

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

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Inquiry Concerning the Deployment of |) | GN Docket No. 10-159 |
| Advanced Telecommunications Capability to |) | |
| All Americans in a Reasonable and Timely |) | |
| Fashion, and Possible Steps to Accelerate Such |) | |
| Deployment Pursuant to Section 706 of the |) | |
| Telecommunications Act of 1996, as Amended |) | |
| by the Broadband Data Improvement Act |) | |

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. (“PRT”) hereby files comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) above-captioned Seventh Broadband Deployment Notice of Inquiry (“NOI”).¹ In the NOI, the Commission solicits information that will help it complete its annual task under Section 706 of the Communications Act of 1996² of determining whether broadband³ “is being deployed to all Americans in a

¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Deployment Notice of Inquiry, GN Docket No. 10-159, FCC 10-148 (2010) (“NOI”).

² 47 U.S.C. § 1302(b). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (the Telecommunications Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in Title 47, Chapter 12 of the United States Code. See 47 U.S.C. § 1301 et seq.

³ In the NOI, the Commission “use[s] the term ‘broadband’ synonymously with ‘advanced telecommunications capability.’” NOI at n. 2. PRT follows this approach in the instant comments.

reasonable and timely fashion.”⁴ If broadband deployment is inadequate, Section 706 commands the Commission to “take immediate action to accelerate deployment of such capability.”⁵

While the NOI’s request for “objective, empirical data and evidence”⁶ might be relevant for some parts of the country, the Commission has already engaged in sufficient fact finding in Puerto Rico and other insular areas to definitively conclude that deployment is not reasonable or timely and that such areas do not have access to advanced telecommunications capabilities. As detailed below, the Commission’s *Sixth Broadband Report* plainly shows that Puerto Rico is being left behind the rest of the United States. In fact, the *Sixth Broadband Report* shows that no broadband service is available anywhere in Puerto Rico to any of its nearly four million citizens. For insular areas, the issue is not the facts, but rather when and how the FCC will act to remedy the “unacceptable” lack of broadband for such Americans. Below, PRT proposes a path forward.

I. PRIOR COMMISSIONS REPEATEDLY IGNORED THE COMMUNICATIONS PROBLEMS FOUND IN INSULAR AREAS.

Insular areas have waited – to no avail – for fourteen years for the Commission to recognize the unique needs of these areas under the Commission’s universal service programs. The root of the problem has been the Commission’s insistence that the communications problems of insular areas are similar to those of areas in the mainland despite Congress’s direction to address unique insular concerns. As background, Congress ordered the Commission to stimulate communications deployment in insular areas in the Telecommunications Act of 1996, 47 U.S.C. § 254 *et seq.* Specifically, Section 254(b) provides that the Commission “shall” base its universal service support mechanisms on the principle that consumers in “insular” areas

⁴ 47 U.S.C. § 1302(b).

⁵ *Id.*

⁶ NOI at ¶ 2.

have access to “advanced telecommunications and information services” that are “reasonably comparable” to those in urban areas.⁷ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas, thus requiring the Commission to address the lack of access to broadband services in insular areas such as Puerto Rico.⁸ Thus far, however, the Commission has not taken the steps necessary to fulfill Congress’s directive. Instead, the Commission has persisted in viewing solutions developed for mainland States as sufficient to meet the challenges faced by Americans in insular areas.

As far back as 1997 – in the Commission order adopting the initial universal service rules – the Commission emphasized that “it is not appropriate to delay action” in Puerto Rico given that the “subscriber level remains significantly below the national average.”⁹ But delay is what the Commission did. Again, in 2005, the Commission stressed that the “low penetration rates in Puerto Rico demonstrate that” the goal of “access to affordable telecommunications and information service” is “not being met” and “that the Commission could be doing more to help the residents of Puerto Rico.”¹⁰ The Commission went on to “tentatively conclude that an interim insular mechanism is the appropriate measure to help reverse this trend.”¹¹ But the

⁷ 47 U.S.C. § 254(b).

⁸ See, e.g., *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”) (internal quotation marks and citation omitted); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read “to give effect, if possible, to every clause and word of a statute”); see generally 2A Norman J. Singer, *Sutherland Statutory Construction* § 46.06 (6th ed. 2000).

⁹ *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 122 (1997).

¹⁰ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, ¶ 33 (2005).

¹¹ *Id.*

insular mechanism never materialized. Now, 14 years have passed, and Puerto Rico continues to lag well behind the U.S. states in every indicator. If it was not appropriate for the Commission to “delay action” in 1997, it certainly isn’t appropriate in 2010. Failing to address these problems today will only set Puerto Rico and other insular areas further behind compared to the rest of the nation.

As shown above, instead of addressing insular communications issues head-on, the Commission tried – and failed – to satisfy the communications needs of unserved insular areas by treating them pursuant to mechanisms built for dissimilarly situated nonrural service providers. But Puerto Rico has unique characteristics that impact broadband deployment on the island, and that are best addressed through a distinct universal service mechanism for insular areas. Data in the *Sixth Broadband Report* capture the differences between Puerto Rico and unserved areas generally. First, data confirm that Puerto Rico significantly lags the rest of the country in income. The average median household income in Puerto Rico is \$13,189, while the average household income in unserved areas generally is \$28,627.¹² The report also highlights differences in population density. The average population density for Puerto Rico is 1,315.85, while the average for unserved areas generally is 138.30.¹³ Similarly, the average percentage of rural households in Puerto Rico is 11.5% while the percentage for all unserved areas is 72.6%.¹⁴ At the end of the day, a unique solution (*i.e.*, a distinct insular funding mechanism) is needed to

¹² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Sixth Broadband Deployment Report, GN Docket No. 09-137, FCC No. 10-129, at Appendix B, “Unserved Areas By State or U.S. Territory.” (2010) (“*Sixth Broadband Report*”).

¹³ *Id.*

¹⁴ *Id.*

address these unique challenges that – to date – have severely stunted broadband deployment in Puerto Rico.

That insular areas lag far behind the nation in broadband deployment is beyond dispute. The *Sixth Broadband Report* shows that the past *laissez-faire* approach to insular areas – as warned by PRT and anticipated by Congress – has resulted in a disastrous communications divide for Puerto Ricans and other insular citizens. Specifically, the data reveal that all of Puerto Rico’s 78 municipalities are unserved.¹⁵ Additional data show that close to 4 million Puerto Ricans lack broadband, an enormous number considering that nationwide 24 million people lack broadband.¹⁶ Put another way, over 16% of unserved Americans live in Puerto Rico. The Broadband Report also highlights the lack of broadband in the United States Virgin Islands, the Northern Mariana Islands, and American Samoa. Out of the eleven municipal areas examined in these islands, ten are unserved by broadband.”¹⁷ At bottom, data presented in the FCC’s most recent section 706 report unequivocally show that broadband is virtually nonexistent in insular areas. Given this, the Commission can no longer resort to additional fact-finding in insular areas. The time has come for action based on the well-established facts.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at Appendix C (identifying three unserved counties in the United States Virgin Islands, three unserved counties in Northern Mariana, and four unserved counties in American Samoa). The *Sixth Broadband Report* examined 11 municipal areas in the U.S. Virgin Islands, American Samoa, Guam and Northern Mariana. Two counties in Northern Mariana were excluded from the analysis due to date irregularities.

II. SECTION 706 COMMANDS THE COMMISSION TO “TAKE IMMEDIATE ACTION TO ACCELERATE DEPLOYMENT” OF BROADBAND SERVICES IN PUERTO RICO AND OTHER INSULAR AREAS.

Section 706 commands the Commission to prioritize broadband deployment in Puerto Rico and other insular areas. Specifically, and as explained above, if the Commission finds that broadband is not being deployed to all Americans in a “reasonable and timely fashion,” then the Commission “shall take immediate action to accelerate deployment of such capability.”¹⁸ Here, the record evidence – presented by the Commission in its *Sixth Broadband Report* – shows that insular areas are virtually unserved by broadband, and thus the Commission must focus its energy on fostering broadband deployment in Puerto Rico and other insular areas. To assist the Commission in fulfilling its statutory mandate to meet the broadband needs of insular areas, PRT offers several recommendations.

First, the Commission should expressly conclude, pursuant to Section 706, that broadband is not being deployed in Puerto Rico and other insular areas in a reasonable and timely fashion.

Second, the Commission should expressly conclude that this unacceptable situation cannot be remedied by the old bromide of treating insular areas like other areas in the mainland states. As explained above, for years, the Commission tried – and failed – to satisfy the communications needs of unserved areas in insular areas by treating them pursuant to universal service mechanisms built for dissimilarly situated-service providers. But insular areas need a distinct universal service mechanism to address their unique situations, including their vast low-

18 47 U.S.C. § 1302(b). PRT takes this opportunity to point out that the Commission is correct to interpret “all Americans” as used in Section 706 as having its “ordinary meaning and thus as establishing the goal of universal broadband availability for every American.” NOI at ¶ 31.

income customer bases, weak overall economic health, and the additional expenses of providing service in insolated and tropical areas.¹⁹

Third, the Commission should grant PRT's outstanding Petition for Reconsideration of the Commission order²⁰ denying PRT's proposal to create an interim insular universal service funding mechanism pursuant to its statutory duty under Section 254 (petition for reconsideration attached at Exhibit 1).²¹ PRT's proposal in the petition provides the Commission a vehicle to rapidly foster communications infrastructure deployment in Puerto Rico. In the petition, PRT explains that Section 254 of the Act, by its terms, requires the Commission to adopt a specific insular mechanism that supports comparatively high loop costs in Puerto Rico.²² The provision of additional loop support to PRT through an insular mechanism will lead directly to greater investment in wireline infrastructure in Puerto Rico. While the Commission has never required

¹⁹ For a detailed description of the unique challenges faced by insular areas, *see* Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 10-90 (July 12, 2010).

²⁰ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, FCC 10-57 (rel. Apr. 16, 2010).

²¹ *See* Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337 (filed April 27, 2010).

²² The petition also points out that Section 254 requires the Commission to ensure that insular areas such as Puerto Rico are provided telecommunications and information services "reasonably comparable," *id.* § 254(b) to those available in urban areas. The underlying Commission order, however, incorrectly concluded that the presence of any telephone service – wireline or wireless – is sufficient. The Act, however, requires comparability – namely, that insular residents receive the same choices as urban residents. Because wireline and wireless services are available in urban areas, then they also must be made available in insular areas. The Commission's declination to adopt the insular mechanism also is arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706. The underlying order reversed course on the Commission's prior tentative conclusion to adopt an insular mechanism addressing the documented needs of Puerto Rico that the Commission found to be both legally and factually required. The underlying order did so citing "changed circumstances" that cannot be substantiated on the record.

recipients of high cost funding to make commitments as to how such funding would be spent, PRT has voluntarily offered to make build-out commitments, for example offering to commit to apply the insular funding for the provision, maintenance, and upgrading of broadband facilities, with the priority of extending broadband capabilities to lines that are not broadband-capable today.²³

Fourth, the Commission should expressly address this problem by prioritizing insular deployment proposals in the ongoing Connect American Fund (“CAF”) universal service broadband proceeding.²⁴ Specifically, and as detailed below, the Commission should heed the advice of PRT (comments and reply comments attached at Exhibit 2) and other commenters that urge the FCC to establish an expedited pilot program to get vital financial support for broadband deployment to insular areas.²⁵

And, the FCC should award the accelerated funding through a Request for Proposal-type (“RFP-type”) process that distributes funding to the most efficient providers. Under the RFP-

²³ Such investment would be separate from, and in addition to, any infrastructure investment pursuant to the commitment of América Móvil in WT Docket No. 06-113. Letter from Michael G. Jones, Willkie Farr & Gallagher, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-113 (March 23, 2007). *See* Letter from Nancy J. Victory, Counsel, Puerto Rico Telephone Company, Inc. to Jeffrey Carlisle, Chief, Wireline Competition Bureau, FCC, CC Docket No. 96-45 at 3 (Nov. 4, 2004); Letter from Nancy J. Victory, Counsel, Puerto Rico Telephone Company, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 & WC Docket No. 05-337 (filed Apr. 2, 2010).

²⁴ The NOI seeks comment on the “the best actions that should or should not be taken to accelerate broadband availability to all Americans.” NOI at ¶ 42. The NOI also asks commenters to focus on the need for “further reforms to the universal service fund.” NOI at ¶ 43.

²⁵ With respect to the permanent CAF program, commenters agree that insular areas require their own broadband funding mechanism that does not rely on the proposed cost model. Commenters also agree that the Commission must maintain all existing USF funding given to Puerto Rico and other insular areas until they achieve the same level of penetration as other areas.

type mechanism, the bidding parties would define the geographic units and other service characteristics associated with their bids.²⁶ To select winning proposals, the FCC would establish a scoring rule to evaluate all proposals on an easily understood and unambiguous basis. The scoring mechanism should heavily favor proposals that foster broadband deployment to the greatest number of people in the shortest time. This efficiency-based metric comports with the Commission’s desire to adopt a simple, temporary vehicle to foster rapid broadband deployment while the Commission studies and finalizes a more comprehensive strategy for nationwide broadband deployment.²⁷

Specifically, with the proposed accelerated mechanism, the Commission could realize tangible and rapid results by funding companies that can leverage existing infrastructure to deploy broadband to unserved areas. For example, as an existing provider of wireline broadband, PRT understands the challenges of broadband deployment in Puerto Rico and the most cost-effective ways to deliver broadband to unserved areas. Unfortunately, PRT has been unable to establish a viable business case. But, with government assistance, PRT projects that it could run its broadband infrastructure into unserved areas for a fraction of what the Commission projects that it will cost per household in other unserved areas of the country. The National Broadband Plan (“NBP”) estimates that the most expensive 250,000 unserved housing units

²⁶ Funding from the accelerated mechanism should be recurring and not a one-time payment. Once the permanent CAF mechanism is established, the Commission would need to transition support from the accelerated mechanism to the permanent mechanism.

