qwest II*, released April 16, 2010, the Commission has reaffirmed (as a general matter and independent of PRTC’s separate claim) that the non-rural high-cost support mechanism is consistent with the requirements of section 254 and otherwise is lawful. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, FCC 10-56, Order on Remand and Memorandum Opinion and Order (2010) (rel. April 16, 2010) (*Qwest II Remand Order*).

⁴³ *NPRM*, 20 FCC Rcd at 19744, para. 30 (quoting PRTC).

⁴⁴ *Id.*, at 19745-6, paras. 31, 33.

⁴⁵ *Id.*

⁴⁶ Petition for a Writ of Mandamus at 1, *In re Puerto Rico Telephone Company, Inc.*, No. 08-1391 (D.C. Cir. filed Dec. 22, 2008).

⁴⁷ Response of Federal Communications Commission to Petition for a Writ of Mandamus at 1, *In re Puerto Rico Telephone Company, Inc.*, No. 08-1391 (D.C. Cir. filed Mar. 6, 2009). In light of the parties’ agreement, the D.C. Circuit held the mandamus case in abeyance, directing the parties to file motions to govern further proceedings by May 17, 2010. Order, *In re Puerto Rico Telephone Company, Inc.*, No. 08-1391 (D.C. Cir. issued Apr. 8, 2009).

⁴⁸ 2009 *Universal Service Monitoring Report*, Table 1.12.

⁴⁹ PRTC’s embedded cost-based high-cost loop support was phased down from approximately \$48 million in 1998 (continued....)

Rico – provided both to PRTC and to competitive ETCs⁵⁰ – has risen from less than \$140 million in 1998 to more than \$215 million in 2008, an increase of nearly 54 percent, and a level of support exceeded by only three states.⁵¹ Most of that increase has occurred since the FCC issued the NPRM in 2005.⁵²

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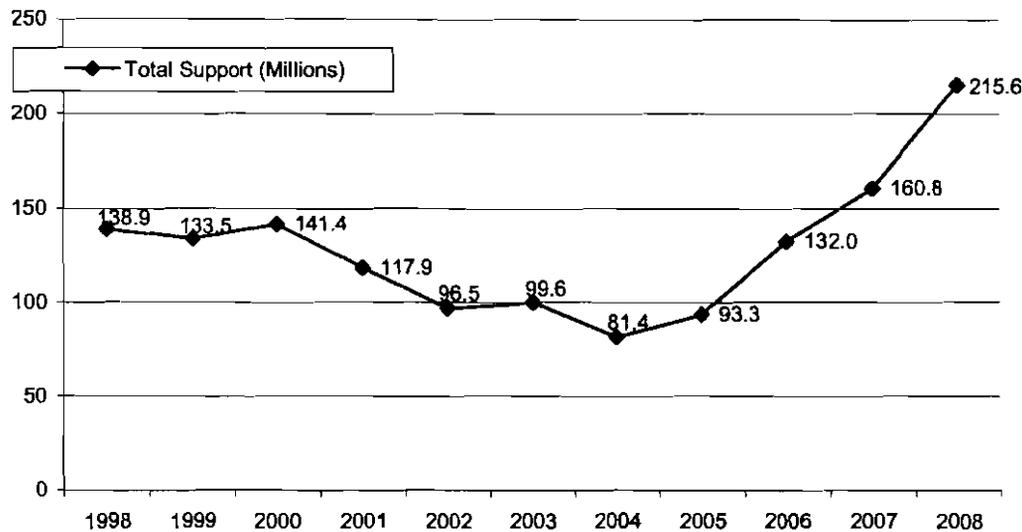
to zero by 2004, while its forward-looking costs (as measured by the model upheld in *Qwest I*) are not high enough to qualify for non-rural high-cost model support. *2009 Universal Service Monitoring Report*, Table 3.6. At the same time, however, PRTC has continued to receive other forms of high-cost support, including more than \$59 million in Interstate Common Line Support in 2008. *See 2009 Universal Service Monitoring Report*, Tables 3.11 & 3.15.

⁵⁰ Prior to the 1996 Act, only incumbent local exchange carriers (“ILECs”), such as PRTC, received high-cost support. In the *Universal Service First Report and Order*, the Commission concluded that high-cost support should be “portable,” *i.e.*, when a particular customer switches from an incumbent carrier to a new entrant, support should flow to the customer’s new carrier. The Commission provided that “[a] competitive carrier that has been designated as an eligible telecommunications carrier” under section 214(e) of the Act, 47 U.S.C. § 214(e), “shall receive universal service support to the extent that it captures subscribers’ lines formerly served by an ILEC receiving support or new customer lines in that ILEC’s study area.” *Universal Service First Report and Order*, 12 FCC Rcd at 8932, 8944, paras. 287, 311. The Commission found that such a policy would “aid the emergence of competition.” *Id.*, at 8944, para. 311. As a result, multiple providers – primarily mobile wireless service providers – are now eligible for high-cost universal service support in a given geographic area in Puerto Rico and throughout the nation.

⁵¹ *2009 Universal Service Monitoring Report*, Table 3.14. *See also id.*, Table 3.15 (indicating that, in 2008, \$59,557,380 in high-cost support went to PRTC and \$156,051,227 in high-cost support went to competitive ETCs). The states receiving the highest total high-cost support in 2008, in descending order, are Mississippi, Texas, and Kansas. *Id.*, Table 3.14.

⁵² We note that, although the *2009 Universal Service Monitoring Report* includes estimates of the amount of support that PRTC and other competitive ETCs serving Puerto Rico received in 2009, we rely primarily on actual 2008 support for the purposes of this decision. Due to PRTC’s conversion to price cap regulation in 2008, PRTC in 2009 received Interstate Common Line Support on a frozen per-line basis, but also had its 2009 support off-set by true-ups and other interim adjustments to support initially distributed in 2007 and 2008. *Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*; WC Docket Nos. 07-292, 07-291, 08-18, Order, DA 08-1026 (rel. May 6, 2008). As a result, PRTC’s total actual disbursements in 2009 – its frozen per-line ICLS minus true-ups for prior periods – was approximately \$9.7 million, *see* Universal Service Administrative Company, High-Cost Disbursement Data, available at <http://www.usac.org/hc/tools/disbursements/default.aspx> (*Disbursement Tool*), which is less than PRTC would typically expect to receive. In 2010, USAC projects that PRTC will receive approximately \$39.5 million, though this may be adjusted to the extent any further true-ups of 2008 support are required or if PRTC’s line counts continue to decline. Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2010, filed Jan. 29, 2010, at App. HC09 (*USAC Second Quarter 2010 Projections*). Similarly, all other eligible telecommunications carriers serving Puerto Rico received approximately \$63.6 million, net of true-ups in 2009, *see Disbursement Tool*, but are projected to receive approximately \$141.8 million in 2010. *USAC Second Quarter 2010 Projections*, at App. HC09.

Total High-Cost Support for Puerto Rico (Millions), 1998-2008



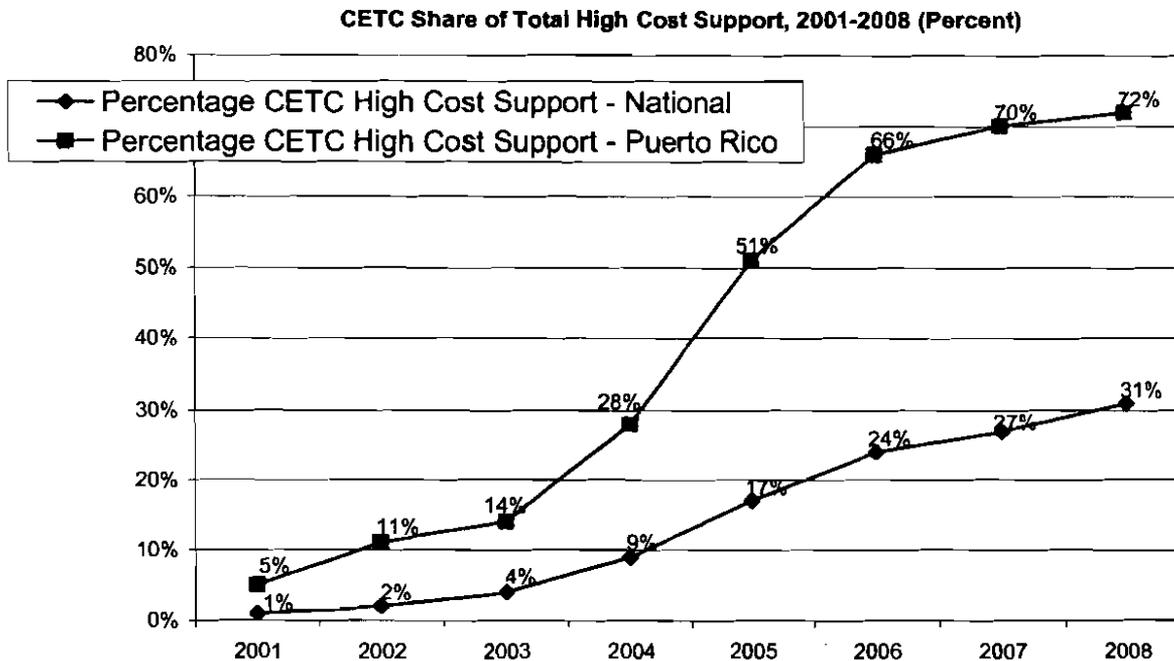
Sources: 2009 Universal Service Monitoring Report, CC Docket No. 98-202, Table 3.14 (rel. Dec. 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf;

18. Meanwhile, subscribership to wireless competitive ETCs (which under our current rules are entitled to the same amount of support per line as the high-cost support that is available to PRTC) has soared in the Commonwealth.⁵³ Since 2005, high-cost support to competitive ETCs in Puerto Rico has been greater, in the aggregate, than high-cost universal service support disbursed to PRTC, the only ILEC serving the Commonwealth. As of 2008, the seven competitive ETCs serving Puerto Rico received approximately 72 percent of all high-cost universal service support, with the remaining 28 percent disbursed to PRTC.⁵⁴ By contrast, competitive ETCs nationwide only received about 31 percent of total high-cost universal service support in 2008, while ILECs still received the lion's share of disbursements (69 percent).⁵⁵

⁵³ The latest wireless telephone subscribership data available to the Commission indicate that wireless subscribership in Puerto Rico increased from approximately 1.1 million people in 2001 to more than 2.4 million people in 2007. *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 08-27, Thirteenth Report, 24 FCC Rcd 6185, Table A-2 (WTB 2009) (*Thirteenth CMRS Competition Report*).

