

41. PRTC's attacks on the accuracy of the forward-looking cost model are similar to arguments that the Commission rejected when it adopted that model in the *Tenth Report and Order*.<sup>160</sup> For example, in "explain[ing] why the model estimates higher costs in some states relative to others in a distribution that differs from carriers' book costs and from some observers' expectations," the Commission found that "[i]n general, ... the states where the model estimated the highest costs were those states in which the territory served by the non-rural carriers, which are typically larger carriers, included more rural areas than in other states."<sup>161</sup> This analysis is entirely consistent with the data in the record, which show that PRTC's embedded costs fall below the threshold for support under the rural high-cost support mechanism. Simply stated, PRTC has not persuaded us that the model fails to accurately measure its costs because PRTC has not demonstrated that its actual costs share the cost characteristics of rural carriers, as opposed to non-rural carriers. We further note that the Tenth Circuit in *Qwest I* upheld that Order (and our use of the cost model) against a similar challenge from Qwest, explaining that "while Qwest notes analytic problems with ... the model it has not presented any evidence that the model overall produces such inaccurate results that it cannot form the basis of rational decision-making."<sup>162</sup> Indeed, as the Tenth Circuit explained, "[t]he model is meant to estimate the costs of providing service," so "[i]t need not reflect physical reality in all aspects if it produces 'reasonably accurate estimates,' as the FCC has found it does."<sup>163</sup> PRTC has provided no new evidence on this record that compels reconsideration of our previous conclusion that the cost model provides a reasonable means of determining appropriate levels of high-cost support. To the contrary, as noted, the record demonstrates a significant increase in telephone subscribership in Puerto Rico in the years since the *NPRM* was issued.

42. Nor do we believe that it would be in the public interest to transition PRTC from the non-rural mechanism to an entirely new high-cost support mechanism based on embedded costs, even on an interim basis. As a general matter, we have determined that the appropriate basis for high-cost support is forward-looking economic cost and have moved away from the use of embedded costs for determining universal service support wherever possible.<sup>164</sup> We intend to continue that process, and agree with GCI that adoption of PRTC's proposal would be a step in the wrong direction.<sup>165</sup>

#### 4. Comprehensive Reform and the National Broadband Plan

43. The Commission has long recognized the need for comprehensive review and possible reform of universal service reform, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural.<sup>166</sup> Since the Commission

<sup>160</sup> *Tenth Report and Order*, 14 FCC Rcd 20156.

<sup>161</sup> *Id.* at 20169, para. 26.

<sup>162</sup> *Qwest I*, 258 F.3d at 1206.

<sup>163</sup> *Id.* (emphasis added).

<sup>164</sup> *Universal Service I First Report and Order*, 12 FCC Rcd at 8901, para. 228.

<sup>165</sup> GCI Comments at 34. Other commenters also oppose the creation of a non-rural insular support mechanism based on embedded costs. See Dobson Comments at 12; CTIA Comments at 16; Sprint-Nextel Comments at 9.

<sup>166</sup> See, e.g., *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform Notice*); *High-Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local* (continued....)

originally adopted the non-rural high-cost mechanism in 1999, the telecommunications marketplace has undergone significant changes.<sup>167</sup> While in 1996 the majority of consumers subscribed to separate local and long distance providers, today the majority of consumers subscribe to local/long distance bundles offered by a single provider. In addition, the vast majority of subscribers have wireless phones as well as wireline phones, and an increasing percentage of consumers are dropping their wireline phones in favor of wireless or broadband-based (voice over Internet protocol) phone services. Finally, an increasing percentage of carriers are converting their networks from circuit-switched to Internet protocol (IP) technology.