²⁷ Indeed, the Commission has emphasized that the accelerated mechanism should be designed in a way that can “be implemented relatively quickly without addressing the full complexities inherent in other reverse auction proposals or cost and revenue models.” NOI at ¶ 45.

represent a disproportionate share of the total investment gap – \$14 billion.²⁸ In Puerto Rico, PRT could reach the same number of unserved housing units for a fraction of the cost.²⁹ Currently, there are 1,413,535 homes in Puerto Rico, and PRT passes by 1,214,546 of these homes with its wireline telephony network. Thus, PRT can leverage its existing wireline infrastructure to expand broadband service to hundreds of thousands of consumers in Puerto Rico for a modest increase in universal service funding.³⁰

²⁸ Omnibus Broadband Initiative, Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 138 (2010) (“*National Broadband Plan*”).

²⁹ This is so because PRT could leverage its infrastructure to provide broadband in the most cost effective manner possible. The FCC has recognized that 12,000 foot-loop-DSL provides the “best economics in delivering 4 Mbps down- and 1 Mbps up-stream to the unserved areas of the country.” See “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1, FCC, at 59, *available at* Appendix C of *Connect America NOI (“CAF Cost Model”)*. Further, “[s]ince DSL is deployed over the same existing twisted-pair copper network used to deliver telephone service, it benefits from sunk costs incurred when first deploying the telephone network.” *Id.* at 85.

³⁰ PRT, as an existing wireline voice and broadband provider, would leverage its current network to cut costs when deploying to unserved areas. This would ensure faster and wider broadband deployment than what wireless providers could offer.

III. CONCLUSION

The Commission should satisfy the broadband needs of unserved, insular areas by following the recommendations proposed above and detailed in PRT's filings in the CAF proceeding.

Respectfully submitted,

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September 7, 2010

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Exhibit 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**PETITION FOR RECONSIDERATION OF
PUERTO RICO TELEPHONE COMPANY, INC.**

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I. INTRODUCTION AND SUMMARY

Puerto Rico Telephone Company, Inc. (“PRT”) hereby petitions the Commission for reconsideration of its *Order* refusing to adopt a new high-cost support mechanism to address the agency’s statutory responsibilities for insular areas and the documented needs of Puerto Rico.¹ Reconsideration is appropriate under Section 1.429 of the Commission’s rules where an order rests on erroneous conclusions of law or fact.² That standard is easily met here. The Commission’s failure to adopt any universal service mechanism – despite the passage of fourteen years since Congress directed that action be taken and its rejection of a targeted mechanism for Puerto Rico in this case – conflicts with the Communications Act (“Act”) and fundamental principles of administrative law. Section 254 of the Act, by its terms, requires the Commission to adopt a specific insular mechanism that supports comparatively high loop costs in Puerto Rico.

Section 254 also requires the Commission to ensure that insular areas such as Puerto Rico are provided telecommunications and information services “reasonably comparable,” *id.* § 254(b) to those available in urban areas. The *Order* incorrectly concluded that the presence of any telephone service – wireline or wireless – is sufficient. The Act, however, requires comparability – namely, that insular residents receive the same choices as urban residents. Because wireline and wireless services are available in urban areas, then they also must be made available in insular areas. However, the Commission effectively relegates Puerto Ricans to fewer communications choices than other residents of the United States by effectively deciding

¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, FCC 10-57 (rel. Apr. 16, 2010) (“*Insular Order*” or “*Order*”).

² 47 C.F.R. § 1.429.

that wireline service is not worthy of support by virtue of the presence of wireless alternatives in Puerto Rico.

Aside from the Commission's statutory duty to implement an insular mechanism, the Commission's declination to do so here is arbitrary and capricious under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. The *Order* reversed course on the Commission's prior tentative conclusion to adopt an insular mechanism addressing the documented needs of Puerto Rico that it found to be both legally and factually required. The *Order* did so citing "changed circumstances" that cannot be substantiated on the record. For the first time, and contrary to its own precedent, the Commission determined that it should assess the availability of wireless services in evaluating whether to establish a universal service mechanism despite Congress's designation of certain regions as needing such support. Indeed, the Commission's prior decisions and the companion *Qwest Remand Order*³ continue to focus predominantly on wireline providers' costs of serving the supported service area. In advancing this new approach, the *Order* failed adequately to consider the potential implications of this conclusion on Puerto Rico and, in particular, the health of its current and future wireline infrastructure. As a result, despite fourteen years of proceedings and demonstrations, the Commission still did not adequately take into account the compelling and significant costs faced by PRT as a wireline carrier serving an insular area. And, as such, the Commission arbitrarily treated insular areas, such as Puerto Rico, differently from rural and high cost areas, which may still apply for and receive loop support.

³ *High-Cost Universal Service Support, Federal-Joint Board on Universal Service, Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier, Order on Remand and Memorandum Opinion and Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 10-56 (rel. Apr. 16, 2010) ("Qwest Remand Order").*

The *Order*, along with the Commission’s existing universal service policies as applied to Puerto Rico, ultimately harm Puerto Ricans by failing to support wireline infrastructure, which is needed not only to provide voice services comparable to those available in the mainland United States but also as the foundation for next generation, high speed broadband deployment. As the Commission recently explicitly recognized, it “indirect[ly] fund[s] . . . broadband-capable networks today through our legacy high-cost programs.”⁴ Nevertheless, the *Order* asks Puerto Rico and PRT to wait for yet another comprehensive universal service proceeding to address these issues. Since Puerto Rico is already far behind the mainland in broadband deployment, further delay will only allow continued erosion of its wireline infrastructure and ultimately harm Puerto Rico’s prospects for ubiquitous broadband deployment. As a result, the Commission should expeditiously reconsider the *Order* and adopt an insular mechanism that will provide explicit universal service loop support to address Puerto Rico’s elevated costs to deploy wireline infrastructure.

II. SECTION 254 REQUIRES THE COMMISSION TO ESTABLISH A SPECIFIC INSULAR MECHANISM THAT SUPPORTS ELEVATED INTRASTATE LOOP COSTS.

A. The Commission Has a Statutory Duty Under Section 254(b)(3) to Adopt a Universal Service Mechanism for Insular Areas.

Section 254(b) speaks in plain and mandatory terms. It provides that the Commission “shall” base its universal service support mechanisms on the principle that consumers in “insular” areas should have access to telecommunications services that are reasonably

⁴ *Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 10-58 ¶ 53 (rel. Apr.21, 2010) (“*Connect America Fund NPRM*”).

comparable to those in urban areas.⁵ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas, thus requiring the Commission to address the lack of access to telecommunications services in insular areas such as Puerto Rico.⁶ Contrary to the Commission’s erroneous conclusion,⁷ the text and structure of Section 254(b)(3) *mandate* a separate universal service mechanism for insular areas. Although the statute seeks to achieve the goal of reasonably comparable rates and services for insular areas,⁸ Congress articulated the means by which the Commission is required to achieve that result.

Section 254(b)’s textual commitment of a universal mechanism for insular areas is buttressed by other provisions of the Act.⁹ Section 151, for example, directs the Commission “to make available, so far as possible, *to all the people of the United States*, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nation-wide . . . wire and radio communication service with adequate facilities at reasonable charges.”¹⁰ Similarly, Section 706 requires the Commission to “encourage the deployment . . . of advanced

⁵ 47 U.S.C. § 254(b).

⁶ *See, e.g., Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”) (internal quotation marks and citation omitted); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read “to give effect, if possible, to every clause and word of a statute”); *see generally* 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 (6th ed. 2000).

⁷ *Insular Order* ¶ 23.

⁸ *Id.*

⁹ *See King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (following the “cardinal rule that a statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context”); *United Sav. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (“Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.”).

¹⁰ 47 U.S.C. § 151 (emphasis added).

telecommunications capability to all Americans.”¹¹ These provisions, in conjunction with Section 254(b), represent a non-discretionary duty to establish a specific insular support mechanism.

Indeed, the Commission expressly acknowledged this mandatory duty in its *2005 NPRM*. In that decision, the Commission unanimously reached a tentative conclusion to adopt an independent mechanism for insular areas that would address the significant disparities in access to telephone service in areas such as Puerto Rico. Not only did the Commission “tentatively conclude that section 254(b) provides the Commission with the authority to establish a new interim support mechanism for insular areas,”¹² but the Commission also agreed that “Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.”¹³ The Commission understood that the only way to satisfy the congressional mandate of universal service for insular areas was to establish “a special support mechanism, in combination with the Commission’s low-income program, [to] help to combat the problem of low subscribership in Puerto Rico.”¹⁴ This conclusion is consistent with the Commission’s previous acknowledgment that Congress intended to provide universal service support for the benefit of consumers in insular areas.¹⁵

¹¹ 47 U.S.C. § 706 (emphasis added).

¹² *2005 NPRM* at 19746, ¶ 33.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See, e.g., Rural Health Care Support Mechanism, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 24613, at 24632-33 ¶ 42 (2004) (noting “Congressional intent ... support[ing] the adoption of special mechanisms by which to calculate support for insular areas”).

Finally, even if Section 254(b) is somehow ambiguous, which it is not, the Commission’s interpretation of the statute is unreasonable. The Commission cannot arbitrarily choose to give effect to some words of a statute, but ignore others. Yet, that is precisely what the Commission has been doing for over fourteen years. Section 254(b)(3) specifically identifies three regions entitled to receive universal service support—rural, insular, and high cost areas. The Commission has chosen to comply with this statutory command by adopting specific high cost funding mechanisms to address the unique needs of two of the three regions identified in the statute. Put simply, the Commission’s conclusion that Section 254(b) does not mandate a separate insular mechanism is betrayed by its decision to ensure universal service for “rural” and other “high cost” areas through the adoption of separate and distinct rural and high-cost funds.¹⁶

B. Section 254(b) Requires the Commission to Support All “Reasonably Comparable” Telecommunications and Information Services in Insular Areas That Are Available in Urban Areas, Including Wireline Telecommunications Services.

The text of Section 254 provides that Congress intended for the Commission to ensure that insular areas have “reasonably comparable” “telecommunications and information services”

¹⁶ Moreover, the funds provided to Puerto Rico under the high-cost program are not sufficient to meet this specific statutory mandate. *Insular Order* ¶¶ 37-42. As explained in PRT’s comments and more fully below, the Commission’s use of the forward-looking cost model to determine high-cost support does not adequately account for the unique challenges faced by carriers providing service in insular areas like Puerto Rico. The Commission specifically declined to adopt the forward-looking cost model for rural areas because the Commission had not adequately assessed rural areas unique costs. *See Federal-State Joint Board on Universal Service*, Ninth Report and Order, 14 FCC Rcd 20432, 20439, ¶ 11 (1999). Both Congress, in Section 254(b), 47 U.S.C. § 254(b), and the Commission, have recognized that insular areas have unique costs. *See Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746, ¶ 33 (2005) (“2005 NPRM”). However, rather than assessing these costs – or as it did with rural areas, table any adoption of a forward-looking cost model until it could adequately assess them – the Commission wrongly lumped insular areas into the high cost forward-looking model without adequately evaluating whether the model actually reflects them – which it does not.

as those available in urban areas.¹⁷ In particular, Section 254 states that “the Commission shall base policies for the preservation and advancement of universal service” on the principle that “[c]onsumers in all regions of the Nation, including . . . 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”¹⁸ Section 254(b)(1) further provides that “[q]uality” telecommunications and information services should be available “at just, reasonable, and affordable rates.”¹⁹

This language leaves no room for the Commission’s interpretation that merely ensuring the availability of one type of telecommunications and information services, such as wireless service, will meet the statute’s command that “reasonably comparable” and “quality” telecommunications and information services be made available in Puerto Rico and other insular areas.²⁰ Because other areas have access to *both* wireline and wireless services, then insular areas are entitled to “reasonably comparable” wireline *and* wireless service under the statutory command of Section 254(b)(3). Under the Commission’s view, however, Section 254 would condone a result where consumers in Puerto Rico have no access to wireline service as long as wireless service is available to a substantial majority of the population. Such a result, incorrectly endorsed by the Commission in this proceeding, is irreconcilable with the text, structure, and purpose of Section 254.

¹⁷ 47 U.S.C. § 254(b)(3).

¹⁸ *Id.* (emphasis added).

¹⁹ 47 U.S.C. § 254(b)(1)

²⁰ *Insular Order* ¶ 27 (“Thus, on this record, a decline in *wireline* subscribership . . . is not determinative given the overall increase in telephone subscribership in Puerto Rico.”) (emphasis in original).