⁵⁴ 2009 *Universal Service Monitoring Report*, Table 3.15. Six of these competitive ETCs are wireless mobile service providers, and one competitive ETC (Centennial) provides both mobile wireless and wireline service.

⁵⁵ *Id.* In May 2008, the Commission found it necessary to impose an interim, emergency cap on competitive ETC high-cost support disbursements, "to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund." See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, WC 05-337, CC 96-45, 23 FCC Rcd 9232, 8837, para. 5 (2008) ("*Interim Cap Order*"), *aff'd*, *Rural Cellular Assn. et al. v FCC*, 588 F.3d 1095 (D.C. Cir. 2009). The interim cap was technology neutral in that it froze high-cost support disbursements to all competitive ETCs, regardless of the technology used to provide universal service.



Source: 2009 Universal Service Monitoring Report, Table 3.15

19. Low-income (Lifeline and Link-Up) support for telephone service in Puerto Rico also has increased dramatically under the Commission's implementation of section 254. In 1997, no Puerto Rican subscribers received Lifeline assistance.⁵⁶ By 2008, nearly 188,000 subscribers in Puerto Rico received assistance under that program – and at the highest subsidy rate (\$13.50 per line) that is generally available under the Lifeline program.⁵⁷ Combined annual Lifeline and Link-Up support in Puerto Rico has grown from just over \$1.16 million in 2001 to more than \$23.4 million in 2008.⁵⁸ Again, much of that growth has occurred since the Commission issued the NPRM in 2005. Further, as described below, low-income customers in Puerto Rico increasingly are served by wireless competitive ETCs.⁵⁹ Customers of wireless carriers received more than one-third of the total low-income support disbursed to Puerto Rico in 2008.⁶⁰

⁵⁶ *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 2.6 (rel. Dec. 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf (2008 *Universal Service Monitoring Report*).

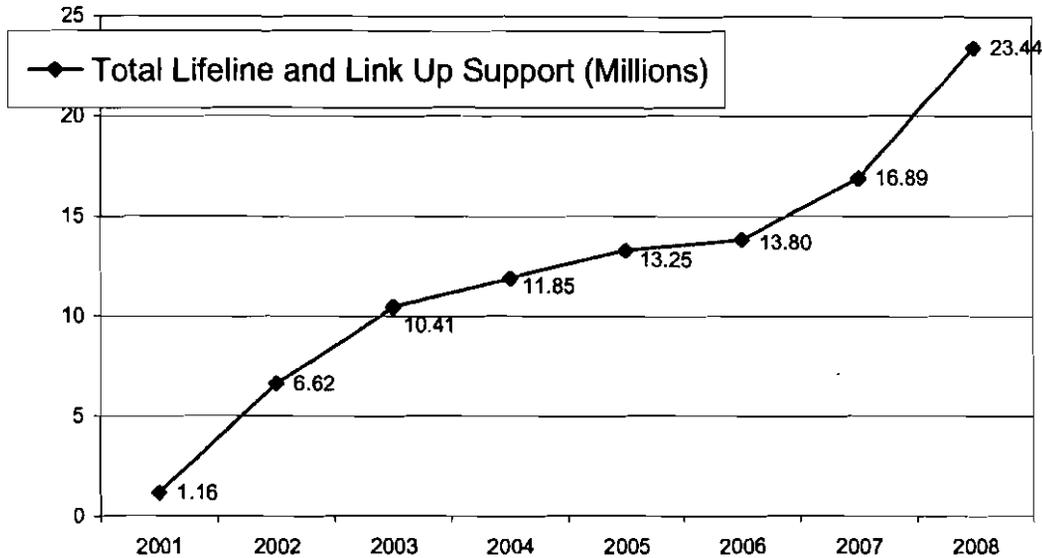
⁵⁷ 2009 *Universal Service Monitoring Report*, Tables 2.3 & 2.6; see 47 C.F.R. § 54.403 (Lifeline support amounts). Eligible residents of tribal lands may receive higher levels of Lifeline support. 47 C.F.R. § 54.403(a)(4).

⁵⁸ 2008 *Universal Service Monitoring Report*, Table 2.4; 2009 *Universal Service Monitoring Report*, Table 2.4.

⁵⁹ 2009 *Universal Service Monitoring Report*, Table 2.5.

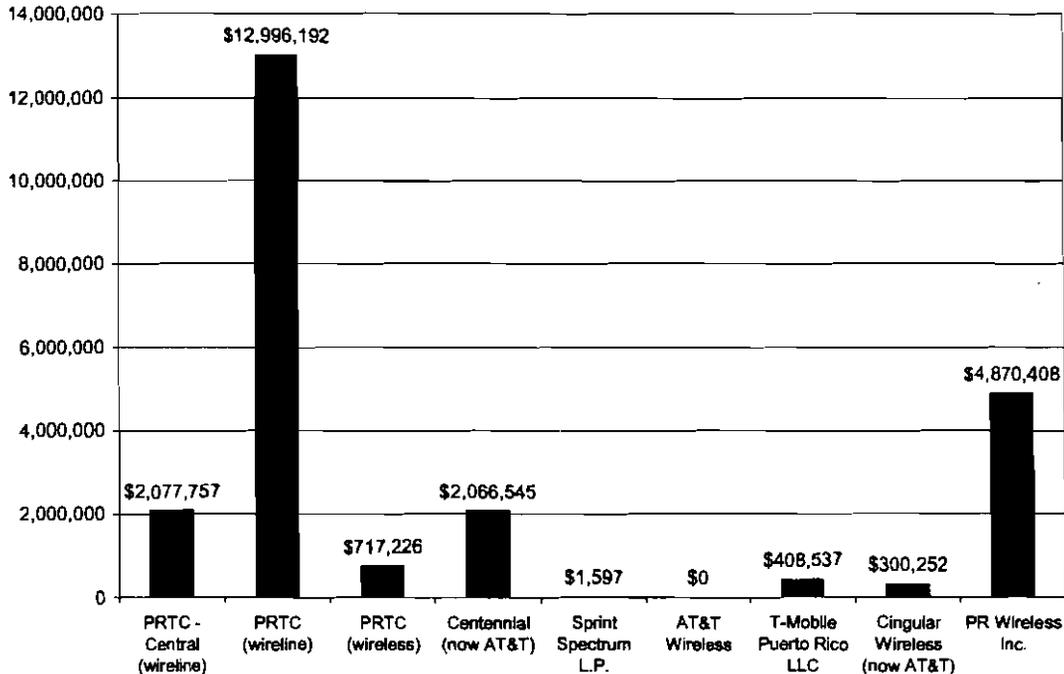
⁶⁰ In 2008, the customers of wireless competitive ETCs in Puerto Rico received \$8,364,565 in Lifeline and Link-Up support, representing about 36 percent of the \$23,438,514 total low-income support disbursed to Puerto Rico that year. *Id.*

Total Lifeline and Link Up Support for Puerto Rico (Millions), 2001-2008



Sources: 2008 and 2009 Universal Service Monitoring Reports, CC Docket No. 98-202, Table 2.4, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf and http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf

Lifeline and Link Up Support for Puerto Rico (By Carrier) 2008 (Dollars)