44. On March 16, 2010, the Commission adopted a Joint Statement on Broadband, which sets forth the overarching vision and goals for U.S. broadband policy and recommends comprehensive reform of universal service.<sup>168</sup> The Commission also delivered to Congress the National Broadband Plan, which contains specific recommendations for reform.<sup>169</sup> The National Broadband Plan recommends that all Americans should have access to affordable broadband service and proposes a comprehensive reform program to shift the high-cost universal service program from primarily supporting voice communications to supporting broadband platforms that enable many applications, including voice.<sup>170</sup> As set forth in the National Broadband plan, a new Connect America Fund would provide universal service support in areas where there is no private sector business case to offer broadband platforms that are capable of delivering high-quality voice services because providers cannot earn enough revenue to cover the costs of deploying and operating broadband infrastructure and services.<sup>171</sup>

45. The recommendations to transition the existing high-cost universal service mechanisms to a new broadband program further cause us to conclude that PRTC's requested reform, limited only to non-rural insular areas, should not be undertaken at this time. While we believe that we have fully addressed the insular support questions raised in the *NPRM*, we anticipate that our efforts to reform universal service support will be advanced further through future proceedings that follow from the National Broadband Plan. The Commission will release a notice of proposed rulemaking later this year that will address the high-cost universal service recommendations of the National Broadband Plan. We encourage parties with information about any unique cost characteristics of providing broadband service in insular areas, such as Puerto Rico, to participate in these forthcoming proceedings and submit any relevant data. Doing so will ensure that the Commission has the information necessary to determine the cost of deploying and operating a broadband infrastructure in insular areas.

(Continued from previous page)

*Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC 6475 (2008) (*Comprehensive Reform FNPRM*).

<sup>167</sup> *Qwest II Remand Order*, FCC 10-56 at para. 76.

<sup>168</sup> The Joint Statement on Broadband includes a recommendation that universal service should be comprehensively reformed. *Joint Statement on Broadband*, para 3 ("The nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.").

<sup>169</sup> *National Broadband Plan* at Chapter 8.

<sup>170</sup> *Id.* at 143 ("The federal government should, over time, end all financial support for networks that only provide 'Plain Old Telephone Service' (POTS) and should provide financial support, where necessary and in an economically efficient manner, for broadband platforms that enable many applications, including voice.") and at 144-151 (describing the transition).

<sup>171</sup> *Id.* at 145-146.

46. In the interim, we find that it will further the public interest if PRTC remains subject to the non-rural support mechanism until comprehensive universal service reform is adopted, consistent with the recommendations contained in the National Broadband Plan. If PRTC were to receive additional support for voice service pursuant its proposed non-rural insular mechanism, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband.<sup>172</sup>

### III. ADDITIONAL LOW-INCOME SUPPORT NOTICE OF PROPOSED RULEMAKING

#### A. Background

47. Pursuant to the Commission's rules, qualifying low-income subscribers are eligible for the Link Up program, which supports discounted connection charges for telephone service. Under the base Link Up program, eligible low-income subscribers may receive a discount equal to the lesser of one-half of a service connection charge or \$30.<sup>173</sup> In addition, the enhanced Link Up program supports discounts of 100 percent of a service connection charge, up to \$70, for eligible low-income consumers on tribal lands,<sup>174</sup> resulting in a maximum Link Up support amount of \$100.

48. Over the last decade, the Commission has sought comment on ways to increase telephone subscribership in unserved and underserved regions of the nation, including tribal lands and insular areas. In the 1999 *Unserved Areas NPRM*, the Commission sought to identify the impediments to increased telecommunications deployment and subscribership in such areas, and proposed particular changes to the Commission's universal service rules to overcome these impediments.<sup>175</sup> The Commission tentatively concluded that Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands are properly included in the definition of insular areas.<sup>176</sup> In the *Twelfth Report and Order*, the Commission adopted enhanced Lifeline and Link Up programs for tribal lands, and stated that it would continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in rural and insular areas.<sup>177</sup> In 2003, the Commission again addressed unserved areas in or near tribal lands, but declined, at that time, to adopt a proposal by the Commonwealth of the Northern Mariana Islands ("CNMI") to expand the enhanced Lifeline and Link Up programs to CNMI.<sup>178</sup> In the 2005 *Qwest II Remand NPRM*, the

<sup>172</sup> The National Broadband Plan recommends phasing out support under the existing high-cost universal service mechanisms as it redirects that support to fund broadband deployment in an effort to minimize the contribution burden. *National Broadband Plan* at 143, 144-151. Increasing the size of the universal service fund as a result of this proceeding would be inconsistent with this approach.

<sup>173</sup> 47 C.F.R. § 54.411(a)(1).