This conclusion is buttressed by the Commission’s own definition of “reasonably comparable.” In the *Qwest Remand Order*, adopted concurrently with the *Insular Order*, the Commission determined that “rural rates are ‘reasonably comparable’ to urban rates under section 254(b)(3) if they fall within a reasonable range of the national average urban rate” using the costs of *wireline* providers.²¹ This definition (which necessarily assumes the universal availability of wireline services by using wireline costs as a definitional benchmark) fatally undermines the Commission’s conclusion in the *Insular Order* that wireless services alone may satisfy the “reasonably comparable” mandate of Section 254(b)(3). In other words, the Commission has simultaneously concluded that wireless service is sufficient for purposes of determining whether insular areas have access to services that are “reasonably comparable” to urban areas, but has established wireline costs, without regard to the cost of wireless service, as the benchmark for defining “reasonably comparable.” Either wireline service is the proper benchmark for the “reasonably comparable” assessment or it is not. But the Commission cannot, consistent the APA’s requirement of “reasoned decisionmaking,” adopt logically inconsistent standards to measure “reasonably comparable” service.²²

Moreover, the National Broadband Plan does not excuse the Commission’s failure to meet the statutory mandate to provide reasonably comparable “telecommunications *and*

²¹ *Qwest Remand Order* ¶¶ 52-53, 63.

²² *Air Line Pilots Ass’n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (holding that a “DOT Order presents an interpretation of the EPP which is internally inconsistent and therefore unreasonable and impermissible under *Chevron*”); *Gen. Chem. Corp. v. United States*, 817 F.2d 844, 846 (D.C. Cir. 1987) (“We find the Commission’s analysis . . . to be internally inconsistent and inadequately explained, and thus we conclude that its ultimate finding . . . was arbitrary and capricious and not supported by substantial evidence on the record considered as a whole.”); *cf. Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (describing “[a]gency inconsistency” as a possible “reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the [APA]”).

information services” to consumers in Puerto Rico.²³ As explained above, Section 254 provides the Commission with a clear and unambiguous statutory command to ensure that consumers in insular areas have access to reasonably comparable “telecommunications *and* information services.”²⁴ That the National Broadband Plan is part of the Commission’s effort to promote wider use of information services does not mean that the agency can ignore its statutory obligation to provide reasonably comparable “telecommunications” services. Even if implementation of the National Broadband Plan might be “more difficult” with a separate insular support mechanism,²⁵ which is far from certain, the Commission does not have the discretion to ignore a mandatory directive imposed on it by Congress because it may conflict with the Commission’s regulatory objectives. “A statute is the command of the sovereign, and an agency implementing a statute may not ignore, or provide its own substitute for, a standard articulated in the statute.”²⁶

²³ See *Insular Order* ¶¶ 43-46.

²⁴ 47 U.S.C. § 254(b)(3) (emphasis added).

²⁵ In any event, as noted below, wireline infrastructure is critical to broadband deployment and fully consistent with the goals of the National Broadband Plan. See *infra* at 22. Indeed, as explained below, Puerto Rico’s broadband deployment lags significantly behind the rest of the nation. See Industry Analysis and Competition Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2008*, at Table 21 (Feb. 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296239A1.pdf (finding that only 24% of households in Puerto Rico have high-speed Internet access connections, compared with 60% across the rest of the United States). Providing the requested insular support to Puerto Rico, as is required by statute, will only serve to help Puerto Rico narrow this gap.

²⁶ *Friends of Richards-Gebaur Airport v. Federal Aviation Admin.*, 251 F.3d 1178, 1195 (8th Cir.2001).

III. THE COMMISSION’S ORDER IS ARBITRARY AND CAPRICIOUS UNDER SECTION 706 OF THE APA.

The *Order* is arbitrary and capricious under Section 706 of the APA.²⁷ The *Order* reversed course on its unanimous preliminary finding that an insular fund was both legally and factually needed, citing “changed circumstances” that simply do not exist. The *Order* overstated both the increased telephone subscribership in Puerto Rico and the amount of universal service support that PRT and Puerto Rico currently receives. Critically, the *Order* ignored evidence of the unique costs that apply specifically to insular areas as opposed to other high cost areas. Lastly, despite the Commission’s recognition that Puerto Rico’s telephone subscribership was “materially lower” than the rest of the nation,²⁸ the *Order* arbitrarily concluded that no additional universal service support should be available, even though the Commission provides such support to rural and high cost areas.

A. The Order Reversed Course on the Insular Fund Proceeding Based on “Changed Circumstances” That Do Not Exist.

The *Order* reversed course from its preliminary finding that an insular fund is legally and factually needed without sufficiently explaining the basis for its departure.²⁹ In a unanimous decision, the Commission reached a tentative conclusion that it should adopt an independent mechanism for insular areas that would address the significant disparities in access to wireline telephone service in areas such as Puerto Rico.³⁰ Indeed, the Commission previously

²⁷ 5 U.S.C. § 706.

²⁸ *Insular Order* ¶ 49.

²⁹ See *Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“*State Farm*”) (“an agency changing its course . . . is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.”)

³⁰ 2005 NPRM at 19746, ¶ 33.

acknowledged Congress' intent to "support the adoption of special mechanisms by which to calculate support for insular areas."³¹ The 2005 NPRM was also premised on the assumption that wireline deployment was the central aim of Section 254(b)(3) and expressly stated that this fundamental statutory goal was going unmet.³² The Commission justified its reversal on what it deemed to be extraordinary subscribership improvements to basic telephone service in Puerto Rico between 2005 and 2009.³³ This is unsustainable for several reasons.³⁴

First, the *Order's* conclusion that "a decline in wireline subscribership . . . is not determinative"³⁵ because of the existence of wireless service directly contradicts its previous determination – on multiple occasions – "that mobile wireless service and wireline telephone services are not perfect substitutes."³⁶ Further, this conclusion is not supported by the record.

³¹ See, e.g., *Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, at 24632-33 ¶ 42 (2004).

³² Based on wireline penetration rates submitted in the record by PRT, the Commission found that, "through section 254(b), Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services. We believe that the low penetration rates in Puerto Rico demonstrate that this goal is not being met and that the Commission could be doing more to help the residents of Puerto Rico." See 2005 NPRM at 19746, ¶ 33.

³³ See *Insular Order* ¶ 20.

³⁴ The Commission similarly cannot sustain its contention that the 0.3 percent increase in the size of the universal service fund that would result from the creation of an insular mechanism would lead to "excess subsidization of the universal service fund,' which may actually detract from 'universal service by causing rates to unnecessarily rise.'" *Insular Order* ¶ 36. Just one month ago, the Commission found that a 0.3 percent to 0.6 percent increase in high cost fund "will not have a significant impact on the overall size of the fund." *High-Cost Universal Service Support, Jurisdictional Separations, Coalition for Equity in Switching Support Petition for Reconsideration*, Report and Order and Memorandum Opinion and Order, WC Docket No. 05-337 & CC Docket No. 80-286, FCC 10-57 (rel. Mar. 18, 2010).

³⁵ *Insular Order* ¶ 27.

³⁶ *Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Areas*, Mem. Op. and Order, 23

Commenters noted that wireless services could not be a substitute for access to wireline telecommunications services and that wireline infrastructure would be critical to advanced communications.³⁷ It also runs contrary to the overarching purposes of Section 254(b)(3) as implemented by the Commission, the historical focus of which has always included wireline as well as wireless service – indeed, at its inception, the USF program was concerned primarily with bringing basic landline telephone service to all consumers, and it has certainly never before been understood to concern *only* wireless service. The Federal-State Joint Board, for example, has declined to recommend requirements that would “render carriers that utilize wireline technologies ineligible for federal support.”³⁸ “This would drastically reduce the number of entities that could provide all of the core services in high-cost areas and could leave many communities without . . . basic service” and “would be inconsistent with the goal of promoting the universal availability of the core services and would not serve the public interest.”³⁹

Second, the *Order* drew conclusions about the need for universal service support from changes in subscribership data that are statistically unreliable. The *Order*’s comparison of telephone subscribership rates in Puerto Rico between 2005 and 2008 compares apples to

F.C.C.R. 11729, 11743, ¶ 30 (2008) (recognizing that mobile wireless service and wireline telephone services are not perfect substitutes); *see also High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Order*, 23 FCC Rcd 8834, ¶ 22 (2008) (noting that “the majority of households do not view wireline and wireless services to be direct substitutes.”).

³⁷ See Minority Media & 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., and Union de Trabajadores de Comunicaciones, Reply Comments, CC Docket No. 96-45, WC Docket No. 05-337 at 11 (May 26, 2006).

³⁸ *Federal-State Joint Board on Universal Service, Recommended Decision*, 17 FCC Rcd 14095, ¶39 (Fed-State Jt. Bd. 2002).

³⁹ *Id.*

oranges and does not measure the availability of qualifying replacement service that comports with the requirements of Section 54.101(a)(2) of the Commission rules, 47 C.F.R. § 54.102(a)(2). In 2008, the Census Bureau changed the wording in the question related to telephone service from “Is there telephone service available in this house, apartment, or mobile home from which you can both make and receive calls?”⁴⁰ to “Does this house, apartment, or mobile home have telephone service from which you can both make and receive calls? *Include cell phones.*”⁴¹ The Commission entirely left out of its analysis, however, that before this change in the questionnaire, the reported telephone subscribership level in Puerto Rico consistently was measured between approximately 73 and 80 percent in 2007 – between 14-21 percent below the national average.⁴² The Commission’s decision to base its refusal to create a universal service mechanism for insular areas like Puerto Rico on the clearly inconsistent statistical data for 2008 is arbitrary and capricious within the meaning of the APA.⁴³ In any event, rather than showing that voice service is ubiquitous in Puerto Rico, particularly in the more sparsely populated interior portions of the island, the increased numbers likely capture some access to “a cell phone” whether or not such service is a qualifying replacement for universal service purposes.⁴⁴

⁴⁰ 2007 Puerto Rico Community Survey Questionnaire at Question 11, *available at* <http://www.census.gov/acs/www/Downloads/Special/PRico/QuestE07PR.pdf>.

⁴¹ 2008 Puerto Rico Community Survey at Question 8(g), *available at* <http://www.census.gov/acs/www/Downloads/Special/PRico/QuestE08PR.pdf> (emphasis in original).

⁴² *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*”).

⁴³ *See, e.g., Lloyd Noland Hosp. and Clinic v. Heckler*, 762 F.2d 1561, 1568 (11th Cir. 1985) (“It is . . . an abuse of discretion to base a regulation on faulty data.”) (citing *Almay, Inc. v. Califano*, 569 F.2d 674, 682 (D.C. Cir.1977)).

⁴⁴ *See* 47 C.F.R. § 54.101(a).

Third, even the increased subscribership percentage relied upon in the *Order* is significantly below the national average and substantially below any other state – providing conclusive evidence of the need for additional universal service support for Puerto Rico. As the Commission acknowledged, Puerto Rico still remains more than six percent behind the national average in telephone subscribership, even incorporating wireless penetration.⁴⁵ In fact, more than 200,000 households have no access to wireline infrastructure.⁴⁶ Indeed, the Commission candidly recognized “that there may be a significant number of low-income consumers in Puerto Rico who remain unable to afford access to voice telephone service” and that “subscribership in Puerto Rico remains materially lower than in any other jurisdiction reported by the Census Bureau.”⁴⁷ As Commissioner Copps explained, “[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.”⁴⁸ Despite its recognition of the problem, the *Order* failed to address elevated-cost issues that are the root cause. In short, the “more” that is “needed” by Puerto Rico is an insular universal service mechanism that will allow

⁴⁵ See *Insular Order* ¶ 20. The Commission’s most recent figure for Puerto Rico’s telephone penetration rate (91.9%) is still well below the penetration rate in all U.S. states (98.2%) and New Mexico (95.7%), the state with the lowest penetration rate. *Universal Service Monitoring Report* at Table 6.4.

⁴⁶ See 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).

⁴⁷ *Insular Order* ¶ 49.

⁴⁸ *Id.* at 41 (Concurring Statement of Commissioner Copps).

these unserved households to obtain access to the basic wireline services mandated by Section 254(b)(3) of the Act.

Fourth, the *Order* erroneously and inappropriately gave great weight to the other forms of financial support that carriers in Puerto Rico receive as a basis for refusing to create an insular universal service mechanism. Foremost, the *Order* relied on cherry-picked data to support its conclusion. Instead of considering the far more relevant high-cost support data from 2009, the *Order* conveniently relied on inflated high-cost funding data from 2008 to support its decision.⁴⁹ The *Order* acknowledged that PRT received only \$9.7 million in universal service funding in 2009 and that, although PRT is projected to receive approximately \$39.5 million in interstate common line support (“ICLS”) in 2010,⁵⁰ the Commission conceded that this projection “may be adjusted to the extent any further true-ups of 2008 support are required or if PRTC’s line counts continue to decline.”⁵¹ But the *Order*’s reliance on the inflated 2008 data vastly overstates the total support that PRT receives and makes it unlikely that PRT is the fourth highest recipient of universal service disbursements. This is particularly true because of the large number of competitive ETCs in Puerto Rico that receive universal service support based on the “identical support” provided to PRT. If PRT’s per line support is adjusted downward, so is the support for wireless ETCs. Without the inflated ICLS support amounts included in its analysis, Puerto

⁴⁹ *Insular Order* ¶ 17 & n.52.

⁵⁰ *Id.*

⁵¹ *Id.* The Commission also fails to acknowledge that although the level of support in Puerto Rico is exceeded only by Mississippi, Texas, and Kansas, *id.*, the telephone penetration rate in all three of those states far exceeds that in Puerto Rico. *Universal Service Monitoring Report* at Table 6.4 (showing the following telephone penetration rates for each state: Mississippi (96.9%), Texas (98.0%), and Kansas (98.9%)).