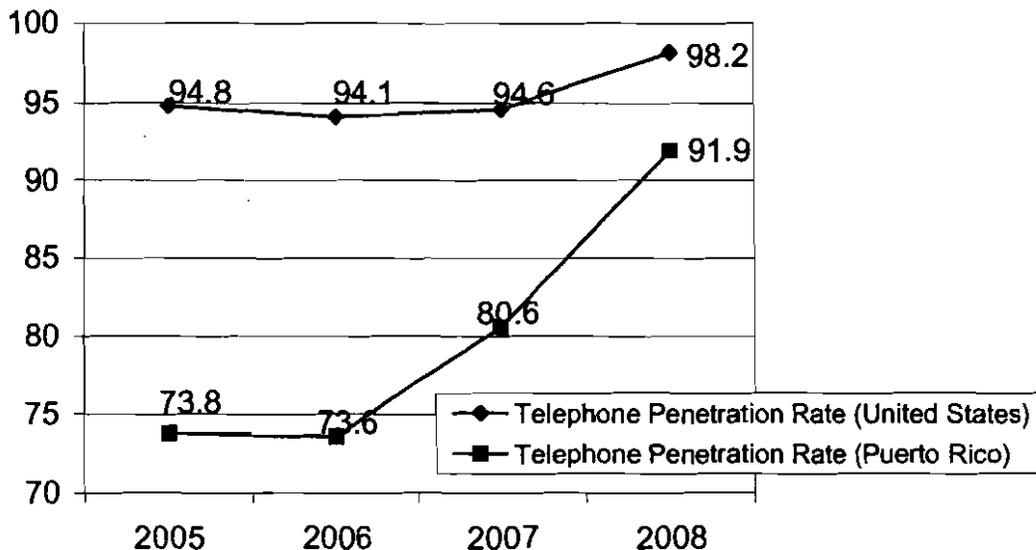


Source: 2009 Universal Service Monitoring Report, Table 2.5

20. All of these factors – increasing high-cost support, burgeoning wireless subscribership, and rapidly growing low-income support – have had a manifest impact on the telephone subscribership

penetration rate in Puerto Rico. Although telephone subscribership in the Commonwealth still lags somewhat behind that in the mainland United States, it has grown dramatically since the Commission issued the *NPRM* at the end of 2005. In 2005, the telephone subscribership rate in Puerto Rico was 73.8 percent (compared with a rate of 94.8 percent for the nation as a whole).⁶¹ By 2008 – the latest period for which we have statistics – the subscribership rate in Puerto Rico had risen to 91.9 percent (compared with a 98.2 percent nationwide rate).⁶² Thus, not only has Puerto Rico’s telephone subscribership rate risen since the *NPRM* was issued, Puerto Rico also has significantly closed the gap between its performance and the average performance of the rest of the country – moving from a subscribership rate deficit of 21 percentage points in 2005 to a deficit of just over 6 percentage points in the latest figures. Puerto Rico has achieved these significant and welcome advancements over the past five years without a separate support program for non-rural insular providers. Indeed, although we do not wish to suggest that we are satisfied with the current level of subscribership in Puerto Rico, and we will strive to continue to make enhancements that will further increase telephone subscribership in Puerto Rico (as reflected in the attached *NPRM*), we consider the improvements observed in Puerto Rico since 2005 a significant success of the universal service program.

Telephone Penetration Rates (Percent), 2005-2008



Source: 2009 Universal Service Monitoring Report, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf

B. Discussion

21. In response to a proposal PRTC had submitted, the Commission’s 2005 *NPRM* sought comment on the adoption of a stand alone universal service support mechanism for non-rural insular carriers. PRTC argues that the Commission must adopt its proposed embedded cost-based mechanism because: (1) section 254(b)(3) compels the agency to address the unique characteristics of non-rural

⁶¹ 2009 *Universal Service Monitoring Report*, Table 6.4. This figure is based on occupied households with telephone service, regardless of technology.

⁶² *Id.*

insular carriers with regime that is distinct from the existing generally applicable non-rural high-cost support mechanism; (2) the existing mechanism does not provide support that is sufficient to ensure reasonably comparable service and affordable rates in Puerto Rico; and (3) the forward-looking economic cost model that currently is used to determine PRTC's eligibility for high-cost model support does not accurately measure its costs.⁶³ As discussed below, we conclude that the statute does not require us to adopt a separate insular support mechanism as proposed by PRTC.⁶⁴

1. Section 254 of the Act Does Not Require the Commission to Establish an Insular High-Cost Support Mechanism

22. PRTC asserts that section 254(b)(3) of the Act imposes upon the Commission a clear, non-discretionary duty to adopt a *separate* universal service mechanism for insular areas.⁶⁵ We disagree. Section 254(b)(3) provides that “[c]onsumers in all regions of the Nation ... should have access to telecommunications and information services that are “reasonably comparable” in terms of price and quality to “those services provided in urban areas.”⁶⁶ That provision also gives examples of the “consumers in all regions of the Nation” that must have such reasonably comparable service; they “include[e] low-income consumers and those in rural, insular and high cost areas.”⁶⁷ Nothing in the text or structure of the statute, however, requires the Commission to adopt a stand alone mechanism addressed to each of the enumerated examples of non-urban “consumers in all regions of the Nation.”⁶⁸ Congress in section 254 sought to achieve a *result* – reasonably comparable rates and services – but did not mandate that the Commission employ specific mechanisms to achieve that result. Rather, the statute leaves to the Commission’s discretion the task of developing one or more mechanisms successfully to implement the broad “reasonable comparability” goal of section 254(b)(3).

23. The Commission has taken multiple actions to implement section 254(b)(3) – both by expanding low-income (Lifeline and Link-Up) programs and by designing high-cost support mechanisms. Carriers in insular areas, just like carriers in non-insular areas, are eligible for support under the existing, generally applicable rural and non-rural high-cost support mechanisms. Indeed, carriers in Puerto Rico

⁶³ PRTC Comments.

⁶⁴ For the reasons set forth herein, we also decline to adopt other parties’ broader proposals to reform the existing legacy high-cost universal service support programs for both rural and non-rural insular areas. *See* Comments of Sandwich Isles Communications, Inc., TelAlaska, Inc., Yukon Telephone Company, Inc. et al., CC Docket No. 96-45, WC Docket No. 05-337 at 4-5 (March 24, 2006) (requesting an expanded insular funding mechanism that would combine existing loop, access support, and other high-cost universal service programs into a single program); Comments of AT&T, CC Docket No. 96-45, WC Docket No. 05-337 at 38-41 (March 27, 2006) (requesting an explicit support mechanism for rural carriers that provide interexchange services to rural areas); Comments of the Regulatory Commission of Alaska, CC Docket No. 96-45, WC Docket No. 05-337 at 4 (March 24, 2006) (asking that the Commission designate remote villages in Alaska as “insular areas” that are eligible for support from any new insular support mechanism); Comments of Hawaii Telecom, Inc., CC Docket No. 96-45, WC Docket No. 05-33 at 5-6 (March 27, 2006) (asking that telecommunications carriers serving Hawaii be eligible for support from any new insular support mechanism).

⁶⁵ *See* PRTC White Paper at 12-15.

⁶⁶ 47 U.S.C. § 254(b)(3).

⁶⁷ *Id.*

⁶⁸ We find support for our interpretation of section 254(b)(3) in the record. *See, e.g.*, Sprint-Nextel Comments at 10 (“Although the statute does mandate access to telecommunications and information services ‘in all regions of the Nation, including ... in rural, insular, and high cost areas’ at rates reasonably comparable to those in urban areas, it does not follow that a separate USF mechanism must or should be established for every mentioned category.”).

received \$215.6 million in Interstate Common Line Support (a form of high-cost support) during 2008,⁶⁹ and rural carriers in insular areas received \$42.1 million in high-cost support.⁷⁰ Likewise, Puerto Rico receives a substantial amount of low-income support – \$23.4 million in 2008. As a result, Puerto Rico currently is the fourth largest recipient of federal high-cost support,⁷¹ the seventh largest recipient of federal low-income support,⁷² and the third largest net recipient of universal service dollars⁷³ among the U.S. states and territories. Instead of creating a specifically tailored program for insular areas, we have chosen to date to comply with the principle in section 254(b)(3) by ensuring that carriers in insular areas are eligible for generally applicable support mechanisms.

24. We must additionally disagree with PRTC's reading of the 2005 *NPRM*. PRTC suggests that the language in the 2005 *NPRM* acknowledges, as a practical matter, the existence of a duty to address insular support separately from a single high-cost mechanism.⁷⁴ The *NPRM* merely confirms, however, that in the Commission's view, section 254(b)(3) may *authorize* the adoption of a separate insular mechanism, but does not mandate one. In particular, the Commission posited that "[t]here would be no need for a rural insular mechanism because all rural insular carriers already receive rural high-cost support."⁷⁵ And the Commission sought comment not on whether section 254(b) requires a separate mechanism for non-rural insular carriers, but whether that statute even "provides the Commission with authority" to adopt one.⁷⁶

25. Although PRTC argues that we have failed to establish mechanisms to provide universal service support to non-rural insular areas, it appears that PRTC's primary objection is that it does not receive high-cost model support under the non-rural mechanism. On three prior occasions, we have declined to adopt PRTC's view that the non-rural high-cost support mechanism fails adequately to take into account cost characteristics and other conditions in Puerto Rico.⁷⁷ Consistent with those prior decisions, we conclude that we have met our obligation under section 254(b)(3) by ensuring that carriers in insular areas are eligible for generally applicable support mechanisms, and we address PRTC's other objection further below.

2. The Commission's Universal Service Programs Provide Support that Is Sufficient to Ensure Reasonably Comparable Service and Affordable Rates in Puerto Rico

26. The Commission has long measured the success of its universal service policies on the basis of telephone penetration rates.⁷⁸ In tentatively concluding that a non-rural insular mechanism

⁶⁹ 2009 *Universal Service Monitoring Report*, Table 3.14.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*, Table 2.4.