<sup>174</sup> 47 C.F.R. § 54.411(a)(3).

<sup>175</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999) (*Unserved Areas NPRM*).

<sup>176</sup> *Id.* at 21233-34, paras.137-38.

<sup>177</sup> *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12215, para. 11 (2000) (*Twelfth Report and Order*).

<sup>178</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958, 10972-74, paras. 28-31 (2003) (*Tribal Lands Order*).

Commission again sought comment on the definition of insular areas and refreshed the record in the *Underserved Areas NPRM*.<sup>179</sup> In 2007, the Wireline Competition Bureau released a public notice to refresh the record regarding the definition of “near reservations” for the purpose of providing enhanced Lifeline and Link Up to tribal lands.<sup>180</sup>

## B. Discussion

49. 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 remain unable to afford access to voice telephone service. As discussed above, telephone subscribership in Puerto Rico has increased dramatically since the Commission released its notice of proposed rulemaking in 2005.<sup>181</sup> Despite these gains, subscribership in Puerto Rico remains materially lower than in any other jurisdiction reported by the Census Bureau.<sup>182</sup> In addition, a significantly higher percentage of Puerto Rican families are below the poverty threshold than the general U.S. population, with approximately 41 percent of Puerto Rican families reporting income below the poverty threshold between 2006 and 2008, as compared to approximately 10 percent of total U.S. families reporting income below the poverty threshold during the same time period.<sup>183</sup> The state with the next highest percentage of families reporting income below the poverty threshold is Mississippi at 16.7 percent.<sup>184</sup> Not only does Puerto Rico have the highest percentage of households with incomes below the poverty level of any jurisdiction reported by the Census Bureau, but it has the lowest median household income as well. Specifically, the median household income in Puerto Rico in 2007 was \$17,741 compared with a national median household income of \$50,740.<sup>185</sup> The state with the next lowest median household income is West Virginia, with a median household income of \$37,060 – over twice the median household income in Puerto Rico.<sup>186</sup> Evidence in the record suggests that infrastructure does not yet reach some subscribers, so some people may not be subscribing because they cannot afford to pay the special construction charges associated with building facilities to reach them.<sup>187</sup> The confluence of these two factors—a subscribership rate lower than any other reported jurisdiction’s and an exceptionally high rate of poverty—causes us to believe that additional low-income support may be appropriate in this jurisdiction. To address this situation and to ensure that low-income consumers in Puerto Rico can take advantage of the assistance available to them through the existing universal service Lifeline and Link Up low-income support programs, we propose to amend our rules to allow eligible low-income consumers in

---

<sup>179</sup> *NPRM*, 20 FCC Rcd at 19746-47, para. 34.

<sup>180</sup> The Wireline Competition Bureau Seeks Additional Comment on Promoting Deployment and Subscribership in Underserved Areas, Including “Near Reservations,” CC Docket No. 96-45, Public Notice, 22 FCC Rcd 4862 (Wireline Comp. 2007).

<sup>181</sup> See *supra* para. 18.

<sup>182</sup> See *Universal Service Monitoring Report*, Table 6.4; see *supra* para. 18.

<sup>183</sup> U.S. Census Bureau, 2006-2008 Puerto Rico Community Survey 3-Year Estimates; U.S. Census Bureau, 2006-2008 American Community Survey 3-Year Estimates.

<sup>184</sup> U.S. Census Bureau, 2006-2008 American Community Survey 3-Year Estimates.

<sup>185</sup> U.S. Census Bureau, *Income, Earnings, and Poverty Data from the 2007 American Community Survey*, Table 2, at 4 (issued Aug. 2008).

<sup>186</sup> *Id.*

<sup>187</sup> *PRTC December 6, 2006 Letter* (describing locations of consumers that had cancelled service requests “because their location would be extraordinarily costly to serve”).

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.