Rico’s total universal service support is approximately \$23 million, which is used to provide low income residents basic telephone service.⁵²

In any event, the *Order’s* reliance on low-income and interstate access charge replacement support as the basis for refusing to provide the support for high intrastate loop costs demanded by Section 254(b)(3) is inappropriate, and such support should not be considered. Accordingly, the *Order* failed to supply a reasoned basis, using relevant and accurate data, to substantiate its reversal of course regarding the adoption of an insular mechanism.

B. The Order Failed to Consider the Unique Needs of Insular Areas Such As Puerto Rico.

The *Order* also failed to consider “relevant data” related to insular areas and the unique costs and burdens of providing telephone service in Puerto Rico.⁵³ More than a decade ago the Commission acknowledged the formidable challenges facing insular areas: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”⁵⁴ The *Insular Order* nevertheless ignored the significant challenges faced by insular

⁵² *Insular Order* ¶ 19.

⁵³ *State Farm*, 463 U.S. at 43 (explaining that “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”) (citations omitted); see *Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, ¶ 42 (2004); see also *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶ 430 (1996) (recognizing “the special circumstances faced by carriers and consumers in the insular areas of the United States”).

⁵⁴ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997); see also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999) (noting that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country”); *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved*

carriers. PRT faces unique challenges in serving Puerto Rico, including the significantly higher operational costs it faces as compared to other carriers its size,⁵⁵ such as:

- higher shipping-related costs, because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense.⁵⁶
- higher operational costs associated with the topography of Puerto Rico, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas that result in “telecommunications transmission facilities requir[ing] additional guying and anchoring and the distances between points [being] increased”;⁵⁷ and
- higher operational costs associated with the climate of Puerto Rico, which is “corrosive and inhospitable to telecommunications equipment,” leading to accelerated deterioration of equipment, and severe tropical weather in the

and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that “subscriberhip levels are below the national average in ... certain insular areas”).

⁵⁵ The Commission has no basis to consider PRT's parent, América Móvil – an entirely separate company – in the evaluation of PRT's size and scale, as the Commission does not do so when considering the size and scale of rural carriers. *See Insular Order* ¶ 38.

⁵⁶ *See generally* Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 3-4 (Dec. 17, 1999) (“VIPSC Comments”); Comments of the Government of Guam, CC Docket No. 96-45, at 3 (Dec. 17, 1999).

⁵⁷ *See VIPSC Comments* at 4; *see also* Comments of PRT, CC Docket No. 96-45, at 6-7 (Dec. 17, 1999).

Caribbean requires frequent reconstruction of existing infrastructure due to storm and hurricane damage.⁵⁸

- a customer base with the lowest per capita income as compared to any U.S. state (approximately one-third of the national average and less than half that of the lowest U.S. state),⁵⁹ 44.8 percent of which live below the poverty line.⁶⁰

Moreover, the *Order* incorrectly dismissed PRT's high average loop cost by comparing it to the rural high cost loop benchmark. That benchmark understates the need for loop support because, contrary to the Commission's stated intention at the time that the rural growth factor was adopted, rural carrier line loss has undermined the benchmark's calculation which was intended to allow for growth in the rural fund, not contraction.⁶¹ As a result of this unintended

⁵⁸ *VIPSC Comments* at 4. *See also Federal-State Joint Board on Universal Service, Order, FCC 05-178, ¶ 2* (Oct. 14, 2005); *Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 7-8* (Dec. 17, 1999). For example, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities. In 2004, Hurricane Jeanne caused \$9.2 million in damage. *See, e.g., Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at 2* (Mar. 28, 2005); *Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 9 n.19* (Jan. 14, 2004).

⁵⁹ The Puerto Rico Community Survey's most recent estimates show that Puerto Rico's per capita income is \$10,022. *See Puerto Rico Selected Economic Characteristics 2008, Puerto Rico Community Survey, American Fact Finder, available at <http://factfinder.census.gov/>*. By contrast, the national average per capita income is \$27,589 and the per capita income in Mississippi, the lowest on the mainland, is \$20,228. *See United States Selected Economic Characteristics 2009, American Community Survey, American Fact Finder, available at <http://factfinder.census.gov/>*.

⁶⁰ Alemayehu Bishaw and Trudi J. Renwick, *Poverty 2007 and 2008: American Community Survey, American Community Survey Reports* (Issued Sep. 2009), *available at <http://www.census.gov/prod/2009pubs/acsbr08-1.pdf>*.

⁶¹ When the Commission adopted the rural growth factor, it expected the rural fund to grow by at least 1 percent per year. But as rural carriers have experienced significant line loss, the rural growth factor has had the unintended consequence of decreasing the support available to rural carriers by increasing the average unseparated loop cost that justifies distribution from the fund. *See Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on*

anomaly, the rural benchmark is inappropriately high and cannot be the basis for denying support to insular areas. Because the rural benchmark has not functioned as intended, the Commission should not compound the problem by applying the same benchmark to insular areas. In any event, the statute requires that the Commission establish a separate insular mechanism that addresses the unique needs of insular areas and provides sufficient support for those areas. Any benchmark used in the insular mechanism must achieve that statutory mandate.

The unique nature of insular areas also is demonstrated by the fact that the ratio of universal support paid to wireline versus wireless service providers in Puerto Rico (30%-70%) is steeply inverted compared with the rest of the country (70%-30%).⁶² The unique aspects of Puerto Rico – such as a lack of wireline infrastructure in certain areas (over 200,000 households remain unserved),⁶³ significant additional operational costs, and the difficulty in recovering those costs over a large subscriber base due to the unique demographic challenges in Puerto Rico⁶⁴ – in combination with the Commission’s existing identical support rule have lead to dramatically

Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244 ¶13 (2001). (“We adopt a ‘rural growth factor’ that allows the high-cost loop support fund to grow based on annual changes in the Gross Domestic Product-Chained Price Index (GDP-CPI) and the total number of working loops of rural carriers. We find that allowing the fund to grow in this fashion over the next five years will enable rural carriers to make prudent investments in rural America.”); *See also* National Exchange Carrier Association, Inc., Overview and Analysis of 2009 USF Data Submission at 3, *available at* <http://www.fcc.gov/wcb/iatd/neca.html> (describing decrease in rural loops and resulting decrease in rural fund cap).

⁶² *See Insular Order* ¶ 18.

⁶³ *Id.* n.95.

⁶⁴ For example, as the Commission noted, consumer incomes in Puerto Rico are markedly lower than those on the mainland, *see Order* ¶ 49. In addition, consumers in insular areas experience a disproportionately high cost of living that can be seen in the increased cost of basic commodities and consumer goods as compared to the mainland. *See Estudios Tecnicos Inc., Economic Conditions: Puerto Rico and the United States*, at 2 (Jan. 31, 2006) (noting that basic commodities such as electricity cost 70 percent more in Puerto Rico than on the mainland, while basic consumer goods such as a Honda Pilot cost 20 percent more in Puerto Rico than in the United States).

different results in Puerto Rico compared to the mainland U.S. Yet the Commission undervalued the relevance of these differences in order to defend its decision to deny PRT additional high cost loop support, and, as discussed in greater detail in Section IV below, these differences will have long-lasting policy implications for Puerto Rico's wireline infrastructure.

C. The Order Arbitrarily Treated Carriers That Serve Insular Areas Differently from Carriers That Serve Rural Areas.

Although the *Order* made much of the economies of scope and scale that benefit PRT,⁶⁵ the Commission ultimately concluded that “subscriberhip in Puerto Rico remains materially lower than in any other jurisdiction reported by the Census Bureau,” and that “[e]vidence in 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.”⁶⁶ However, the Commission concluded that additional low-income support is needed, rather than funding that would directly support infrastructure build-out.⁶⁷

By contrast, when dealing with carriers in rural areas that benefit from similar, and perhaps greater, economies of scope and scale, the Commission provides a separate mechanism by which to apply for supplemental support.⁶⁸ Indeed, citing the higher rates paid by consumers in rural areas, the Commission granted such supplemental support to Wyoming on the same day

⁶⁵ See *Insular Order* ¶ 39.

⁶⁶ *Id.* ¶ 49.

⁶⁷ *Id.* The additional \$70 support solves nothing because the cost to build out these lines far exceeds that amount, rising as high as several thousand dollars in some cases.

⁶⁸ See 47 C.F.R. § 54.316.

it denied wireline infrastructure support to Puerto Rico.⁶⁹ This disparate treatment simply cannot be the product of reasoned decisionmaking.

IV. THE COMMISSION'S ORDER DISSERVES THE PUBLIC INTEREST.

By denying PRT additional high cost loop support through an insular mechanism, the *Order* has denied the people of Puerto Rico access to expanded critical wireline infrastructure that PRT has voluntarily committed to build and that could be used for both voice and broadband services. More than that, the Commission's overall universal service policy approach in Puerto Rico has harmed the island by encouraging the erosion of its wireline infrastructure. As a result, after more than fourteen years of waiting for the Commission to address the unique needs of insular areas, the people of Puerto Rico will continue to be plagued by the longstanding implications of lagging wireline infrastructure investment. Failing to address these problems today and instead promising to address Puerto Rico's broadband infrastructure problems in a future comprehensive proceeding, will only set Puerto Rico further behind compared with the rest of the nation.

A. Additional Support Through an Insular Mechanism Would Be Used to Build Out Infrastructure Given PRT's Voluntary Commitments.

Despite the *Order's* claims to the contrary,⁷⁰ the provision of additional loop support to PRT through an insular mechanism will lead directly to greater investment in wireline infrastructure in Puerto Rico. While the Commission has never required recipients of high cost funding to make commitments as to how such funding would be spent, PRT has voluntarily offered to make build-out commitments, for example offering to commit to apply the insular

⁶⁹ *Qwest Remand Order* ¶ 84.

⁷⁰ *See Insular Order* ¶ 28.

funding for the provision, maintenance, and upgrading of broadband facilities, with the priority of extending broadband capabilities to lines that are not broadband-capable today.⁷¹

The Commission has recognized that wireline loop infrastructure serves the dual purpose of enabling both voice and broadband service.⁷² Furthermore, the Commission has also acknowledged the specific importance of wireline broadband services to consumers seeking high-speed connections in the foreseeable future.⁷³ As such, even though the Commission has not yet explicitly funded broadband facilities, incumbent telephone companies have made significant loop improvements using universal service funding that will also facilitate broadband deployment.⁷⁴ The adoption of an insular mechanism would allow PRT to do so as well.

⁷¹ Such investment would be separate from, and in addition to, any infrastructure investment pursuant to the commitment of América Móvil in WT Docket No. 06-113. Letter from Michael G. Jones, Willkie Farr & Gallagher, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-113 (March 23, 2007). See Letter from Nancy J. Victory, Counsel, Puerto Rico Telephone Company, Inc. to Jeffrey Carlisle, Chief, Wireline Competition Bureau, FCC, CC Docket No. 96-45 at 3 (Nov. 4, 2004); Letter from Nancy J. Victory, Counsel, Puerto Rico Telephone Company, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 & WC Docket No. 05-337 (filed Apr. 2, 2010).

⁷² See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities Universal Service Obligations of Broadband Providers, Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (2005) (“Packet-based technology is now deployed throughout wireline networks and is used in many circumstances, including increasingly to perform the switching and routing functions associated with POTS and the processing functions that permit broadband Internet access service.”); see also *Connect America Fund NPRM*.

⁷³ “Wireless broadband may not be an effective substitute in the foreseeable future for consumers seeking high-speed connections at prices competitive with wireline offers.” *Connecting America: The National Broadband Plan* at 41 (rel. Mar. 16, 2010) available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“*National Broadband Plan*”).

⁷⁴ *Insular Order*, Capps Concurring Statement at 41 (“While some areas of the country are seeing such [broadband] service now, or may see it in the near future, 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.”).

B. The Commission Has Harmed Puerto Rico by Starving the Island’s Wireline Infrastructure of Needed Universal Service Support.

The *Order* asserted that its universal service policies are a great success in Puerto Rico,⁷⁵ but in fact these policies are eroding support for critical wireline infrastructure. The *Order* emphasized the amount of ICLS that Puerto Rico receives.⁷⁶ As an initial matter, this line of justification conflates fundamental differences between the Commission’s existing rural high cost loop support and non-rural high cost model support mechanisms with its access charge replacement mechanisms, such as ICLS. These two types of mechanisms serve different purposes. On the one hand, the non-rural high cost loop mechanism and high cost model support are loop support mechanisms adopted to support areas of the country with high average loop costs. On the other hand, ICLS was adopted to replace implicit universal service subsidies collected from other carriers through interstate access charges.⁷⁷ By conflating these mechanisms, the Commission ignores the fact that, despite the ICLS support received, Puerto Rico still lacks support for high intrastate loop costs.

Similarly, the *Order* failed to address the universal service policy implications of competitive ETCs receiving 72 percent of all high-cost universal service support in Puerto Rico.⁷⁸ The Commission has previously tentatively concluded that it should eliminate the rule that awards these carriers “identical support” because these carriers do not have the same

⁷⁵ “[T]he 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.” *Insular Order* ¶ 31.

⁷⁶ See *Insular Order* ¶¶ 17-20.

⁷⁷ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001).