⁷³ *Id.*, Table 1.12.

⁷⁴ PRTC Comments at 6, n.4.

⁷⁵ *NPRM*, 20 FCC Rcd at 19746, para. 34.

⁷⁶ *Id.*, at 19746, para. 33.

⁷⁷ See paras. 10-12, above.

⁷⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8783, para. 8 ("Universal service support mechanisms that are designed to increase subscribership by keeping rates affordable will benefit everyone in the country, including those who can afford basic telephone service."); see also *id.*, 8838-39, para. 112 ("[S]ubscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, (continued....)");

should be adopted, the Commission in the *NPRM* relied heavily on an apparent decline in overall telephone subscribership in Puerto Rico during the period PRTC transitioned to the non-rural high-cost support mechanism.⁷⁹ That assumption by the Commission may have been made on the basis of incomplete information at the time we issued the *NPRM*.⁸⁰ In any event, it has been rebutted by marketplace developments over the four-plus years since we adopted the *NPRM*. During that period, Puerto Rico's telephone subscribership penetration rate has risen from approximately 73.8 percent in 2005 to 91.9 percent in 2008.⁸¹ And over that same four-year period, the gap in telephone penetration between Puerto Rico and the nation as a whole has been dramatically narrowed – from a deficit of 21 percentage points to one of just over six percentage points.⁸² Given this substantial change in circumstances since we issued the *NPRM*, we find that the non-rural high-cost support mechanism, acting in conjunction with our other universal service programs, produces sufficient support to achieve reasonably comparable service in Puerto Rico and non-insular areas consistent with section 254.

27. PRTC argues that a decrease in *wireline* telephone subscribership in Puerto Rico demonstrates that the non-rural high-cost support mechanism provides insufficient support.⁸³ We

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thus, represent an important tool in evaluating the affordability of rates.”); *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 78–7, CC Docket No. 80–286, Memorandum Opinion and Order on Reconsideration and Order Inviting Comments, 3 FCC Rcd 4543, 4546, para. 26 (1988) (“This Commission is strongly committed to the principle of preserving universal service, and we will continue to monitor closely available data on telephone penetration levels to ensure that our policies are serving that goal.”).

⁷⁹ In the *NPRM*, the Commission stated that “the evidence provided by PRTC supports a finding that there appears to be a correlation between a recent decline in Puerto Rico's subscribership rates and the reduction of Puerto Rico's high-cost support.” *NPRM*, 20 FCC Rcd at 19746, para. 34.

⁸⁰ The sole evidence upon which the Commission relied for that assumption was a letter from PRTC to the FCC. See *NPRM*, 20 FCC Rcd at 19745, para. 31 & nn. 91-92 (citing Letter from Nancy Victory, Counsel for Puerto Rico Telephone Company, Inc., to Jeffrey Carlisle, Federal Communications Commission, CC Docket No. 96-45, at 1-2 (dated Nov. 4, 2004)). As set forth in Attachment B to that letter, however, the data proffered in support of PRTC's claim only measured the percentage of households with a telephone line from PRTC in 2002, not the percentage of households in Puerto Rico receiving telephone service from any provider in 2004. Importantly, as discussed below, the Commission has always measured telephone subscribership based on access to telecommunications service, regardless of technology or provider. Hence, the tentative statements in the *NPRM* likely understated telephone subscribership in Puerto Rico and may have posited a false correlation between the subscribership rate at the time and PRTC's high-cost support.

⁸¹ See *supra* para. 20.

⁸² See *id.*

⁸³ PRTC Comments at 3, 23, 25-26, 28; see also Letter from Miguel Reyes Davila, President, Telecommunications Regulatory Board of Puerto Rico, to Kevin J. Martin, Chairman, Federal Communications Commission, CC Docket No. 96-45, at 2 (April 15, 2005) (comparing the wireline telephone subscribership rate in Puerto Rico (66.9 percent) to the overall telephone subscribership rate in the United States (94 percent)) (2005 TRB Letter). We note that in a 2008 filing with the Commission, América Móvil (PRTC's corporate parent) asserted that we must consider its deployment of wireless infrastructure in Puerto Rico as part of its commitment to invest \$1 billion over five years to improve service in Puerto Rico, as required by the *América Móvil Order*. Opposition of América Móvil to Motion to Reject, WT Docket No. 06-113, at 5-6 (Feb. 20, 2008); see also para. 29 & n. 104, *infra*. In that filing, América Móvil argued that “it would be exceptionally unusual for the Commission to order specific types of investment, and *a fortiori* to order that the entire commitment be devoted to traditional wireline (POTS) at a time when there is a significant migration of voice-grade services to wireless and IP-based infrastructure.” *Id.* at 6. This assertion seems inconsistent with PRTC's earlier position that the Commission should only consider wireline telephone subscribership rates in the context of universal service policy.

disagree. The Commission measures telephone subscribership based on access to telecommunications service, regardless of whether such access is provided by traditional wireline service or by newer technologies, including wireless.⁸⁴ This approach is consistent with our current universal service policies, which make high-cost support “portable” to *any* carrier that serves a particular customer,⁸⁵ regardless of the technology used.⁸⁶ Thus, on this record, a decline in *wireline* subscribership (as measured solely by PRTC’s loss of switched access lines) is not determinative given the overall increase in telephone subscribership in Puerto Rico.⁸⁷ Commission data show that competitive local exchange carriers served approximately 19 percent of all switched access lines in Puerto Rico as of June 2008,⁸⁸ and the number of wireless subscribers in the Commonwealth more than doubled from approximately 1.1 million in 2001 to more than 2.4 million in 2007.⁸⁹ Indeed, PRTC’s own 2005 study concluded that “universal service is a virtual reality,” because 92.8 percent of households surveyed in Puerto Rico had wireline or wireless service, and 44 percent of households had both.⁹⁰ Accordingly, we believe it more likely that PRTC’s

⁸⁴ See, e.g., *2009 Universal Service Monitoring Report* at 6-2, n.4 (explaining that the questions in the Current Population Survey (CPS), upon which the Commission relies for telephone subscribership data, are intended to be neutral as to whether the household has wireline or wireless phones). Though the Commission relies on the American Community Survey (ACS) for telephone subscribership data about Puerto Rico, see *id.* at 6-3, the ACS (like the CPS) is administered by the Bureau of Census and utilizes the same technology neutral survey methodology.

⁸⁵ See *Universal Service First Report and Order*, 12 FCC Rcd at 8932, 8944, paras. 287, 311.

⁸⁶ In the *Universal Service First Report and Order*, the Commission adopted the principle of “competitive neutrality” pursuant to its authority under section 254(b)(7) of the Act to adopt “other” universal service principles in the public interest. 12 FCC Rcd at 8801, para. 46. In the context of section 254(b)(7), “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.” *Id.*, para. 47. The net result is that under the Commission’s rules, high-cost universal service support is available to any provider, including mobile wireless service providers, so long as they receive ETC designation pursuant to section 214(e) of the Act, 47 U.S.C. § 214(e), and offer the supported universal services set forth in section 54.101 of the Commission’s rules. See 47 C.F.R. § 54.101.

⁸⁷ PRTC relies heavily on the declaration of Harold Furchtgott-Roth to assert that the non-rural support mechanism has led to decreased *wireline* infrastructure investment and declining *wireline* penetration rates in Puerto Rico. See PRTC Comments at 27-28 (citing Declaration of Harold Furchtgott-Roth, attached as Appendix C). This declaration only relies on subscribership and investment data related to PRTC itself, and does not consider all eligible telecommunications carriers in Puerto Rico. See PRTC Comments at 28, n. 30 (explaining that Puerto Rico penetration data are based on the availability of PRTC wireline telephone service, and do not include competitive carriers or wireless providers); see also Letter from Nancy J. Victory, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, at 1 (December 6, 2006) (PRTC December 6, 2006 ex parte letter). It therefore likely understates telephone subscribership rates and network investment in Puerto Rico relative to the 50 states, making any comparison unreliable.

⁸⁸ Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 2008*, Table 8 (July 2009) (Local Competition Report), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf

⁸⁹ See *supra* note 53.

⁹⁰ Letter from Nancy J. Victory, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337 (December 12, 2006) (PRTC December 12, 2006 ex parte letter), Attachment, “Telephone Usage in Puerto Rico: A survey of 1,620 households,” at 2 (October 17, 2005) (PRTC Telephone Subscribership Study). The PRTC Telephone Subscribership Study, which was designed to gather information about telephone usage, was based on a questionnaire administered to (continued....)

line losses have resulted from customer migration to new service providers,⁹¹ not from the decisions of customers to terminate service entirely because high-cost support levels have rendered local service rates unaffordable.⁹² This decision to “cut the cord” reflects a trend occurring throughout the country.⁹³

28. PRTC further asserts that several communities and many customers in Puerto Rico have no access to telecommunications infrastructure (and, thus, no service) because PRTC has found it too costly to deploy facilities without federal high-cost loop support.⁹⁴ We find that this claim does not justify the creation of PRTC’s preferred non-rural insular support mechanism, within the current high-cost support framework, for several reasons. First, it is not clear in the record before us how many households on Puerto Rico lack access to wireline infrastructure that delivers basic voice service.⁹⁵ To the extent that

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1,620 households selected randomly to represent the universe of households in Puerto Rico. *PRTC Telephone Subscriber Study*.