50. As discussed above, the Commission in the *Twelfth Report and Order* took measures to address impediments to telephone subscribership and infrastructure investment on tribal lands, including the adoption of enhanced Link Up support. The Commission identified a number of factors that are primary impediments to subscribership on tribal lands, including the cost of basic voice service, the cost of intrastate toll service, inadequate telecommunications infrastructure and the cost of line extensions, and the lack of competitive service providers offering alternative technologies.<sup>188</sup> At that time, however, the Commission chose not to extend the actions taken in the *Twelfth Report and Order* to all high-cost areas and all insular areas, including Puerto Rico.<sup>189</sup> Although the record demonstrated that subscribership levels were below the national average in other low-income, rural areas and in certain insular areas, the Commission found that the factors causing low subscribership on tribal lands were not the same factors causing low subscribership in those other jurisdictions.<sup>190</sup> We recognize that is still the case today: while Puerto Rico faces a lower telephone subscriber rate and a higher poverty rate than other jurisdictions, the Commonwealth does not appear to suffer from other impediments to subscribership that affect tribal lands, notably higher cost to provide voice telephone service<sup>191</sup> and a lack of competitive service providers offering voice service via alternative technologies.<sup>192</sup> Moreover, Puerto Rico has a much higher telephone subscribership rate (approximately 92 percent in 2008)<sup>193</sup> than the subscribership rate we found on reservations when we adopted the *Twelfth Report and Order* (approximately 47 percent).<sup>194</sup>

51. Importantly, however, the Commission's decision in 2000 to limit the measures adopted in the *Twelfth Report and Order* to tribal lands was driven by its "concern[] that to devise a remedy addressing all low subscribership issues for all unserved or underserved populations simultaneously might unnecessarily delay action on behalf of those who are least served, *i.e.*, tribal communities."<sup>195</sup> In other words, the Commission placed higher priority on increasing telephone subscribership on tribal lands – it did not determine that no further action was needed to assist other unserved or underserved populations. As described in the previous section, the Commission has long attributed Puerto Rico's historically lagging telephone subscribership penetration rate to low per-capita income.<sup>196</sup> Thus, to the extent that parties have identified line extension and construction costs as obstacles to affordable telephone service in Puerto Rico,<sup>197</sup> extending the enhanced Link Up support already available to tribal lands could likewise

---

<sup>188</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12219-20, para. 20.

<sup>189</sup> *Id.*, at 12226-27, paras. 32-33.

<sup>190</sup> *Id.*, at 12226, para. 32;

<sup>191</sup> *See supra* paras. 36-38.

<sup>192</sup> *See supra* paras. 26-27.

<sup>193</sup> *See supra* para. 19.

<sup>194</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12223, para. 25.

<sup>195</sup> *Id.*, at 12226, para. 32.

<sup>196</sup> *See supra*, para. 34.

<sup>197</sup> *See supra*, paras. 27-28. We note that PRTC has long argued that the "Link-up program should be expanded to include additional support to low-income consumers in unserved and underserved areas, including tribal lands and insular areas," because "low-income consumers often cannot afford the expense associated with hook-ups" and "the (continued....)

“increase subscribership among qualifying low-income individuals [in Puerto Rico] by minimizing certain of these up-front costs.”<sup>198</sup> Indeed, by further reducing the initial connection charges and line extension charges for qualifying low-income customers in Puerto Rico, as we already have for consumers living on tribal lands, we would hope to remove a remaining impediment to affordable voice telephone service and, thus, further close the gap in telephone subscribership between the Commonwealth and non-insular areas.<sup>199</sup>

52. Specifically, for the benefit of consumers in Puerto Rico meeting the eligibility criteria for the Lifeline and Link Up Programs, we propose to amend our rules to increase the cap on Link Up support to cover special construction charges.<sup>200</sup> The cap for these charges would be increased from the current \$30 limit to \$100.<sup>201</sup> This additional \$70 in Link Up support would cap Link Up discounts at the same level as the enhanced Link Up available to eligible residents of tribal lands.<sup>202</sup> Link Up support would be available to eligible low-income consumers in Puerto Rico for up to 100 percent of the special construction charges, subject to the \$100 cap. Under our rules, Link Up support would continue to be available “for a single telecommunications connection at a consumer’s principal place of residence.”<sup>203</sup> To ensure reasonable use of the support, this support would be available only when a low-income-eligible consumer in Puerto Rico has requested service under the Lifeline or Link Up Programs but such service could not be provided absent construction of additional facilities. Consistent with our rules, all ETCs in Puerto Rico would be required to offer and make available this additional Link Up support to eligible low-income consumers. All ETCs in Puerto Rico also would be required to advertise the availability of this additional Link Up support using media of general distribution in Puerto Rico. In addition, all ETCs receiving Link Up support in Puerto Rico would be required to report the number of consumers that request such additional Link Up support, the number of consumers that receive such support, the reasons why any requesting consumers did not qualify for or receive such support, the cost of constructing the additional facilities, and a description of the additional facilities constructed. This information would be included in the annual report required by section 54.209 of our rules.<sup>204</sup> We seek comment on these proposed revisions to the low-income support rules for eligible low-income consumers in Puerto Rico.