⁷⁸ *Insular Order* ¶ 18.

investment incentives that an incumbent telephone company would have.⁷⁹ Without analysis as to how this inversion has affected Puerto Rico’s infrastructure investment, the *Order* concluded only that Puerto Rico’s universal services needs are met. The Commission’s position here is also fundamentally at odds with its recently issued Notice of Proposed Rulemaking and its National Broadband Plan, which recommended cost-cutting measures for existing voice support and creating funding mechanisms for broadband that would target just one provider per geographic area.⁸⁰ Accordingly, the *Order’s* emphasis on the aggregate amount of universal service support Puerto Rico receives today turns a blind eye to the likelihood that such amount would decrease under the Commission’s proposed universal service policy objectives.

The end result is that, once again, after more than fourteen years, PRT and the people of Puerto Rico must wait to address the specific needs of insular areas through a future universal service proceeding.⁸¹ Meanwhile, the underfunding of infrastructure investment in Puerto Rico continues.

⁷⁹ “Because a competitive ETC’s per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.” *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1472, ¶ 10 (2008) (citations omitted).

⁸⁰ See *Connect America Fund NPRM* ¶ 10; *National Broadband Plan* at 145.

⁸¹ See *Insular Order* ¶ 46 (“If PRTC were to receive additional support for voice service pursuant [to] 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.”).

V. CONCLUSION

For the reasons set forth herein, PRT petitions that the Commission reconsider its decision to deny PRT's proposal to create an interim insular funding mechanism pursuant to its statutory duty under Section 254.

Respectfully submitted,

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April 27, 2010

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Company, Inc.*

Exhibit 2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| A National Broadband Plan for Our Future |) | GN Docket No. 09-51 |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

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FEDERAL COMMUNICATIONS COMMISSION
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| |) | |

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. (“PRT”) hereby responds to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“NOI”) and Notice of Proposed Rulemaking (“NPRM”) that seek comment on the proposed transition of the existing universal service support mechanisms to fund a new mechanism that explicitly supports broadband deployment known as the Connect America Fund (“CAF”).¹ PRT applauds the Commission’s plan to create a CAF and, specifically, the Commission’s focus on designing the

¹ *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) (“*Connect America NOI*”). Specifically, the FCC seeks comment on three broad issues. First, the FCC seeks comment on the use of a model to quantify the amount of universal service support necessary to support networks that provide broadband and voice service. *Id.*, ¶ 13. Second, the FCC seeks comment on approaches to target funding on an accelerated basis in order to extend broadband networks in unserved areas. *Id.* Third, the FCC seeks comment on specific proposals to cap and cut the legacy high-cost programs and realize savings that can be shifted to targeted investment in broadband infrastructure. *Id.* With respect to all three inquiries, the Commission encourages input on “unique circumstances in insular areas that would necessitate a different approach.” *Id.*

broadband universal service program to meet the needs of insular areas.² Tailoring universal service mechanisms to address the unique needs of insular areas is long overdue.³

I. INTRODUCTION AND SUMMARY

Insular areas like Puerto Rico have long lagged behind the rest of the nation in both telephone and broadband deployment and subscribership. Absent Commission intervention, as the rest of the country moves forward, this digital divide will continue to widen, denying the people of insular areas the critical economic, social, civic, health, and educational benefits of broadband. Now, more than ever, the Commission must fulfill its statutory mandate to ensure that the people of insular areas have access to telecommunications and information services that are “reasonably comparable” to those in urban areas.⁴

To assist the Commission in fulfilling its statutory mandate to meet the broadband needs of insular areas, PRT offers five recommendations.

² The FCC is statutorily obligated to promote universal service in insular areas. To this end, the Commission recently promised to “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.” *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 24 FCC Rcd 4136, ¶ 2 (rel. Apr. 16, 2010) (“*2010 Insular Order*”).

³ Since the passage of the 1996 Act, P.L. 104-104, the Commission has yet to adopt a universal service mechanism that addresses the unique needs of insular areas despite the call of PRT, a number of minority groups, and the Telecommunications Regulatory Board of Puerto Rico to do so. As a result, despite having a “materially lower” level of telephone and broadband subscribership than the rest of the nation, as non-rural insular area, Puerto Rico receives zero high cost intrastate loop support. *Id.*, ¶ 49. PRT has recently petitioned the Commission to reconsider its *2010 Insular Order* and continues to urge the Commission to act expeditiously to reverse this unlawful order.

⁴ 47 U.S.C. § 254(b).

- *First*, the Commission should reiterate that Section 254 of the Communications Act requires that “insular” areas have access to “advanced telecommunications and information services” that are “reasonably comparable” to those in urban areas.⁵
- *Second*, the high cost model should not apply to insular areas; Puerto Rico and other insular areas require their own broadband funding mechanism. For years, the Commission tried – and failed – to satisfy the communications needs of unserved areas in insular areas by treating them pursuant to mechanisms built for dissimilarly situated nonrural service providers. But Puerto Rico needs a distinct mechanism to address its unique situation, including the vast low-income customer base, the island’s weak overall economic health, and the additional expenses of providing service in an insolated and tropical area like Puerto Rico.
- *Third*, the FCC should establish an expedited pilot program to get vital financial support for broadband deployment to Puerto Rico and other insular areas. As detailed below, Puerto Rico fits the Commission’s vision of an unserved area that requires immediate funding: there is “no private sector business case to provide broadband and voice services” and distributing such funds can be done in “an efficient, targeted manner.”⁶
- *Fourth*, re-targeting ICLS support in Puerto Rico should be predicated on an operational CAF and significant improvements in broadband and telephone subscription in Puerto Rico. Altering current ICLS distributions before these conditions are fulfilled could have devastating consequences to Puerto Rico’s broadband and telecommunications deployment.
- *Fifth*, broadband adoption and availability should not be considered separately in insular areas like Puerto Rico. Increasing subsidies for low-income broadband users is of little value if broadband providers do not have the incentive to deploy broadband in the first place.

Absent rapid Commission action, the broadband availability gap in Puerto Rico will continue its steady increase, and the island’s citizens will lose out on the tremendous economic, employment, health, and educational benefits that universal broadband provides to the rest of the country. Given this, PRT encourages the FCC to quickly adopt a plan to ensure that universal broadband service reaches insular areas of the Nation.

⁵ *Id.*

⁶ *Connect America NOI*, ¶ 2.

II. SECTION 254 OF THE COMMUNICATIONS ACT REQUIRES THAT ANY BROADBAND UNIVERSAL SERVICE PROGRAM FUND BROADBAND DEPLOYMENT AND ADOPTION IN INSULAR AREAS.

Section 254(b) speaks in plain and mandatory terms. It provides that the Commission “shall” base its universal service support mechanisms on the principle that consumers in “insular” areas should have access to “advanced telecommunications and information services” that are “reasonably comparable” to those in urban areas.⁷ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas, thus requiring the Commission to address the lack of access to broadband services in insular areas such as Puerto Rico.⁸ The Commission itself agrees that “Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.”⁹ However, thus far the Commission has not taken the steps necessary to fulfill Congress’s directive.

To date, the Commission has failed to account for the unique nature of insular areas in its legacy high cost non-rural model. Although Section 254(b)(3) specifically identifies three

⁷ 47 U.S.C. § 254(b).

⁸ *See, e.g., Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”) (internal quotation marks and citation omitted); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read “to give effect, if possible, to every clause and word of a statute”); *see generally* 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 (6th ed. 2000).

⁹ *See Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, ¶ 33 (2005) (“2005 NPRM”). This conclusion is consistent with the Commission’s previous acknowledgment that Congress intended to provide universal service support for the benefit of consumers in insular areas. *See, e.g., Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, ¶ 42 (2004) (noting “Congressional intent . . . support[ing] the adoption of special mechanisms by which to calculate support for insular areas”).

regions entitled to receive universal service support – rural, insular, and high cost areas – the Commission has attempted to comply with this statutory command by adopting specific funding mechanisms only for rural and high cost areas. The Commission has not fulfilled its clear and unambiguous statutory requirement to ensure that consumers in insular areas have access to reasonably comparable “telecommunications and information services.”¹⁰ This failure has contributed to poor telecommunications infrastructure deployment in insular areas like Puerto Rico. And because telecommunications infrastructure is critical to broadband deployment, Puerto Rico’s broadband deployment and subscribership lags significantly behind the rest of the nation – only 24 percent of households in Puerto Rico have high-speed Internet access connections, compared with 60 percent across the rest of the United States.¹¹ Providing targeted insular support for broadband services to Puerto Rico, as required by statute, will narrow this gap.

III. THE PROPOSED HIGH COST MODEL DOES NOT ADDRESS THE UNIQUE CHARACTERISTICS OF PUERTO RICO AND OTHER INSULAR AREAS.

Puerto Rico and other insular areas require their own broadband funding mechanism. For years, the Commission tried to satisfy the communications needs of Puerto Rico based on a model that penalizes Puerto Rico for its population density without considering its poor population and high costs of deployment. As a result, by all metrics, Puerto Rico lags behind every other state in the country with respect to broadband and voice penetration.¹²

¹⁰ 47 U.S.C. § 254(b)(3) (emphasis added).

¹¹ See Industry Analysis and Competition Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2008*, at Table 21 (Feb. 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296239A1.pdf (“2010 Form 477 Report”).

¹² *Id.* Additionally, the Commission’s most recent figure for Puerto Rico’s telephone penetration rate (91.9%) is still well below the penetration rate in all U.S. states (98.2%) and

Fortunately, the instant proceeding provides the current Commission with a chance to start from scratch. To this end, the Commission should design two distinct funding mechanisms: one for insular areas and one for rural areas. As a first step at drawing a line between insular and rural funding, the Commission must not apply the proposed high cost model to Puerto Rico and other insular areas. This model admittedly ignores the unique characteristics and needs of Puerto Rico. The proposed cost model does not use any data from Puerto Rico or the other territories in its design. The Commission candidly explains in the cost model that “due to insufficient demographic and infrastructure data to calculate baseline availability for Puerto Rico and the U.S. Virgin Islands in the Caribbean, and Guam, American Samoa and the Northern Marianas in the Pacific, these areas are excluded from further analysis.”¹³ Clearly, the Commission cannot apply a cost model to insular areas if the Commission did not rely on insular data when formulating the model.

The lack of consideration for insular areas in the cost model is evident. Several misguided assumptions in the cost model would likely prevent funding for providers in Puerto Rico. This directly conflicts with Section 254’s universal service mandate and is simply unacceptable from a public policy perspective. First, the model relies heavily on line density. This would exclude Puerto Rico from support despite the fact that Puerto Rico faces other compelling challenges and costs, including the poorest population per capita in the United States.

New Mexico (95.7%), the state with the lowest penetration rate. *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2009). In fact, more than 200,000 households have no access to wireline infrastructure. See 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). Even the Commission candidly recognized “that there may be a significant number of low-income consumers in Puerto Rico who remain unable to afford access to voice telephone service” and that “subscriberhip in Puerto Rico remains materially lower than in any other jurisdiction reported by the Census Bureau.” *2010 Insular Order*, ¶ 49.

¹³ *CAF Cost Model* at 17.

Second, the model makes demographic assumptions that are not accurate for Puerto Rico, which is demographically unique. The cost model assumes that “[t]he take rate for broadband in unserved areas will be comparable to the take rate in served areas with similar demographics.”¹⁴ But no served area in the nation has demographics that are “comparable” to Puerto Rico. As noted above, the customer base in Puerto Rico has the lowest per capita income, with 44.8 percent of population living below the poverty line.¹⁵ Historically, this poverty has fostered very low adoption rates for all services. PRT anticipates a similar result if the Commission shoehorns Puerto Rico into the proposed rural cost model instead of adopting a distinct universal service mechanism for insular areas. Third, the model does not account for the impact of the Commission’s failed, legacy universal service policy in Puerto Rico, which did not incentivize wireline infrastructure investment. Puerto Rico already suffers from inadequate telecommunications infrastructure compared to the rest of the country. The Commission cannot adopt a cost model for Puerto Rico that is premised on leveraging existing networks, when the data on which cost conclusions are based comes from states with more extensive build-out than Puerto Rico.

IV. THE FCC SHOULD ESTABLISH AN EXPEDITED PILOT PROGRAM TO GET VITAL SUPPORT TO INSULAR AREAS.

Puerto Rico requires immediate financial assistance to overcome the dearth of broadband investment and deployment on the island. As such, PRT wholeheartedly supports the Commission’s plans to “create an accelerated process to distribute funding to support new deployment of broadband-capable networks in unserved areas” while the Commission develops

¹⁴ *Id.* at 3.

¹⁵ Alemayehu Bishaw and Trudi J. Renwick, Poverty 2007 and 2008: American Community Survey, *American Community Survey Reports* (Issued Sep. 2009), available at <http://www.census.gov/prod/2009pubs/acsbr08-1.pdf>.

the new CAF funding mechanism.¹⁶ The Commission notes that “[s]uch funding could, for instance, be provided to areas identified as ‘unserved’ once the Broadband Data Improvement Act mapping is completed in February 2011.”¹⁷ PRT anticipates that the broadband mapping data will mirror current data that shows Puerto Rico lagging far behind the rest of the nation in both broadband deployment and subscribership.¹⁸ Given this, the Commission’s top priority should be targeting new, accelerated broadband funding to unserved areas of Puerto Rico and other insular areas.¹⁹ This approach would satisfy the Commission’s Section 254 obligations to insular areas discussed above. And, as detailed below, this approach would satisfy the Commission’s twin goals – articulated in the NOI – of providing funding in areas where there is “no private sector business case to provide broadband and voice services” and distributing such funds in “an efficient, targeted manner.”²⁰

A. Puerto Rico Requires Accelerated Broadband Funding Because The Economics of Deployment in Poor Areas Leave Many Unserved.