⁹¹ The PRTC Telephone Subscriber Study found that the “actual and potential degree of substitution between fixed and cellular service is substantial,” *PRTC Telephone Subscriber Study*, at 2, and the “two most important reasons for not having a phone at home now are: the use of cellular phone (35.5%) and the cost of the service (28.4%).” *Id.* at 3. The study also found that “households in the sample revealed limited awareness of the Lifeline program” – specifically, only 264 of 1,620 respondents knew about the program. *Id.* We believe that the affordability of telephone service in Puerto Rico has improved since this study was conducted based in large part on efforts by the Commission, the TRB, and telecommunications providers serving Puerto Rico to improve the effectiveness and awareness of federal low-income support programs. *See infra*, paras. 33-34.

⁹² We find support for this conclusion in the record. *See, e.g.*, Sprint-Nextel Comments at 9 (attributing lower wireline subscribership to customers abandoning traditional wireline service for wireless and VoIP services). We also find support for this conclusion in PRTC’s own filings before the Commission. *See* Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. For Waiver of Section 64.1903 of the Commission’s Rules, WC Docket No. 10-52 at 6-7 (Jan. 26, 2010) (explaining that PRTC “face[s] intense competition from wireline and wireless providers” including “four facilities-based competitors ... in addition to other resellers and providers,” and “dozens of [wireless] carriers competing for residential and business customers.” Indeed, “[a]s a result of the competitive conditions in Puerto Rico, PRT[C] has experienced considerable erosion in its switched access lines” so that “PRT[C]’s competitors now serve a majority of business customers in Puerto Rico, and PRT[C]’s residential customers are increasingly ‘cutting the cord,’ choosing for economic reasons to rely solely on wireless devices to meet their local and long distance needs.”).

⁹³ *Thirteenth CMRS Report*, 24 FCC Rcd at 6293-95, paras. 229-30.

⁹⁴ PRTC Petition for Reconsideration at 19-20; PRTC Comments at 29, 35; PRTC Reply Comments at 14-15; PRTC December 6, 2006 ex parte letter; Letter from Nancy J. Victory, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, at 2 (March 29, 2005). For example, PRTC claims that “approximately 200 communities have access to no telephone infrastructure at all because of their remote location on the island.” PRTC Comments at 29. We note, however, the competitive inroads made by new universal service providers and the commensurate increase in telephone subscribership since these filings were submitted to the Commission.

⁹⁵ While PRTC originally claimed that “approximately 200 communities have access to no telephone infrastructure at all because of their remote location on the island,” PRTC Comments at 29, and recently claimed that 200,000 households are not passed by wireline infrastructure, it does not quantify the number of households in Puerto Rico lacking access to voice service by any service provider. Letter from Nancy J. Victory, Counsel to PRTC, to Marlene H. Dortch, CC Docket No. 96-45, WC Docket No. 05-337 (filed April 12, 2010). MMTC asserts that “[t]here are approximately 200 rural communities in Puerto Rico encompassing 200,000 households that have no telephone infrastructure at all.” MMTC Comments at 5 (emphasis in original); *see also* Letter from David Honig, President and Executive Director, Minority Media and Telecommunications Council, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337 (filed March 31, 2010) (same). Based on the 2008 telephone penetration rate reported in the Bureau of Census American Community Survey (91.9 percent), about 96,000 of the 1,186,497 reported households in Puerto Rico – less than half the number claimed by (continued....)

PRTC believes unique circumstances in Puerto Rico warrant additional high-cost support in order to extend broadband infrastructure, those arguments are more appropriately raised in the context of upcoming proceedings to consider the recommendations of the National Broadband Plan to reform the legacy high-cost support mechanisms to support broadband. Second, establishing a non-rural insular mechanism would not guarantee that PRTC would deploy infrastructure to expand service.⁹⁶ Third, we are not persuaded that areas unserved by PRTC are without access to basic local telephone service from *any* provider today. Data from American Roamer show that mobile wireless coverage in Puerto Rico is nearly ubiquitous,⁹⁷ and (as noted above) that wireless subscribership has more than doubled since 2001.

29. PRTC also claims that “[a]bsent sufficient federal support, carriers are forced to choose between fully investing in network development and expansion and raising rates to levels that could further diminish subscribership levels.”⁹⁸ There are no data in the record supporting this position, however. As we found in 2003, PRTC offered no evidence that the elimination of its high-cost loop support caused rate shock or rate comparability problems.⁹⁹ While PRTC asserts that *any* increase in rates would negatively affect telephone subscribership in Puerto Rico, PRTC has placed no rate data in the record.¹⁰⁰ Moreover, recent rate data submitted by Verizon show that PRTC’s local service rates fall well

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MMTC – are unserved. See 2008 American Community Survey 1-Year Estimates, Puerto Rico Community Survey, available at: http://factfinder.census.gov/servlet/ADPTable?_br=y&-context=adp&-qr_name=ACS_2008_1YR_G00_DP2PR&-ds_name=ACS_2008_1YR_G00_&-tree_id=308&-caller=geoselect&-geo_id=04000US72&-format=&-lang=en. This Census figure, moreover, reflects the number of households that do not subscribe to telephone service, rather than the number of households that lack access to telephone infrastructure.

⁹⁶ PRTC Comments at 40 (asserting that no conditions should be placed on PRTC’s receipt of high-cost support). PRTC recently informed the Commission that it would “be willing to commit to apply ... funding” from its proposed non-rural insular support mechanism “for the provision, maintenance, and upgrading of broadband facilities, with the priority of extending broadband capabilities to lines that are not broadband-capable today.” Letter from Nancy J. Victory, Counsel for PRTC, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, WC Docket 05-337 at 3 (April 1, 2010) (*PRTC April 1, 2010 Ex Parte Letter*). Although we commend PRTC for its recognition of the critical role broadband deployment will play in economic development and other beneficial change, PRTC’s proposed commitment fails to advance the rationale PRTC has given in this proceeding for creating a non-rural insular high-cost support mechanism, which is the need for additional funding to expand infrastructure in unserved areas to increase voice telephone subscribership rates in Puerto Rico.

⁹⁷ *Thirteenth CMRS Competition Report*, 24 FCC Rcd 6185, Map B-1: Coverage of Top 4 Mobile Telephone Operators (coverage by AT&T, Sprint-Nextel, T-Mobile, Verizon Wireless and affiliates). The four service providers that are considered “nationwide,” Verizon Wireless, AT&T, T-Mobile, and Sprint Nextel, offer facilities-based service in at least some portion of the western, mid-western, and eastern United States. *Id.*, at 6199, para. 14. As shown on the map, wireless coverage in Puerto Rico is at least as pervasive, if not more so, than wireless coverage in many non-insular areas. *Id.*, Map B-1. Indeed, the Commission has found that more than 95 percent of the total U.S. population lives in areas with at least three mobile service providers offering competing service, and more than half the total population lives in areas with at least five competing providers offering mobile service. *Id.*, at 6189, para. 2. Even in rural areas, approximately 98.5 percent of the population has access to mobile services offered by one or more providers. *Id.*

⁹⁸ PRTC Comments at 29; see also PRTC Petition for Reconsideration at 20; TRB Letter at 2.

⁹⁹ *Remand Order*, 18 FCC Rcd at 22637, para. 139. Likewise, in 2000, the Commission rejected PRTC’s argument that phasing down “hold-harmless” support would lead to rate shock in Puerto Rico, noting that the Puerto Rico Commission actually supported the phase-down. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 24422, 24428-29, para. 13 & n.47 (2000).

¹⁰⁰ PRTC Petition for Reconsideration at 21-22; PRTC Comments at 29.

below the national average urban rate,¹⁰¹ demonstrating that these rates are reasonably comparable to the rates paid by consumers in non-insular areas.¹⁰² We further note that PRTC submitted a study of telephone subscribership, which it claims is “useful in demonstrating that increases in residential wireline rates” in Puerto Rico “would not be inconsistent with public policy.”¹⁰³ Moreover, the relevance of PRTC’s earlier (2004-2006) claim that it cannot invest in its network without additional high-cost support is substantially diminished, if not extinguished, by its later (2007) commitment – unqualified with respect to universal service support – to the Commission that it would invest more than \$1 billion over five years to improve communications and information services in Puerto Rico.¹⁰⁴

¹⁰¹ PRTC’s basic local service rates range from \$19.35 per month to \$23.05 per month. See Comments of Verizon and Verizon Wireless, CC Docket No. 96-45, WC Docket No. 05-337, Ex. 2 (Declaration of Alan Buzacott) (filed May 8, 2009). By contrast, the national average urban rate benchmark is \$25.62 per month. Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* (August 2008). See n. 102, *infra*, for a description of the national average urban rate benchmark.