(Continued from previous page)

establishment of facility extensions in hard to serve areas (e.g., mountainous regions that are sparsely populated) is often prohibitively expensive.” See, e.g., Reply Comments of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 at 3-4 (filed Jan. 19, 2000).

<sup>198</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12240, para. 60. The number of Lifeline subscribers in tribal lands has increased from fewer than 19,000 in 2000 to over 350,000 in 2008. *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 2.7 (rel. Dec. 2003), available at <http://www.fcc.gov/wcb/iatd/monitor.html>; 2009 *Universal Service Monitoring Report*, Table 2.7.

<sup>199</sup> Although we declined a request by the Commonwealth of Northern Mariana Islands (CNMI) in 2003 for similar support because we found that the record did not warrant such additional support at that time, we would be open to considering new requests from CNMI and other similarly situated areas. See *Tribal Lands Order*, 18 FCC Rcd at 10972-74 paras. 28-31.

<sup>200</sup> Proposed rules are attached at Appendix B.

<sup>201</sup> This additional \$70 in Link Up support would allow eligible low-income consumers in Puerto Rico to receive the same amount of support as eligible residents of tribal lands. See 47 C.F.R. § 54.411(a)(3).

<sup>202</sup> See 47 C.F.R. § 54.411(a)(3).

<sup>203</sup> 47 C.F.R. § 54.411(a)(1).

<sup>204</sup> 47 C.F.R. § 54.209.

#### IV. CONCLUSION

53. We decline to establish the non-rural insular high-cost support mechanism sought by PRTC. This decision is buttressed by changes in circumstances in Puerto Rico since 2005. As we explained above, record evidence demonstrates that funding under the current universal service programs is sufficient to achieve affordable rates and reasonably comparable service in Puerto Rico within the meaning of section 254. The Commission's decision to pursue fundamental universal service reform to promote greater broadband deployment provides a separate and independent ground for keeping the existing non-rural high-cost program in place at this time. To ensure that eligible low-income consumers in Puerto Rico can fully avail themselves of the low-income support mechanisms, we seek comment on our proposal to provide some additional Link Up support to help defray charges incurred when special facilities must be built to serve these customers.

#### V. PROCEDURAL MATTERS

##### A. Procedural Matters Related to the Order

###### 1. Paperwork Reduction Analysis

54. This order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995.<sup>205</sup> In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.<sup>206</sup>

###### 2. Final Regulatory Flexibility Act Certification

55. As we are adopting no rules in this order, no regulatory flexibility analysis is required.

###### 3. Congressional Review Act

56. The Commission will not send a copy of this order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act<sup>207</sup> because no rules are being adopted at this time.

##### B. Procedural Matters Related to the Notice of Proposed Rulemaking

###### 1. Paperwork Reduction Analysis

57. This notice of proposed rulemaking contains proposed information collections that would apply to fewer than ten respondents and, as a result, is not subject to the Paperwork Reduction Act of 1995.<sup>208</sup> In addition, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.<sup>209</sup>

---

<sup>205</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

<sup>206</sup> Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

<sup>207</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>208</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

<sup>209</sup> Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

## 2. Initial Regulatory Flexibility Act Certification

58. The Regulatory Flexibility Act (RFA)<sup>210</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>211</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>212</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>213</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>214</sup>

59. In this notice of proposed rulemaking, we propose to revise the Commission’s rules to permit eligible telecommunications carriers serving Puerto Rico to recover additional universal service support under specified circumstances. Currently, there are 7 eligible telecommunications carriers serving Puerto Rico, none of which qualify as a small entity. Accordingly, the proposed rule will not have a significant economic impact on a substantial number of small entities.