Establishing a business case – and securing credit – to develop and expand broadband infrastructure in Puerto Rico is very difficult. The lack of broadband deployment and

¹⁶ *Connect America NOI*, ¶ 43. Specifically, the Commission seeks comment on the best way to create an accelerated process to distribute funding to areas defined as “unserved” by the Commission’s Broadband Data Improvement Act mapping efforts, which is scheduled for completion in February 2011.

¹⁷ *Id.*

¹⁸ As noted above, the Commission recently determined that only 24% of households in Puerto Rico have high-speed Internet access connections, compared with 60% across the rest of the United States. *See 2010 Form 477 Report*.

¹⁹ Specifically, the Commission should adopt the National Broadband Plan proposal to “create a fast-track program in CAF for providers to receive targeted funding for new broadband construction in unserved areas.” *Connect America NOI*, ¶ 10.

²⁰ *Id.*, ¶ 2.

subscription to date bears this out. As noted above, only 24 percent of households in Puerto Rico have high-speed Internet access connections, compared with 60 percent across the rest of the United States.²¹ PRT attributes the lack of broadband connectivity to a number of factors, including the extensive poverty in Puerto Rico, the island's poor overall economic health, and the unique expenses of providing service in an insolated and tropical area like Puerto Rico.

The lack of broadband deployment and subscription is not surprising considering that 44.8 percent of the Puerto Rican population lives below the poverty line.²² In fact, the potential customer base in Puerto Rico has the lowest median household income in the United States. Recent United States Census data estimates that the median household income in Puerto Rico is \$18,401.²³ By contrast, Mississippi, the poorest state in the country, has a median household income of \$37,090, and the national median household income is \$52,029.²⁴ Unfortunately, there does not appear to be any near term solution to the poverty in Puerto Rico. Indeed, unemployment plagues Puerto Rico. In April 2010, the unemployment rate in Puerto Rico was a

²¹ See *2010 Form 477 Report*, at Table 21. It is worth noting that “broadband service” was defined in the above-cited report as 768 kbps downstream and 200 kbps upstream. The *NOI* proposes a minimum threshold for broadband of 4 Mbps downstream and 1 Mbps upstream.

²² Alemayehu Bishaw and Trudi J. Renwick, *Poverty 2007 and 2008: American Community Surveys*, *American Community Survey Reports* (Issued Sep. 2009), available at <http://www.census.gov/prod/2009pubs/acsbr08-1.pdf>.

²³ “Median Household Incomes,” U.S. Census Bureau, available at http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&_box_head_nbr=R1901&-ds_name=ACS_2008_1YR_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2005_EST_G00_R2001_US30&-CONTEXT=grt.

²⁴ Other rural states have even larger median household incomes. Alaska, \$68,460; Wyoming, \$53,207; Nebraska, \$49,693; and Montana, the 42nd poorest state, had a median household income of \$43,654.

staggering 17.2%, up from 10.8% in 2005.²⁵ By contrast, Mississippi's unemployment rate in April 2010 was 11.5%, and the national unemployment rate was 9.9%.²⁶ Absent increased universal service support, the economic conditions will continue to foreclose widespread deployment of broadband in Puerto Rico because wireline providers will remain unable to justify the enormous expense of deployment.

And the existing USF adoption programs directed at low income individuals – Lifeline and Link-Up, standing alone – do not solve all of economic issues concerning the deployment of broadband in extraordinarily poor areas of the United States. As detailed in Section VI, Lifeline and Link Up programs are most effective where facilities to provide services have already been constructed. However, where broadband facilities are largely unconstructed (as in Puerto Rico), such programs do not assist providers to make the economic calculus that the construction of new facilities is economically reasonable. Specifically, providers are unable to accurately predict if local populations: (1) qualify for subsidies; (2) can afford any ongoing and additional subscription costs; (3) are even interested in broadband; and (4) can afford the computers and equipment necessary to benefit from broadband. Without some ability to project higher subscription rates or predictable subsidization of the construction and maintenance of facilities, the economics of deploying infrastructure in poor unserved areas simply foreclose construction of the facilities.

²⁵ “Economy at a Glance: Puerto Rico,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.pr.htm>.

²⁶ “Economy at a Glance: Mississippi,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.ms.htm>; “Economy at a Glance: United States,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.us.htm>. Again, other rural states enjoy a much more stable workforce: Alaska had 8.4% unemployment; Wyoming had 7.1% unemployment; Nebraska had 5.0% unemployment; and Montana had 7.1% unemployment. *Id.*

Separate and apart from individual poverty, macro-level financial struggles island-wide hinder broadband deployment. The Puerto Rican banking industry's situation is dire when compared to the rest of the United States.²⁷ While 3 percent of loans at mainland banks are past due, Puerto Rican banks face more than twice that number with 8.2 percent of their loans either past due or in default.²⁸ And of the 10 banks headquartered in Puerto Rico at the beginning of this year, the FDIC forced the closure and sale of three banks in April.²⁹ By contrast, only 200 of the 8,000 lenders in the United States have closed.³⁰ With Puerto Rican banks struggling, broadband providers, like other businesses in Puerto Rico, find it difficult to secure funding for projects in Puerto Rico. Further, Puerto Rico has been in a recession since 2006, and the government has had problems achieving fiscal balance.³¹ Last year, the Puerto Rican government had an estimated \$3.2 billion deficit,³² and a total budget of \$26.6 billion.³³ To chip

²⁷ See "Puerto Rico Fiscal Situation Update," Center for the New Economy, Vol. 4, No.1, at 4 (May 2010) ("Private financial institutions in Puerto Rico are under great strain. Total commercial bank assets in Puerto Rico have declined from \$101.5 billion as of December 2005 to \$89.6 billion as of December 31, 2009, a decline of \$11.9 billion, or 11.7 percent. This means Puerto Rico is experiencing a significant credit contraction as the local financial industry is delevering to bring the asset side of balance sheets into line with capital requirements.").

²⁸ See "Puerto Rican Lenders Face Their Own Crisis," New York Times (April 29, 2010), *available at* http://www.nytimes.com/2010/04/30/business/30fdic.html?_r=1&scp=1&sq=puerto%20rico%20unemployment&st=cse ("New York Times Article").

²⁹ See "Puerto Rico Governor, FDIC's Bair Call Bank Closure a Milestone," Wall Street Journal (May 1, 2010), *available at* <http://online.wsj.com/article/SB10001424052748704608104575218553966868356.html>.

³⁰ See New York Times Article.

³¹ "Puerto Rico's First BanCorp Ordered To Shape Up," Wall Street Journal (June 9, 2010), *available at* http://online.wsj.com/article/BT-CO-20100609-711917.html?mod=WSJ_latestheadlines.

³² "Puerto Rico's Governor Aims To Cut Taxes And Deficit, Too," Wall Street Journal (May 27, 2010), *available at* <http://online.wsj.com/article/BT-CO-20100527-706425.html>.

away at this deficit, the Commonwealth's government laid off almost 17,000 public employees last year.³⁴ At bottom, these macro-level problems – which are unique to Puerto Rico in their severity – place a stranglehold on broadband investment and deployment in Puerto Rico.

Further, broadband providers – and the investment community – are reluctant to invest heavily in broadband in Puerto Rico because of the unique operational expenses of providing service in an insolated and tropical area. Indeed, PRT faces significantly higher operational costs compared to other carriers its size,³⁵ such as:

- Higher shipping-related costs, because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense,³⁶
- Higher operational costs associated with the topography of Puerto Rico, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas that result in “telecommunications transmission facilities requir[ing] additional guying and anchoring and the distances between points [being] increased”;³⁷ and
- Higher operational costs associated with the climate of Puerto Rico, which is “corrosive and inhospitable to telecommunications equipment,” leading to accelerated deterioration of equipment, and severe tropical weather in the

³³ “Government Layoffs on Horizon,” *New York Times* (March 3, 2009), *available at* http://www.nytimes.com/2009/03/04/us/04brfs-GOVERNMENTLA_BRF.html.

³⁴ “Puerto Rico to Lay off 16,000 Workers, Cut Deficit,” *ABC News* (Sept. 25, 2009), *available at* <http://abcnews.go.com/International/wireStory?id=8674530>.

³⁵ The Commission has no basis to consider PRT's parent, América Móvil – an entirely separate company – in the evaluation of PRT's size and scale, as the Commission does not do so when considering the size and scale of rural carriers. *See 2010 Insular Order*, ¶ 38.

³⁶ *See generally* Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 3-4 (Dec. 17, 1999) (“*VIPSC Comments*”); Comments of the Government of Guam, CC Docket No. 96-45, at 3 (Dec. 17, 1999).

³⁷ *See VIPSC Comments* at 4; *see also* Comments of PRT, CC Docket No. 96-45, at 6-7 (Dec. 17, 1999).

Caribbean requires frequent reconstruction of existing infrastructure due to storm and hurricane damage.³⁸

Even the Commission – more than a decade ago – acknowledged the formidable challenges facing insular areas: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”³⁹ Without additional, targeted broadband funding – combined with expanded FCC adoption programs – there is no business case for private investment in broadband deployment in unserved areas in Puerto Rico.

B. The FCC Should Award Support to Companies That Will Put Accelerated Broadband Funding to Work in an “Efficient, Targeted Manner.”

The Commission could realize tangible and rapid results if it provides accelerated broadband funding to companies that are able to leverage existing infrastructure to deploy broadband to unserved areas. For example, as an existing provider of wireline broadband, PRT understands the challenges of broadband deployment in Puerto Rico and the most cost-effective

³⁸ *VIPSC Comments* at 4. See also *Federal-State Joint Board on Universal Service*, Order, FCC 05-178, ¶ 2 (Oct. 14, 2005); Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 7-8 (Dec. 17, 1999). For example, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities. In 2004, Hurricane Jeanne caused \$9.2 million in damage. See, e.g., Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at 2 (Mar. 28, 2005); Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 9 n.19 (Jan. 14, 2004).

³⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997); see also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999) (noting that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country”); *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that “subscribership levels are below the national average in ... certain insular areas”).

ways to deliver broadband to unserved areas. PRT already has invested significant financial and personnel resources over the last several years to determine how broadband could be deployed throughout Puerto Rico. Unfortunately, and as detailed above, PRT has been unable to establish a viable business case for broadband across the entire island without support from the universal service fund.

However, PRT projects that it could run its broadband infrastructure into unserved areas for a fraction of what the Commission projects that it will cost per household in other unserved areas of the country. The National Broadband Plan (“NBP”) estimates that the most expensive 250,000 unserved housing units represent a disproportionate share of the total investment gap – \$14 billion.⁴⁰ This represents less than two-tenths of one percent of all housing units in the United States; the average amount of funding for terrestrial broadband per household to close the gap for these units is an estimated \$56,000.60.⁴¹ In Puerto Rico, PRT could reach the same number of unserved housing units for a fraction of the cost. This is so because PRT could leverage its infrastructure to provide broadband in the most cost effective manner possible. The FCC has recognized that 12,000 foot-loop-DSL provides the “best economics in delivering 4 Mbps down- and 1 Mbps up-stream to the unserved areas of the country.”⁴² Further, “[s]ince DSL is deployed over the same existing twisted-pair copper network used to deliver telephone service, it benefits from sunk costs incurred when first deploying the telephone network.”⁴³

⁴⁰ Omnibus Broadband Initiative, Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 138 (2010) (“*National Broadband Plan*”).

⁴¹ *Id.*

⁴² See “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1, FCC, at 59, available at Appendix C of *Connect America NOI* (“*CAF Cost Model*”).

⁴³ *Id.* at 85.

PRT, as an existing wireline voice and broadband provider, would leverage its current network to cut costs when deploying to unserved areas. This would ensure faster and wider broadband deployment than what wireless providers could offer.⁴⁴ Currently, there are 1,413,535 homes in Puerto Rico, and PRT passes by 1,214,546 of these homes with its wireline telephony network. Thus, PRT can leverage its existing wireline infrastructure to expand broadband service to hundreds of thousands of consumers in Puerto Rico for a modest increase in universal service funding.

V. EXISTING ICLS DISTRIBUTIONS TO PUERTO RICO SHOULD CONTINUE UNTIL BROADBAND SUPPORT MECHANISMS ARE OPERATIONAL.

Any change in universal service funding in Puerto Rico could have devastating consequences given the fragility of the island's economic situation, the lack of broadband deployment, and the low telephone and broadband subscription rates when compared to the rest of the country. Accordingly, the Commission should continue ICLS distribution to Puerto Rico until: (1) the CAF fund is fully operational; and (2) Puerto Rico has caught up to the rest of the United States in broadband and telephone subscription. As PRT repeatedly has detailed, the Commission has not fulfilled its statutory requirement to ensure that consumers in insular areas like Puerto Rico have access to reasonably comparable "telecommunications and information services."⁴⁵ This is due, in part, to the Commission's failure to appropriately fund facilities deployment in Puerto Rico based on the high costs of deployment and low subscription rates. This has produced a situation in which Puerto Rico lags far behind the rest of the nation in

⁴⁴ To further ensure the efficient use of accelerated broadband funding in Puerto Rico, the Commission could limit this targeted funding to providers that will immediately provide 4 Mbps downstream and 1 Mbps upstream.