¹⁰² To induce states to achieve the reasonably comparable rates that are required by section 254(b)(3), the Commission requires states to review annually their residential local rates in rural areas served by non-rural carriers and certify that those rural rates are reasonably comparable to urban rates nationwide, or explain why they are not. See 47 C.F.R. §54.316. The Commission defined the statutory term “reasonably comparable” in terms of a national rate benchmark, which serves as a “safe harbor” in the rate review and certification process. See 47 C.F.R. §54.316(b); *Remand Order*, 18 FCC Rcd at 22582-89, 22607-10, paras. 38-48, 80-82. States with rural rates below the benchmark may presume that their rural rates are reasonably comparable to urban rates nationwide without providing additional information; if the rural rates are above the benchmark, states can rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of rates. See *Remand Order*, 18 FCC Rcd at 22609-10, para. 82. The national rate benchmark currently is set at two standard deviations above the average urban rate as reported in the most recent annual rate survey published by the Wireline Competition Bureau. See 47 C.F.R. §54.316(b).

¹⁰³ PRTC December 12, 2006 ex parte letter at 1. This statement seems inconsistent with PRTC’s assertion that it will not be able to expand network coverage absent support from a non-rural insular mechanism because any rate increase would lead to a decrease in subscribership. We also find that PRTC’s December 12, 2006 ex parte letter seems inconsistent with its earlier assertion that Puerto Rico “lacks any affordable rates.” PRTC Petition for Reconsideration at 11; see also PRTC White Paper 14-15. In any event, the fact that telephone subscribership has increased dramatically to almost 92 percent undercuts PRTC’s assertion that local service rates in Puerto Rico are not affordable.

¹⁰⁴ América Móvil acquired PRTC from Verizon in 2007. In the Verizon/América Móvil license order, the Commission conditioned its approval of the transaction on “América Móvil investing \$1 billion over five years to improve service in Puerto Rico.” *Verizon Communications, Inc., Transferor, and América Móvil, S.A. DE C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6211, para. 36 (2007) (*América Móvil Order*) (citing Letter from Michael G. Jones, Willkie Farr & Gallagher, to Marlene Dortch, Secretary, Federal Communications Commission (dated March 23, 2007) (committing that América Móvil will invest “directly or through TELPRI \$1 billion over five years in communications and/or information services in Puerto Rico and that these investments will promote improvements in these services.”)). América Móvil must file annual reports describing its investments. *América Móvil Order*, 22 FCC Rcd at 6211, para. 36. In its report for 2009, América Móvil states it “invested through TELPRI \$155,037,598 in several projects to provide wireline and wireless communications, as well as the deployment of broadband services across the Island.” América Móvil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113, at 1 (dated Dec. 31, 2009).

30. In short, PRTC has not shown that the subscribership levels in Puerto Rico are related to excessively high local rates or that providing additional high-cost support would have any direct impact on facilities deployment or subscribership levels.

31. Although most of the increase in high-cost support disbursements to Puerto Rico is attributable to support received by other providers, notably PRTC's wireless affiliate and other mobile wireless service providers, those carriers (as much as PRTC) promote the universal service goals of the 1996 Act.¹⁰⁵ The current universal service program does not embody a preference for service by any one carrier, or any one technology.¹⁰⁶ Thus, the dramatic increase in high-cost support for wireless competitive ETCs in Puerto Rico relative to PRTC, the only wireline ETC, is entirely consistent with the high-cost program, as it is currently designed.¹⁰⁷ As the Fifth Circuit explained, "the purpose of universal service is to benefit the customer, not the carrier," so "[s]ufficient funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy."¹⁰⁸

32. A similar lack of evidence caused the Fifth Circuit Court of Appeals to reject a challenge to a cap the Commission had imposed on certain ILEC high-cost support mechanisms.¹⁰⁹ The court in that case held that a single provider's reduced rate of return "does not establish that the cap [on certain ILEC high-cost support mechanisms] fails to provide sufficient service" to customers.¹¹⁰ "[T]he Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers."¹¹¹ So long as the mechanism in place enables "customer[s] to receive basic telecommunications services, the FCC ... is not further required to ensure sufficient funding of every local provider as well."¹¹² Faced with record evidence showing that universal service for *customers* has dramatically improved since we adopted the *NPRM* in 2005, we reject PRTC's argument that the non-rural mechanism provides insufficient support to maintain affordable rates and reasonably comparable service in Puerto Rico.

33. Comments challenging the sufficiency of universal service support in Puerto Rico also fail to give weight to efforts by the FCC, the Puerto Rico Telecommunications Regulatory Board (TRB), PRTC, and competitive ETCs that have significantly increased the number of recipients of federal low-income

¹⁰⁵ Indeed, we note that PRTC's wireless affiliate received \$38.8 million in high-cost universal service support in 2008. See *2009 Universal Service Monitoring Report*, Table 3.30. Presumably PRTC's wireless affiliate uses this support for universal service purposes, as it is required to certify pursuant to the Commission's rules. See 47 C.F.R. § 54.904(a).

¹⁰⁶ See *infra*. paras. 26 and n.88.

¹⁰⁷ We recognize, however, that as the Commission considers comprehensive reform of the legacy high-cost support program, the Commission may need to revisit the impact of its existing policies on its ability to achieve universal access to broadband. See *infra*., paras. 44-46.

¹⁰⁸ *Alenco Commc'ns, Inc. v. FCC*, 601 F.3d 608, 620 (5th Cir. 2000) (*Alenco*).

¹⁰⁹ *Alenco*, 201 F.3d at 620.

¹¹⁰ *Alenco*, 201 F.3d at 621; see also *Rural Cellular Assn.*, 588 F.3d at 1103-04 (rejecting a challenge to an interim cap the Commission imposed on high-cost support disbursements to competitive ETCs, and finding that petitioners produced "no cost data showing they would, in fact, have to leave customers without service as a result of the cap," which gave the court "no valid reason to believe the principle of 'sufficiency'" would be "violated by the cap.>").

¹¹¹ *Alenco*, 201 F.3d at 620; see also *Rural Cellular Assn.*, 588 F.3d at 1103 ("The pertinent question is whether the interim cap will undercut adequate telephone services for customers....").

¹¹² *Alenco*, 201 F.3d at 620.

support in Puerto Rico since 2003 and, commensurately, increased telephone subscribership. The Commission has taken steps to improve the effectiveness of the low-income support mechanism by expanding the federal default eligibility criteria for Lifeline/Link-Up to include an income-based criterion and additional means-tested programs.¹¹³ And to target low-income consumers more effectively, the Commission adopted outreach guidelines for Lifeline/Link-Up and issued a voluntary survey to gather data and information from states regarding the administration of the programs.¹¹⁴ Further, low-income consumers in Puerto Rico receive the maximum amount of Lifeline assistance available (\$13.50 per month) due to the substantial contribution (\$3.50 per month) provided by the Commonwealth.¹¹⁵ Importantly, the Commission has found a positive correlation between the amount of state Lifeline support and telephone subscribership penetration rates.¹¹⁶ We also found that the transfer of PRTC to América Móvil in 2007 was in the public interest based, in part, on América Móvil's extensive experience in designing products specifically for rural and low-income populations.¹¹⁷ Finally, we note again that through the operation of market forces, the wireless subscription rate in Puerto Rico has grown substantially,¹¹⁸ with low-income customers subscribing to wireless service in ever-increasing numbers, so that the customers of wireless competitive ETCs received more than one-third of total low-income support in 2008.¹¹⁹

34. These combined public and private efforts have contributed to the dramatic growth in low-income support provided to the Commonwealth.¹²⁰ Combined annual Lifeline and Link-Up support in Puerto Rico has grown from just over \$1.16 million in 2001 to more than \$23.4 million in 2008,¹²¹ ranking Puerto Rico as the seventh largest recipient of low-income support among the states and

¹¹³ In April 2004, the Commission expanded the eligibility criteria for Lifeline and Link-Up to include any consumer whose income is 135 percent or less of the Federal Poverty Guidelines. Previously, consumers were only eligible if they took part in Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance (section 8), or the Low Income Home Energy Assistance Program (LIHEAP). *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8307-12, paras. 7-13 (2004). The Commission also encouraged states to implement automatic enrollment in Lifeline and Link-Up, though it stopped short of requiring automatic enrollment. *Id.*, at 8318-19, paras. 25-26.

¹¹⁴ *Id.*, at 8329, paras. 50-51.

¹¹⁵ *2009 Universal Service Monitoring Report*, Table 2.3. This amount includes basic federal support, additional state support, and the federal match. *See also* PRTC Comments at 34-35 (explaining that Puerto Rico provides each eligible subscriber low-income support, in addition to basic Lifeline support, well above the national average, and acknowledging the "successful efforts" by the TRB and carriers serving the island "to educate Puerto Rican customers about the availability of Lifeline and Link-Up support").

¹¹⁶ *2009 Universal Service Monitoring Report*, at 2-2 ("States that have provided a full or high level of Lifeline support for telephone service for low-income consumers experienced an average growth in penetration rates for low-income households of 4.0% from March 1997 to March 2008. In contrast, states that provided a basic or low level of Lifeline support experienced an average increase in telephone penetration rates for low-income households between March 1997 and March 2008 of only 1.4%.").

¹¹⁷ *America Movil Order*, 22 FCC Rcd at 62111, para. 36.

¹¹⁸ *See supra*, para. 18 and n.57.

¹¹⁹ *See supra*, para. 19.

¹²⁰ *See* PRTC Petition for Reconsideration at 5-10; PRTC White Paper 16-27; PRTC Comments 16-33; MMTCC Comments at 12-15.