60. The Commission therefore certifies, pursuant to the RFA, that the proposals in this notice of proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the notice of proposed rulemaking require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the notice of proposed rulemaking, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the notice of proposed rulemaking and this initial certification will be published in the Federal Register.<sup>215</sup>

### C. *Ex Parte* Presentations

61. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>216</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the

---

<sup>210</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>211</sup> See 5 U.S.C. § 605(b).

<sup>212</sup> 5 U.S.C. § 601(6).

<sup>213</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>214</sup> 15 U.S.C. § 632.

<sup>215</sup> See 5 U.S.C. § 605(b).

<sup>216</sup> 47 C.F.R. §§ 1.1200-1.1216.

views and arguments presented is generally required.<sup>217</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.<sup>218</sup>

#### D. Comment Filing Procedures

62. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>219</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.<sup>220</sup>

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
  - Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

63. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: [www.bcpweb.com](http://www.bcpweb.com); phone: 1-800-378-3160. Furthermore, three copies of each pleading must be sent to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition

<sup>217</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>218</sup> 47 C.F.R. § 1.1206(b).

<sup>219</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>220</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-115, Report and Order, 13 FCC Rcd 11322 (1998).

Bureau, 445 12th Street, SW, Room 5-B521, Washington, DC 20554; e-mail: antoinette.stevens@fcc.gov.

64. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: [www.bcpiweb.com](http://www.bcpiweb.com), by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

65. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: (202) 418-0530 or TTY: (202) 418-0432.

66. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or [theodore.burmeister@fcc.gov](mailto:theodore.burmeister@fcc.gov).

#### VI. ORDERING CLAUSES

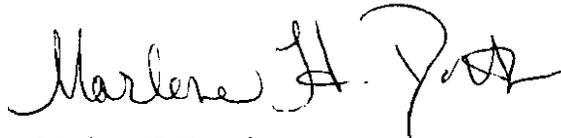
67. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this order IS ADOPTED.

68. IT IS FURTHER ORDERED that this order shall be effective 30 days after publication in the Federal Register, pursuant to 5 U.S.C. § 553(d)(3) and section 1.427(b) of the Commission's rules, 47 C.F.R. § 1.427(b).

69. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, , 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this notice of proposed rulemaking IS ADOPTED.

70. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

## List of Commenters

## NPRM Comments

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Inc. Erratum	AT&T
BellSouth Corporation Erratum	BellSouth
CenturyTel, Inc.	CenturyTel
CTIA – The Wireless Association	CTIA
Dobson Cellular Systems, Inc.	Dobson
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Hawaiian Telecom, Inc.	HT
Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom	Iowa Telecom
Iowa Utilities Board	IUB
Massachusetts Department of Telecommunications and Energy	MDTE
Middle Atlantic Regulatory Commission and State Commissioners of the MACRUC States	MACRUC Members
Minority Media and Telecommunications Council Communications Workers of America Hispanic Technology and Telecommunications Partnership Hispanics in Information Technology and Communications League of United Latin American Citizens National Association of Hispanic Publications National Puerto Rican Coalition Office of Communication of the United Church of Christ, Inc. Union De Trabajadores De Comunicaciones	
National Association of State Utility Consumer Advocates	NASUCA
Nebraska Public Service Commission	Nebraska PSC
Nebraska Rural Independent Companies	Nebraska Companies
Oregon Telecommunications Association and The Washington Independent Telephone Association	OTA WITA
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Public Service Commission of Wisconsin	PSCW
Puerto Rico Telephone Company, Inc.	PRT
Qwest Communications International Inc.	Qwest
Regulatory Commission of Alaska	

<u>Commenter</u>	<u>Abbreviation</u>
Rural Independent Competitive Alliance	RICA
Sandwich Isles	
TelAlaska	
Yukon Telephone	
Adak Telephone Utility	
Bristol Bay Telephone Cooperative	
Copper Valley Telephone Cooperative	
Cordova Telephone Cooperative	
OTZ Telephone cooperative	
Summit Telephone Company	
United Utilities	STYu, et. Al
Sprint Nextel Corporation	Sprint Nextel
Verizon telephone companies	Verizon
Vermont Public Service Board	VtPSB
Vermont Department of Public Service	VtDPS
Maine Public Utilities	MPUC
Washington Utilities and Transportation Commission	WUTC
Western Telecommunications Alliance	WTA
Wyoming Office of Consumer Advocate	Wyoming OCA
Wyoming Public Service Commission	Wyoming PSC