⁴⁵ For a detailed discussion of this issue, *see* Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337 (filed April 27, 2010).

broadband deployment and subscribership. Until the two prerequisites above are fulfilled, the Commission should ensure that Puerto Rico’s existing ICLS distributions continue to fund communications in Puerto Rico. At bottom, the Commission should focus on providing additional funding to Puerto Rico while it re-targets existing funding to ensure ubiquitous broadband deployment.

VI. BROADBAND ADOPTION AND AVAILABILITY SHOULD NOT BE CONSIDERED SEPARATELY IN INSULAR AREAS LIKE PUERTO RICO.

Increasing Lifeline and Link-Up subsidies for low-income broadband users is of little value if broadband providers do not have the incentive to deploy broadband in the first place. Although the *National Broadband Plan* considers broadband availability and adoption to be separate issues,⁴⁶ this segregated framework makes little sense for insular areas like Puerto Rico. As detailed in Section IV, establishing a “private sector business case”⁴⁷ to develop and expand broadband infrastructure in Puerto Rico is very difficult due to a number of factors, including the island’s low-income customer base, its weak economic health, and the unique expenses of providing service in an insolated and tropical area like Puerto Rico. Under these circumstances, widespread poverty presents significant barriers to both broadband adoption and availability.

Without existing broadband facilities throughout the island, the Commission’s traditional low-income subsidies administered through the Lifeline and Link-Up programs cannot help address the hurdles to broadband subscribership in Puerto Rico – no matter how the programs are enhanced. Indeed, low-income subsidies are intended for qualifying individuals that need assistance to pay for subscription or service initiation fees where services are already available,

⁴⁶ See *National Broadband Plan* at Chapters 8-9.

⁴⁷ The Commission is designing its broadband universal service program to provide funding in geographic areas where there is “no private sector business case to provide broadband and voice services.” *Connect America NOI*, ¶ 2.

not to create incentives for providers to deploy infrastructure. As PRT has explained in the past, although 134,146 of its residential customers benefit from the Lifeline program, Lifeline and Link-Up programs alone have not successfully improved Puerto Rico's historically lagging telephone and broadband subscribership.⁴⁸ And even an enhanced Link-Up program without additional infrastructure support would be inadequate to compensate for the substantial cost of extending lines and maintaining operations in Puerto Rico.⁴⁹

VII. CONCLUSION

The Commission should satisfy the broadband needs of unserved insular areas by following the five recommendations proposed above.

Respectfully submitted,

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⁴⁸ Comments of Puerto Rico Telephone Company, Inc. WC Docket No. 05-337, CC Docket No. 96-45, & WC Docket No. 03-109 (filed Jun. 7, 2010) ("PRT Link Up Comments"); *see also* 2010 *Insular Order*, ¶ 51; *id.*, ¶ 49 (acknowledging "that there may be a significant number of low-income consumers in Puerto Rico who remain unable to afford access to voice telephone service.").

⁴⁹ PRT Link Up Comments at 5-7.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| A National Broadband Plan for Our Future |) | GN Docket No. 09-51 |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

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| |) | |

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. (“PRT”) hereby files reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“NOI”) and Notice of Proposed Rulemaking (“NPRM”) that seek comment on the transition of existing universal service support mechanisms to fund a new mechanism that explicitly supports broadband deployment known as the Connect America Fund (“CAF”).¹ PRT and other commenters support the CAF and, specifically, the Commission’s focus on designing the

¹ *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) (“*Connect America NOI*”). Specifically, the FCC seeks comment on three broad issues. First, the FCC seeks comment on the use of a model to quantify the amount of universal service support necessary to support networks that provide broadband and voice service. *Id.*, ¶ 13. Second, the FCC seeks comment on approaches to target funding on an accelerated basis in order to extend broadband networks in unserved areas. *Id.* Third, the FCC seeks comment on specific proposals to cap and cut the legacy high-cost programs and realize savings that can be shifted to targeted investment in broadband infrastructure. *Id.* With respect to all three inquiries, the Commission encourages input on “unique circumstances in insular areas that would necessitate a different approach.” *Id.*

broadband universal service program to meet the needs of insular areas.² As the record demonstrates,³ tailoring universal service mechanisms to address the unique needs of insular areas is long overdue.⁴

I. INTRODUCTION AND SUMMARY

Now, more than ever, the Commission must fulfill its statutory mandate to ensure that the people of Puerto Rico and other insular areas have access to telecommunications and information services that are “reasonably comparable” to those in urban areas.⁵ Just days after initial comments were filed in this proceeding, the Commission released the Sixth Broadband Deployment Report (“Sixth Broadband Report”),⁶ which concludes that Puerto Rico, the U.S.

² The FCC is statutorily obligated to promote universal service in insular areas. To this end, the Commission recently promised to “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.” *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 24 FCC Rcd 4136, ¶ 2 (rel. Apr. 16, 2010) (“2010 Insular Order”).

³ Unless otherwise noted, all comments cited below were filed in WC Docket No. 10-90 on July 12, 2010.

⁴ Since the passage of the 1996 Act, P.L. 104-104, the Commission has yet to adopt a universal service mechanism that addresses the unique needs of insular areas despite the calls of PRT, the Representatives of Puerto Rico, the Chair of the House Appropriations Committee for the FCC, the Chair of the House Small Business Committee, the Telecommunications Regulatory Board of Puerto Rico, and numerous Latino and minority groups to do so. As a result, despite having a “materially lower” level of telephone and broadband subscribership than the rest of the nation, as a non-rural insular area, Puerto Rico receives zero high cost intrastate loop support. *Id.*, ¶ 49. PRT has recently petitioned the Commission to reconsider its 2010 *Insular Order* and continues to urge the Commission to act expeditiously to reverse this unlawful order.

⁵ 47 U.S.C. § 254(b).

⁶ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Sixth Broadband Deployment Report, GN Docket No. 09-137, FCC No. 10-129 (2010) (“Report”).

Virgin Islands, Northern Mariana Islands, and American Samoa are almost entirely unserved by broadband.⁷ Indeed, one-sixth of unserved Americans live in Puerto Rico. The report's striking conclusion bolsters the record evidence in this proceeding that absent Commission intervention the digital divide between insular areas and urban areas will continue to widen, denying the people of insular areas the critical economic, social, civic, health, and educational benefits of broadband. The need for immediate Commission assistance could not be more clear.⁸

To assist the Commission in fulfilling its statutory mandate, PRT and other commenters offer several recommendations. Given the troubling new data in the Sixth Broadband Report – as well as the Commission's legal compulsion under Section 254 to foster deployment in insular areas – the Commission should prioritize deployment in insular areas until they achieve the same level of penetration as other areas. As an initial step, commenters urge the FCC to establish an expedited pilot program to get vital financial support for broadband deployment to insular areas. As commenters explain, insular areas fit the Commission's vision of unserved areas that require immediate funding. Specifically, there is “no private sector business case to provide broadband and voice services” – even with Lifeline and Link-Up support – because of the poverty, weak overall economic health, and the additional expenses of constructing facilities and providing

⁷ Report at Appendix B, “Unserved Areas By State or U.S. Territory.”

⁸ Time and again, the Commission has failed to provide Puerto Rico the necessary support to elevate communications access to a level commensurate with the rest of the country – or even the poorest states. After the Commission's most recent rejection of support – denying PRT's request for an insular mechanism – a collection of ten leading Latino public interest organizations filed comments urging the Commission to “grant PRT's Petition and end its unlawful and disparate treatment of the people of Puerto Rico as second-class citizens.” *See* Comments of the Communications Workers of America, Dialogue on Diversity, The Hispanic Institute, The Hispanic Technology and Telecommunications Partnership, Labor Council for Latin American Advancement, Latinos in Information Sciences and Technology Association, League of United Latin American Citizens, Minority Media and Telecommunications Council, National Conference of Puerto Rican Women, and the National Puerto Rico Coalition, WC Docket No. 05-337, at 2 (filed June 14, 2010).

service in these insolated and tropical areas.⁹ The FCC should award the accelerated funding through a Request for Proposal-type (“RFP-type”) process that distributes funding to the most efficient providers. With respect to the permanent CAF program, commenters agree that insular areas require their own broadband funding mechanism that does not rely on the proposed cost model. For years, the Commission tried – and failed – to satisfy the communications needs of Puerto Rico based on a model that penalizes Puerto Rico for its population density without considering its poor population and high costs of deployment.

The record plainly shows that, absent rapid Commission action, the broadband availability gap in Puerto Rico and other insular areas will continue its steady increase, and the islands’ citizens will lose out on the tremendous economic, employment, health, and educational benefits that universal broadband provides to the rest of the country. Given this, PRT encourages the FCC to quickly adopt and implement a plan to ensure that universal broadband service reaches insular areas of the nation.

II. INSULAR AREAS REQUIRE IMMEDIATE UNIVERSAL SERVICE SUPPORT GIVEN THE COMMISSION’S RECENT CONCLUSION THAT PUERTO RICO, THE U.S. VIRGIN ISLANDS, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA ARE UNSERVED.

The Sixth Broadband Report – which defines “broadband” as service with actual download speeds of 4 Mbps and actual upload speeds of 1 Mbps – concludes that the entire island of Puerto Rico, as well as the U.S. Virgin Islands (“USVI”), the Northern Mariana Islands, and American Samoa, lack broadband. Specifically, the Report shows that Puerto Rico consists of 78 municipalities, and all 78 municipalities are unserved.¹⁰ Additional data show that close to 4 million Puerto Ricans lack broadband, an enormous number considering that nationwide 24

⁹ *Connect America NOI*, ¶ 2.

¹⁰ Report at Appendix B, “Unserved Areas By State or U.S. Territory.”

million people lack broadband.¹¹ Put another way, over 16% of unserved Americans live in Puerto Rico. The Broadband Report also highlights the lack of broadband in the USVI, the Northern Mariana Islands, and American Samoa – out of the eleven municipal areas examined in these islands, ten are unserved by broadband.”¹²

Given this new information – as well as the Commission’s legal compulsion under Section 254 to foster deployment in insular areas¹³ – the Commission’s top priority should be

¹¹ *Id.*

¹² Report at Appendix C (identifying three unserved counties in the United States Virgin Islands, three unserved counties in Northern Mariana, and four unserved counties in American Samoa). The Report examined 11 municipal areas in the U.S. Virgin Islands, American Samoa, Guam and Northern Mariana. Two counties in Northern Mariana were excluded from the analysis due to date irregularities.

¹³ Commenters widely agree that – pursuant to Section 254 – the Commission must design the CAF and USF so that consumers in “insular” areas have access to “advanced telecommunications and information services” that are “reasonably comparable” to those in urban areas. *See, e.g.*, Joint Comments of AST Telecom, LLC d/b/a Bluesky Communications, Choice Communications, LLC, and PR Wireless at 17 (“Wireless Insular Comments”) (“In order to fulfill the obligations of Section 254 of the Act, USF funding policies *must* take into consideration the particular and special situations faced in insular areas.”) (emphasis in original); National Tribal Telecommunications Association at 19 (Emphasizes that the “Commission has stated that the respective insular areas have very different attributes and related cost issues than do the continental states.”); Regulatory Commission of Alaska Comments at 3-4 (“Any model must consider the variety of factors that affect our cost of service including rugged terrain, extreme arctic weather, the presence of permafrost, the lack of road access, a widely dispersed population, *remote and insular locations* and reliance on satellite transport.”) (emphasis added); TDS Telecommunication Corp. Comments at 2 (Argues that “Section 254(b)(3) of the Communications Act . . . directs the Commission to base USF policy on the principle that consumers 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 “[a]dhering to this statutory mandate is more important today than ever.”); Missouri Small Telephone Company Group Comments at 2 (“The proposals appear designed to disadvantage customers in rural or insular areas.”); Rural Cellular Association Comments at 1 (“RCA supports . . . accelerat[ing] investment in broadband infrastructure and mak[ing] broadband services more accessible throughout the United States, and in particular for people living in rural and *insular*, high-cost areas, tribal lands, and for low-income Americans.”) (emphasis added); USA Coalition Comments at 20 (“In many rural, insular, and high-cost areas, telecommunications service is affordable only with support from the USF.”); CenturyLink Comments at 28 (Acknowledging that “Section 254 requires that universal service support be

targeting new, accelerated broadband funding to Puerto Rico and other insular areas.¹⁴ As detailed in PRT’s initial comments, and again below,¹⁵ Puerto Rico and its fellow insular islands fit the Commission’s vision of unserved areas that require immediate funding: there is “no private sector business case to provide broadband and voice services” and distributing such funds can be done in “an efficient, targeted manner.”¹⁶ Absent rapid Commission action, the broadband availability gap in insular areas will continue its steady increase, and these areas’ citizens will lose out on the tremendous economic, employment, health, and educational benefits that universal broadband provides to the rest of the country.¹⁷

In the interim, the Commission should retain indefinitely the existing universal service distributions to Puerto Rico and other insular areas. Despite Section 254’s clear statutory instruction,¹⁸ the Commission has not ensured that consumers in insular areas have access to

“sufficient” to ensure that Americans in insular, rural, and high cost areas of the country receive access to affordable service.”); Alexicon Comments at 22 (“It is not only essential but mandatory that rates in rural, insular, and high cost areas must remain affordable.”).

¹⁴ Specifically, the Commission should move quickly to adopt the National Broadband Plan proposal to “create a fast-track program in CAF for providers to receive targeted funding for new broadband construction in unserved areas.” *Connect America NOI*, ¶ 10.