¹²¹ *See supra* para. 0.

territories.¹²² This increase was driven by a dramatic expansion in the number of low-income support recipients, which grew from zero in 1997 to 188,000 in 2008.¹²³ The Commission has previously attributed Puerto Rico's historically lagging telephone subscribership penetration rate to low per-capita income, not a high cost of service.¹²⁴ PRTC acknowledges this fact.¹²⁵ We therefore find the expansion of subsidies associated with the low-income support program significant given our prior finding that low-income support – *not* high-cost support – is the federal program best suited to address issues of affordability and subscribership in Puerto Rico.¹²⁶ On the basis of the record before us, we are unpersuaded that providing additional high-cost support through a non-rural insular mechanism is needed to address the underlying concern that PRTC identifies regarding low telephone subscribership in Puerto Rico. While we emphasize that there is still work to be done, this dramatic narrowing of the gap in telephone subscribership between Puerto Rico and non-insular areas reinforces our long-held view that low-income support, in combination with our other universal service programs, is an effective means to address affordability and subscribership in Puerto Rico.¹²⁷ As indicated in the attached NPRM, we seek comment on whether, due to the extraordinarily low income levels in Puerto Rico, it is appropriate to amend our rules to allow eligible low-income consumers in Puerto Rico additional support through the Link Up Program to offset special construction charges incurred if additional facilities are required to provide them with access to voice telephone service

35. In summary, we agree with PRTC that “the Commission has created a set of complementary universal service programs that work in conjunction to ensure that all consumers have access to affordable and reasonably comparable telecommunications services.”¹²⁸ Indeed, in responding to the Tenth Circuit's *Qwest II* decision, we concluded generally that the non-rural high-cost support mechanism, acting in combination with the Commission's other universal service programs, provides sufficient support to achieve the universal service objectives set forth in section 254 of the Act.¹²⁹ These programs have produced almost ubiquitous access to telecommunications services and very high telephone subscribership rates throughout the United States, including Puerto Rico. We therefore do not agree with PRTC that its loss of high-cost loop support from the legacy program that preceded the creation of the non-rural support mechanism rendered universal service support to Puerto Rico insufficient.¹³⁰ As we recently explained, the Commission cannot reasonably evaluate the non-rural high-cost support mechanism in isolation.¹³¹ Sufficient support that satisfies the universal service objectives of

¹²² 2009 *Universal Service Monitoring Report*, Table 2.4. The largest recipients of combined Lifeline and Link-Up support, in descending order, are as follows: California, Texas, Oklahoma, New York, Ohio, and Florida. *Id.*

¹²³ See *supra* para. 0.

¹²⁴ See *Remand Order*, 18 FCC Rcd at 22638, para. 140, n. 451.

¹²⁵ See PRTC White Paper 17-19; PRTC Comments at 13-15, 17.

¹²⁶ *Remand Order*, 18 FCC Rcd 22638, para. 140; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report and Order, 14 FCC Rcd 8078, 8097, para. 39 (“Affordability problems, as they relate to low-income consumers, raise many issues that are unrelated to the need for support in high-cost areas, and section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates.”).

¹²⁷ There is support in the record for this approach. See, e.g., GCI Comments at 35; Sprint-Nextel Comments at 9.

¹²⁸ PRTC Comments at 33.

¹²⁹ *Qwest II Remand Order*, FCC 10-56 at paras. 23-75.

¹³⁰ PRTC White Paper at 27; PRTC Comments at 33-37.

¹³¹ *Qwest II Remand Order*, FCC 10-56 at para. 27.

Act – including reasonable comparability and affordability – can only be achieved through the totality of the Commission’s universal service programs.¹³² Moreover, we reject PRTC’s contention that the Commission views high-cost support and low-income support to be “mutually exclusive.”¹³³ To the contrary, we simply find that PRTC is not entitled to federal high-cost model support under the non-rural mechanism because its costs do not meet the eligibility threshold and, on the basis of this record, that total support provided to Puerto Rico through the various universal service programs is sufficient to satisfy the objectives in section 254 of the Act.

36. We acknowledge that in the 2005 *NPRM*, the Commission tentatively concluded that “adopting a non-rural mechanism would have a limited impact on the universal service fund.”¹³⁴ PRTC estimates that a non-rural insular mechanism would provide PRTC with approximately \$33 million in additional annual support based on 2004 data, which amounts to less than one percent of the total high-cost program.¹³⁵ We are not persuaded, however, that the relatively limited financial impact of PRTC’s proposal compels us to adopt it.¹³⁶ Because universal service is funded by contributions from telecommunications carriers, which typically pass their contributions on to consumers,¹³⁷ we must take care to avoid “excess subsidization of the universal service fund,” which may actually “detract from universal service by causing rates to unnecessarily rise, thereby pricing some consumers out of the market.”¹³⁸ Moreover, as the D.C. Circuit recently held, we “must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.”¹³⁹ In administering the universal service program, we take seriously our obligation to “strike an appropriate balance between the interests of widely dispersed customers with small stakes and a concentrated interest group seeking to increase its already large stake.”¹⁴⁰ Given our conclusion on this record that universal service support for Puerto Rico is sufficient under the Commission’s existing universal service programs, we find that any additional high-cost support provided to PRTC cannot be justified under those existing programs.

¹³² *Remand Order*, 18 FCC Rcd at 22368, para. 140.

¹³³ See PRTC Petition for Reconsideration at 20; see also PRTC Comments at 33-36.

¹³⁴ *Qwest II Remand NPRM*, 20 FCC Rcd at 19746, para. 34.

¹³⁵ PRTC Comments at 41.

¹³⁶ See PRTC Petition for Reconsideration at 22; PRTC White Paper at 27, 29; MMTTC Reply Comments at 5.

¹³⁷ Support for the USF derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. See 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those contribution assessments through to their end-user customers. See 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors’ contribution base revenues.

¹³⁸ *Alenco*, 201 F.3d at 620; see also *Qwest II*, 398 F.3d at 1234 (10th Cir. 2005). Indeed, this is a real concern, as the current quarterly universal service contribution factor has climbed to 15.3 percent – an all-time high – due to the increased demand for universal service support and a declining pool of interstate telecommunications revenues against which to assess contributions. *Proposed Second Quarter 2010 Universal Service Contribution Factor*, Public Notice, DA 10-427 (OMD rel. Mar. 12, 2010).

¹³⁹ *Rural Cellular Assn*, 588 F.3d at 1102.

¹⁴⁰ *Id.*

3. The Application of the Commission's Forward-Looking Cost-Based Model for Determining Non-Rural High-Cost Support Adequately Addresses PRTC's Circumstances

37. The Commission determined in the *Universal Service First Report and Order* that non-rural carriers would receive support based on forward-looking economic costs (*i.e.*, costs estimated by the Commission's cost model), that the definition of rural carriers would exclude carriers of PRTC's size, and that a separate support mechanism for carriers serving insular areas was not warranted.¹⁴¹ As a result, although PRTC receives significant levels of Interstate Common Line Support,¹⁴² it does not receive high-cost model support or any specially targeted insular support today. In the *NPRM*, the Commission sought comment on a PRTC proposal that the Commission adopt a non-rural insular high-cost support mechanism based on the existing rural high-cost loop support mechanism, but with a cost threshold far below that currently used for rural telephone companies.¹⁴³

38. PRTC's proposal is predicated, in part, on its long-standing contention that the extreme weather and terrain conditions and high shipping costs in insular areas make the cost characteristics of even large insular carriers more like those of rural carriers.¹⁴⁴ In the *Universal Service First Report and Order*, the Commission rejected this argument as grounds for providing PRTC high-cost support on the basis of embedded costs, finding that, "as a large telephone compan[y]," PRTC "should possess the economies of scale and scope to deal efficiently with the cost of providing service in their areas."¹⁴⁵ We

¹⁴¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 889, 8943-44, 8997-9001, paras. 203, 310, 414-23; see also *supra* paras. 8-10.

¹⁴² Based on the Universal Service Administrative Company's (USAC's) most recent projections, PRTC will receive approximately \$40 million in interstate common line support (ICLS) in 2010. See *USAC Second Quarter 2010 Projections*, at App. HC09.

¹⁴³ Pursuant to the high-cost loop support mechanism, a rural carrier receives support based on the amount its cost per loop exceeds certain thresholds set as a percentage of the national average cost per loop (NACPL). 47 C.F.R. § 36.631. In 2001, the Commission froze the NACPL for the purposes of this calculation at \$240 per loop, but it also established an indexed cap for the HCLS mechanism. See 47 C.F.R. §§ 36.603(a), 36.622(a), (c). When HCLS would exceed the cap using the frozen NACPL – as it has in every year since the rules were amended – the NACPL is recalculated at the level necessary to provide support at the capped level. 47 C.F.R. § 36.622(c)(2); see also National Exchange Carrier Association, Universal Service Fund, Rural High-Cost Loop Support Effective July 2001, Amended Filing, CC Docket No. 96-45 (filed July 23, 2001). Rather than using the cap-adjusted NACPL that is used for rural carriers under the HCLS mechanism (currently \$412.54), PRTC would like to have its support based on the frozen NACPL of \$240. See National Exchange Carrier Association, Inc. (NECA), Universal Service Fund 2009 Submission of 2008 Study Results, Overview at 5 (filed Sept. 30, 2009), available at <http://www.fcc.gov/wcb/iatd/neca.html> (NECA 2009 USF Filing) (showing cap-adjusted NACPL). Under the cap-adjusted NACPL, PRTC would receive no support based on its 2008 costs, while it would receive \$32.0 million based on the frozen NACPL. We note that the current actual NACPL is \$383.38 and PRTC would receive \$1.7 million if that were the benchmark used. See *id.*, Overview at 7 (showing actual "USF cost per loop").