## NPRM Reply Comments

<u>Commenter</u>	<u>Abbreviation</u>
Ad Hoc Telecommunications Users Committee Errata of the Ad Hoc	Ad Hoc
Alltel Communications Inc.	Alltel
AT&T Inc.	AT&T
BellSouth Corporation	BellSouth
Cameron Telephone Company, LLC	Cameron
Colorado Public Utilities Commission	COPUC
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Florida Public Service Commission	Florida PSC
Massachusetts Department of Telecommunications and Energy	MDTE
Minority Media and Telecommunications Council	
Communications workers of America	
Hispanic Technology and Telecommunications Partnership	
Hispanics in Information Technology and Communications	
League of United Latin American Citizens	
National Association of Hispanic Publications	
National Puerto Rican Coalition	
Office of Communication of the United Church of Christ, Inc.	
Union De Trabajadores De Comunicaciones	MMTC
Montana Public Service Commission	Montana PSC
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Companies	Nebraska Companies
New Jersey Division of the Ratepayer Advocate	Ratepayer Advocate
Public Service Commission of Wisconsin	PSCW
Puerto Rico Telephone Company, Inc.	PRT
Qwest Communications International Inc.	Qwest
South Dakota Telecommunications Association	SDTA
State of Hawaii	State
Telecommunications Regulatory Board of Puerto Rico	Board
Texas Office of Public Utility Counsel	Texas OPC
Verizon Verizon	
Vermont Public Service Board	VtPSB
Vermont Department of Public Service	VtDPS
Maine Public Utilities Commission	MPUC
	(collectively Vermont/Maine)

**APPENDIX B****Proposed Rules****PART 54 – UNIVERSAL SERVICE**

1. The authority citation for Part 54 continues to read as follows:

**AUTHORITY:** 47 U.S.C. 151, 154(i), 201, 205, 214,  
and 254 unless otherwise noted.

**Subpart E – Universal Service Support for Low-Income Consumers**

2. Amend Section 54.411 by revising the first sentence of paragraph (a)(3) and the second sentence of paragraph (b), and adding paragraph (e) to read as follows:

(3) For an eligible resident of Tribal lands or Puerto Rico, a reduction of up to \$70, in addition to the reduction in paragraph (a)(1) of this section, to cover 100 percent of the charges between \$60 and \$130 assessed for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands or Puerto Rico. \* \* \*

(b) \* \* \* An eligible resident of Tribal lands or Puerto Rico may participate in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

\* \* \*

(e) In order to receive enhanced Link Up support for discounted connection charges provided to eligible residents of Puerto Rico pursuant to paragraph (a)(3) of this section, an eligible telecommunication carrier must comply with the following requirements:

(1) An eligible low-income consumer in Puerto Rico has requested service under the Lifeline or Link Up Programs but such service could not be provided absent construction of additional facilities.

(2) The eligible telecommunications carrier must report the number of consumers that request such additional Link Up support, the number of consumers that receive such support, the reasons why any requesting consumers did not qualify for or receive such support, the cost of constructing the additional facilities, and a description of the additional facilities constructed. This information must be included in the annual report required by section 54.209 of our rules.

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*In the matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up Support, WC Docket Nos. 05-337 and 03-103, and CC Docket No. 96-45*

In 2005, the Commission issued an NPRM tentatively concluding that high-cost Universal Service funding in Puerto Rico should be increased to raise telephone penetration rates—the lowest in the country. I agreed with the tentative conclusion, voted to approve the NPRM and expected that the Commission would proceed to an Order setting up a funding mechanism that would attend to the specific needs of Puerto Rico. That Commission failed to follow through, however, and no action was taken to address the concerns raised in the NPRM. At the end of 2008, PRTC filed a petition for a writ of mandamus before the D.C. Circuit seeking Commission action on the 2005 NPRM. While I was Acting Chairman, on behalf of the Commission I committed to a timeline for addressing the matter. And the present Commission has dutifully stuck by that timeline, culminating in today's Order. Finally we take a much needed closer look at the critical issue of telephone service in Puerto Rico.

However, I can only concur in today's decision. While I can understand the road the majority is traveling—and even my colleagues' reasons for doing so—I cannot, as someone who has been pushing for resolution for so many years, wholeheartedly endorse the more gradualist approach we take today. The Order finds that circumstances have changed in Puerto Rico and the justifications for the 2005 tentative conclusions are no longer valid. I agree that the situation has changed: according to some calculations, voice penetration in Puerto Rico is now 91.9%, a marked improvement from the less than three-quarters take rate that the Commission observed in 2005. In addition, the collective Universal Service support going to providers in Puerto Rico—support to CETCs as well as Lifeline support—has increased significantly. This suggests that the Commission's Universal Service funds have changed the telecommunications access in Puerto Rico for the better. But better is not good enough for the good people of Puerto Rico. Voice penetration there still falls significantly below the national average. Furthermore, the insular nature of Puerto Rico, as well as its low median household income—roughly one third of the national median household income—create a unique situation which should not be overlooked any longer. More is needed here.

The Order points out that the Commission cannot address the immediate voice telecommunications needs of the people of Puerto Rico because our focus is shifting from Universal Service support of legacy voice services to comprehensive Universal Service reform for high-speed broadband services. Since I arrived at the Commission, I have encouraged the adoption and implementation of a national plan that would make ubiquitous, affordable high speed, value-laden broadband service a reality. While some areas of the country are seeing such service now, or may see it in the near future through infrastructure upgrades, the record shows that there are areas in Puerto Rico that have no infrastructure. Not only is voice service not available, but there is no wireline foundation for broadband service either—putting the people of Puerto Rico that much further from getting the broadband service that we recognize as a necessity in the Digital Age. I do hope we can move forward with implementing the National Broadband Plan to make sure that these areas that lack service—insular, as well as tribal areas and rural areas—at least get the same service that the rest of the country already takes for granted. But, again, this is a longer-term approach to a serious near-term problem.

I am somewhat heartened by the proposal in today's Notice of Proposed Rulemaking to increase support through the Link Up Program in Puerto Rico. The additional support would be used to offset facility construction charges for getting voice service to eligible subscribers. The problem of low voice penetration in Puerto Rico—while improved in recent years—still remains. Based on the household

income numbers in Puerto Rico, it appears that additional funding for build-out and service to subscribers with particular financial needs would be helpful. Now we will have to wait to review the record on this Notice to understand how the proposal will work, and, should we find that the proposal is a good one, we will have to wait even longer for an Order adopting rules to implement it. It is a shame that the people of Puerto Rico must wait so long for infrastructure and service levels that the rest of the United States is already experiencing. But I do expect that this Commission will move swiftly on this proposal and adopt programs that will encourage broadband deployment and adoption in Puerto Rico. Let's not wait another five years to see that Puerto Rico gets the voice and broadband service that it needs.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

*In the matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up Support, WC Docket Nos. 05-337 and 03-103, and CC Docket No. 96-45*

I have often said that, while the Universal Service system has been critical in connecting Americans and has improved their quality of life, the system needs comprehensive reform. I have noted that Universal Service reform must accomplish five basic objectives. The Commission must:

- (1) contain the growth of the Fund;
- (2) in a limited and fiscally sound manner, explore the possibility of broadening the base of contributors;
- (3) reduce the contribution burden;
- (4) ensure competitive neutrality; and
- (5) eliminate waste, fraud and other abuses of the system.

As a general matter, the Commission must achieve these objectives instead of adding to the growth of the fund. As such, I am concerned that some of the proposed ideas in the Notice of Proposed Rulemaking could ultimately result in expansion of the fund. On the other hand, the high level of poverty in Puerto Rico has produced a unique circumstance. It is vital to our mission that the Commission gathers a record that provides us with a full understanding of the ramifications of these proposed rules.

In the meantime, I look forward to working with my colleagues on comprehensive Universal Service reform.