¹⁴⁴ PRTC Petition for Reconsideration 6-7; PRTC White paper at 16-17; PRTC Comments at 10-12; see also MMTS Comments at 23.

¹⁴⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 8946, para. 315; see also *supra* paras. 9-10. PRTC was, at that time, the 12th largest company in the nation, with more than \$1.3 billion access lines and annual operating revenues of \$1 billion. *Id.*, para. 315 & n.791. In 2000, PRTC became a Verizon subsidiary after the merger of GTE (its corporate parent since 1999) and Bell Atlantic Corporation. *Remand Order*, 18 FCC Rcd at 22637, para. 139 & n.446. América Móvil acquired PRTC in 2007. *América Móvil Order*, 22 FCC Rcd 6195. América Móvil, through various operating subsidiaries, provides telecommunications services to more than 110 million subscribers in 14 countries in North, Central and South America. *Id.*, 22 FCC Rcd at 6198, para. 8. América Móvil's predominant business (which accounts for 100 million of its subscribers) is the provision of (continued....)

believe this reasoning still applies to PRTC. In approving license transfers associated with América Móvil's 2007 acquisition of PRTC, for example, we found that América Móvil "brings significant advantages of scale and scope to bear" in providing telecommunications services to consumers.¹⁴⁶

39. Even more significantly, record evidence in this proceeding reinforces our earlier decision. While PRTC claims that its costs are similar to those of rural carriers, PRTC's embedded costs are actually too low to make it eligible for support under the high-cost support mechanism that currently funds much smaller, rural telephone companies that do not enjoy the same economies of scale and scope.¹⁴⁷ Only by lowering the rural mechanism's cost threshold significantly – from slightly more than \$400 per loop to about \$240 per loop (as proposed by PRTC) – would PRTC become eligible for the significant increase in high-cost loop support (about \$33 million annually) that it has requested.¹⁴⁸ Thus, based on PRTC's own embedded cost data in the record before us, we find that PRTC has not justified a departure from our prior determinations that, for purposes of high-cost support, PRTC should be treated as a non-rural carrier due to its size and resulting economies of scale and scope.

40. We also reject PRTC's claim that the non-rural forward-looking cost model fails accurately to represent insular costs.¹⁴⁹ In particular, we do not find persuasive PRTC's arguments that it should receive high-cost support based on its embedded costs because the forward-looking economic costs produced by the high-cost model are less than PRTC's actual costs.¹⁵⁰ First, PRTC's arguments do not address the central purpose of using forward-looking economic costs in the non-rural support model, which is to estimate the costs that would be incurred by an *efficient* provider of service.¹⁵¹ The Commission previously found that "variability in historic costs among companies is due to a variety of factors and does not simply reflect how efficient or inefficient a firm is in providing the supported

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wireless telecommunications services. *Id.* América Móvil also provides, through various operators, wireline telecommunications services in El Salvador, Guatemala, and Nicaragua that collectively provide service to more than 2 million subscribers. *Id.* América Móvil's sole current operation in the United States is its indirect, controlling interest in TracFone Wireless, Inc. (TracFone), a prepaid wireless telecommunications provider in the United States (including Puerto Rico). As of March 2006, TracFone had 6.9 million wireless subscribers in the United States. *Id.* América Móvil reported revenues of approximately \$30 billion and net income of approximately \$5 billion for 2009 for all subsidiaries. América Móvil's Fourth Quarter of 2009 Financial and Operating Report (dated Feb. 2, 2010), available at: http://www.americamovil.com/docs/reportes/eng/2009_4.pdf.

¹⁴⁶ *America Movil Order*, 22 FCC Rcd at 6212, para. 39 (explaining that América Móvil "acquires more than 50 million mobile phone handsets each year, and that this volume of purchases enables América Móvil to achieve favorable prices for such handsets," and that "América Móvil, due to its size," is "able to enjoy reduced wireless infrastructure prices.") (internal citations omitted).

¹⁴⁷ See *supra*, para. 37 & n. 152.

¹⁴⁸ *Id.*

¹⁴⁹ PRTC Petition for Reconsideration at 14-17; PRTC White Paper 20-22; PRTC Comments at 18-21; see also TRB Letter at 3; MMTC Comments at 19-20. In particular, PRTC attacks the accuracy of the model on which the forward-looking mechanism is based because "the majority of the inputs ... are national averages, and are not company specific," which PRTC contends "grossly underestimate[s] the costs faced by PRTC." PRTC Comments at 19; see also Appendix A, Declaration of David C. Blessing. In *Qwest I*, however, the Tenth Circuit rejected the notion "that the use of statewide and national averages is necessarily inconsistent with [section] 254." *Qwest I*, 258 F.3d at 1202 n.9. Hence, there is no legal barrier to our continued use of national average costs in the model so long as the non-rural mechanism produces results that comport with section 254 of the Act, which it does.

¹⁵⁰ PRTC Comments at 19-23.

¹⁵¹ *Universal Service First Report and Order*, 12 FCC Rcd at 8899-8900, paras. 224-26.

services.”¹⁵² Indeed, in this proceeding, PRTC has merely asserted that its costs are higher because it serves an insular area and has not addressed whether inefficiencies may have contributed to the difference. Second, PRTC argues that the national average costs used in the model are inappropriate for estimating the costs of serving insular areas and states that “it remains unclear the extent to which [PRTC’s] costs were included in those national averages.”¹⁵³ In the *Tenth Report and Order* the Commission considered the use of a variety of data sources to determine input values in the high-cost model, including surveys of non-rural carriers.¹⁵⁴ To the extent that PRTC declined to respond to a voluntary survey seeking cost data from carriers, the Commission could not include PRTC’s cost data.¹⁵⁵ Finally, PRTC’s argument relies on inaccurate premises. For example, PRTC argues that the model’s use of customer addresses from Puerto Rico results in erroneous customer locations that generate inaccurate results.¹⁵⁶ In fact, the road surrogate method used by the model assumes an even distribution of customers along roads and does not attempt to precisely assign customer location based on addresses.¹⁵⁷ PRTC also complains that “[a] comparison of the actual operating costs of other non-rural jurisdictions further calls attention to the disparate treatment of Puerto Rico.”¹⁵⁸ But it does not follow that the forward-looking cost model produces inaccurate results simply because Puerto Rico receives less high-cost model support than other jurisdictions. In any event, we find PRTC’s “analysis” unpersuasive due to the manner in which it mixes statewide average embedded costs with support amounts from two different support mechanisms (*i.e.*, the rural and non-rural support mechanisms) that are based on two different methodologies (*i.e.*, embedded versus forward-looking costs).¹⁵⁹

¹⁵² *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High-Cost Support for Non-Rural Carriers*, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20198, para. 90 (1999) (*Tenth Report and Order*). The Commission further found that “[s]electing different values for each input for each of the fifty states, the District of Columbia, and Puerto Rico, or for each of the 94 non-rural study areas, would increase the Commission’s administrative burden significantly,” *id.*, at 20199, para. 92, making the use of “company-specific data for federal universal service support purposes ... administratively unmanageable and inappropriate.” *Id.*, at 20198, para. 90.

¹⁵³ PRTC Comments at 19.

¹⁵⁴ *Tenth Report and Order*, 14 FCC Rcd at 20187-350, paras. 63-439 (discussing the selection of various cost inputs for the model).

¹⁵⁵ *Id.* at 20198 n. 217 (listing non-rural carriers that responded to supplemental structure and cable cost survey).

¹⁵⁶ PRTC Comments at 20-21.

¹⁵⁷ *Tenth Report and Order*, 14 FCC Rcd at 20177, para. 43 (describing the PNR road surrogate algorithm adopted by the Commission for use in the model).

¹⁵⁸ PRTC Comments at 22.

¹⁵⁹ PRTC compares Puerto Rico’s average loop costs to Idaho’s average loop costs (which were about 15 percent lower than Puerto Rico’s) to South Dakota’s average loop costs (which were approximately the same as Puerto Rico’s) and suggests that it is inequitable that those states receive high-cost loop support, while Puerto Rico does not. PRTC Comments at 22-23. (PRTC actually asserts that Idaho receives more “high-cost loop support under the non-rural mechanism,” but high-cost loop support is the universal service support mechanism for rural carriers, and Idaho does not receive support under the non-rural high-cost support mechanism. *See id.*). Puerto Rico’s analysis ignores the fact that not all carriers are eligible for support under the same high-cost mechanisms. Idaho and South Dakota are served by both non-rural carriers (which are not eligible for high-cost loop support) and rural carriers (which are eligible for high-cost loop support). While Puerto Rico’s 2008 cost per loop was \$430.65, rural carriers serving Idaho and South Dakota had average loop costs of \$560.66 and \$750.41, respectively. *NECA 2009 USF Filing*, App. D. In other words, carriers that are eligible for high-cost loop support in those states have costs that are significantly higher than PRTC’s costs.