¹⁵ PRT Comments at 7-14. As PRT detailed in its opening comments, establishing a business case – and securing credit – to develop and expand broadband infrastructure in Puerto Rico is very difficult. The lack of broadband deployment and subscription to date bears this out. *Id.*

¹⁶ *Connect America NOI*, ¶ 2.

¹⁷ The time for Commission action in Puerto Rico is now. The Report emphasizes that “[i]f the Commission finds that broadband is not being deployed in a reasonable and timely manner, it *must ‘take immediate action to accelerate deployment’.*” Report at ¶ 29 (emphasis added).

¹⁸ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas, thus requiring the Commission to address the lack of access to broadband services in insular areas. Even the Commission points out that “Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.” *See Federal-State Joint Board on Universal*

reasonably comparable “telecommunications and information services.”¹⁹ This failure has contributed to poor telecommunications infrastructure deployment in insular areas like Puerto Rico.²⁰ Any reduction in universal service funding now could have devastating consequences given the fragility of the island’s economic situation, the lack of broadband deployment, and the low telephone and broadband subscription rates when compared to the rest of the country. Accordingly, and as detailed in PRT’s opening comments, the Commission should continue existing distributions to an unserved, insular area until the CAF fund is fully operational and the insular area has caught up to the rest of the United States in broadband and telephone subscription. This proposal comports with the Wireless Insular Commenter recommendation that “any USF reform efforts considered by the Commission should significantly enhance high-cost support to wireless carriers serving insular areas or, at a minimum, continue to provide the existing levels of high-cost support until such time as there is reliable evidence that the quality of service and choices in telecommunications providers in the Territories is comparable to those on the U.S. mainland.”²¹

Service, High-Cost Universal Service Support, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, ¶ 33 (2005) (“2005 NPRM”). This conclusion is consistent with the Commission’s previous acknowledgment that Congress intended to provide universal service support for the benefit of consumers in insular areas. *See, e.g., Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, ¶ 42 (2004) (noting “Congressional intent . . . support[ing] the adoption of special mechanisms by which to calculate support for insular areas”).

¹⁹ 47 U.S.C. § 254(b)(3) (emphasis added).

²⁰ *See infra* Section III.A.

²¹ Wireless Insular Commenters at 3.

III. THE RECORD STRONGLY SUPPORTS EXPEDITED PILOT PROGRAMS TO GET VITAL SUPPORT TO INSULAR AREAS.

Puerto Rico and other insular areas require immediate financial assistance to overcome the dearth of broadband investment and deployment on their islands, especially given the Sixth Broadband Report's conclusions that Puerto Rico and other insular areas lag far behind the rest of the nation in both broadband deployment and subscribership.²² As such, PRT wholeheartedly supports the Commission's plans to "create an accelerated process to distribute funding to support new deployment of broadband-capable networks in unserved areas" while the Commission develops the new CAF funding mechanism.²³ As detailed below, this approach would satisfy the Commission's twin goals – articulated in the NOI – by providing funding in areas where there is "no private sector business case to provide broadband and voice services" and distributing such funds in "an efficient, targeted manner" through the use of the RFP-type process proposed in the NOI.²⁴

A. Puerto Rico and Other Insular Areas Require Accelerated Broadband Funding Because the Economics of Deployment in Poor, Insular Areas Leave Many Citizens Unserved.

The Commission and commenters agree that the unique costs of deploying broadband in low-income, insular areas stifles broadband penetration and justifies immediate financial support to insular areas. The Commission – more than a decade ago – acknowledged the formidable challenges facing insular areas: "insular areas generally have subscribership levels that are lower

²² See *supra* Section II.

²³ *Connect America NOI*, ¶ 43. Specifically, the Commission seeks comment on the best way to create an accelerated process to distribute funding to areas defined as "unserved" by the Commission's Broadband Data Improvement Act mapping efforts, which is scheduled for completion in February 2011. *Id.*

²⁴ *Id.*, ¶ 2.

than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”²⁵ And recently, the Commission concluded in the Sixth Broadband Report that “unserved areas appear to have lower income levels than the U.S. as a whole” and that “subscription rates tend to increase with income.”²⁶ The FCC statements comport with evidence in this proceeding that establishing a business case – and securing credit – to develop and expand broadband infrastructure in Puerto Rico and other insular areas is very difficult. Specifically, commenters attribute the lack of broadband connectivity to a number of factors, including the extensive poverty in these areas, the poor overall economic health of these areas, and the unique expenses of providing service in insular areas.

As detailed in PRT’s initial comments, the lack of broadband deployment and subscription in Puerto Rico is not surprising considering that 44.8 percent of Puerto Ricans live below the poverty line.²⁷ In fact, the potential customer base in Puerto Rico has a significantly

²⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997); *see also Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999) (noting that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country”); *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that “subscribership levels are below the national average in ... certain insular areas”).

²⁶ Report, ¶ 23, n. 97.

²⁷ Alemayehu Bishaw and Trudi J. Renwick, Poverty 2007 and 2008: American Community Surveys, *American Community Survey Reports* (Issued Sep. 2009), available at <http://www.census.gov/prod/2009pubs/acsbr08-1.pdf>.

lower median household income than any state.²⁸ And given the high levels of unemployment in Puerto Rico, there does not appear to be any near term solution to this poverty.²⁹ Absent increased universal service support, the economic conditions will continue to foreclose widespread deployment of broadband in Puerto Rico because providers will remain unable to justify the enormous expense of deployment.

Poverty also stifles broadband deployment in other insular areas. The Wireless Insular Commenters point out that the median income for households in the USVI is \$34,983, compared to a median income of \$52,175 for all households in the United States.³⁰ And per capita income in the USVI is \$19,787, compared to \$27,466 for the United States overall.³¹ In American Samoa, income levels are even farther behind those in the mainland United States.³² According to the Census, 61.0% of the population of American Samoa had incomes below the poverty level

²⁸ Recent United States Census data estimates that the median household income in Puerto Rico is \$18,401. Mississippi, the poorest state in the country, has a median household income of \$37,090, and the national median household income is \$52,029. See “Median Household Incomes,” U.S. Census Bureau, *available at* http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1901&-ds_name=ACS_2008_1YR_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2005_EST_G00_R2001_US30&-CONTEXT=grt.

²⁹ In April 2010, the unemployment rate in Puerto Rico was a staggering 17.2%, up from 10.8% in 2005. “Economy at a Glance: Puerto Rico,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.pr.htm>. By contrast, Mississippi’s unemployment rate in April 2010 was 11.5%, and the national unemployment rate was 9.9%. “Economy at a Glance: Mississippi,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.ms.htm>; “Economy at a Glance: United States,” Bureau of Labor Statistics, *available at* <http://www.bls.gov/eag/eag.us.htm>. Other rural states enjoy a much more stable workforce: Alaska had 8.4% unemployment; Wyoming had 7.1% unemployment; Nebraska had 5.0% unemployment; and Montana had 7.1% unemployment. *Id.*

³⁰ Wireless Insular Comments at 7.

³¹ *Id.*

³² *Id.*

in 1999.³³ In the USVI, 23.8% of all families are below the poverty level, more than double the percentage in the United States as a whole (9.6%).³⁴ In addition, these low income levels are “exacerbated by the exceptionally high cost of living in the Territories.”³⁵ The Wireless Insular Commenters ultimately conclude that these “tremendously low income levels and pervasive poverty in the insular areas create inequalities in access and affordability of voice and broadband service.”³⁶

And the existing USF adoption programs directed at low income individuals – Lifeline and Link-Up – standing alone, do not solve all of the economic issues concerning the deployment of broadband in extraordinarily poor areas of the United States, nor can they be relied on as the sole solution to the lack of deployment in insular areas. As detailed in PRT’s opening comments, where broadband facilities are largely unconstructed (as in Puerto Rico), such programs do not assist providers to make the economic calculus that the construction of new facilities is economically reasonable.³⁷ Indeed, low-income subsidies are intended for qualifying individuals that need assistance to pay for subscription or service initiation fees where services are already available, not to create incentives for providers to deploy infrastructure.

Separate and apart from individual poverty, macro-level financial struggles hinder broadband deployment in insular areas. PRT’s opening comments highlighted that the Puerto

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Specifically, providers are unable to accurately predict if local populations: (1) qualify for subsidies; (2) can afford any ongoing and additional subscription costs; (3) are interested in broadband; and (4) can afford the computers and equipment necessary to benefit from broadband.

Rican banking industry's situation is dire when compared to the rest of the United States.³⁸ With Puerto Rican banks struggling, broadband providers, like other businesses in Puerto Rico, find it difficult to secure funding for projects in Puerto Rico. Further, Puerto Rico has been in a recession since 2006, and the government has had problems achieving fiscal balance.³⁹ Last year, the Puerto Rican government had an estimated \$3.2 billion deficit.⁴⁰ PR Wireless – a CMRS provider in Puerto Rico – echoes these concerns: “The island government has struggled to deliver essential services as a result of the economic decline, and after the loss of special tax incentives for U.S. firms operating in Puerto Rico as a result of its commonwealth status, many Puerto Ricans believe that the Commonwealth has lost its ability to support economic growth.”⁴¹ At bottom, these macro-level problems place a stranglehold on broadband investment and deployment in Puerto Rico.

Economic indicators in other insular areas are equally troubling. The Wireless Insular Commenters note that the “most recent U.S. Census data paint a compelling picture for the declining economy in American Samoa. From 2002 to 2007, American Samoa's GDP grew at an average annual rate of 0.4%, compared to an annual rate of 2.8% in the United States

³⁸ See “Puerto Rico Fiscal Situation Update,” Center for the New Economy, Vol. 4, No.1, at 4 (May 2010) (“Private financial institutions in Puerto Rico are under great strain. Total commercial bank assets in Puerto Rico have declined from \$101.5 billion as of December 2005 to \$89.6 billion as of December 31, 2009, a decline of \$11.9 billion, or 11.7 percent. This means Puerto Rico is experiencing a significant credit contraction as the local financial industry is delevering to bring the asset side of balance sheets into line with capital requirements.”).

³⁹ “Puerto Rico's First BanCorp Ordered to Shape Up,” Wall Street Journal (June 9, 2010), available at http://online.wsj.com/article/BT-CO-20100609-711917.html?mod=WSJ_latestheadlines.

⁴⁰ “Puerto Rico's Governor Aims to Cut Taxes and Deficit, Too,” Wall Street Journal (May 27, 2010), available at <http://online.wsj.com/article/BT-CO-20100527-706425.html>.

⁴¹ Wireless Insular Comments at 6.

(excluding the territories).”⁴² And “federal data show that median annual inflation-adjusted earnings in American Samoa declined by approximately 6% from 2006 to 2008.”⁴³ The economic situation in USVI also remains bleak. The Wireless Insular Commenters explain that for tourism, which is the USVI’s primary industry, the “total number of visitors in 2009 was down 13.1% from 2008. While the U.S. mainland economy has begun to emerge from the downturn, USVI is expected to lag behind the mainland as it pulls out of its own recession.”⁴⁴

Further, broadband providers – and the investment community – are reluctant to invest heavily in broadband in insular areas because of the unique operational expenses of providing service in insolated and tropical areas. PRT, the Wireless Insular Commenters, and GTA Telecom (formerly known as the Guam Telephone Authority) explain that Puerto Rico and other insular areas face significantly higher operational costs compared to most other areas of similar sizes,⁴⁵ such as:

- Higher shipping-related costs, because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense;⁴⁶

⁴² *Id.*

⁴³ *Id.* The Wireless Insular Comments further explain that the “economic situation has become more acute of late due to the September 2009 closure of a tuna cannery owned by Chicken of the Sea, resulting in the loss of more than 2,000 jobs. More recently, StarKist Co. announced that it will be reducing its American Samoa workforce by 600-800 positions. The resulting reductions will reduce the company’s territorial employment from its high of more than 3,000 in 2008 to less than 1,200 workers. The combined workforce reductions, amounting to 3,800 jobs, comprise over 20% of the total American Samoa workforce.” *Id.* at 6.

⁴⁴ *Id.* at 6.

⁴⁵ The Commission has no basis to consider PRT’s parent, América Móvil – an entirely separate company – in the evaluation of PRT’s size and scale, as the Commission does not do so when considering the size and scale of rural carriers. *See 2010 Insular Order*, ¶ 38.

⁴⁶ PRT Comments at 12; Wireless Insular Comments at 4; GTA Telecom Comments at 2 (“GTA faces unique challenges in providing services to the island’s inhabitants. There is a vast

- Higher operational costs associated with the topography of these islands, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas of Puerto Rico that result in telecommunications transmission facilities requiring additional guying and anchoring and the distances between points being increased;⁴⁷
- Higher operational costs associated with the climate of Puerto Rico and other insular areas, which is corrosive and inhospitable to telecommunications equipment, leading to accelerated deterioration of equipment;⁴⁸ and
- Severe tropical weather in the Caribbean and the South Pacific Ocean requires frequent reconstruction of existing infrastructure due to storm and hurricane damage.⁴⁹

As a result, insular areas “experience unique and extraordinary high costs associated with building and maintaining telecommunications infrastructure.”⁵⁰ Without additional, targeted broadband funding – combined with expanded FCC adoption programs – there is no business case for private investment in broadband deployment in Puerto Rico and other insular areas.

ocean and a great distance between Guam and the mainland United States. Thus, GTA encounters much higher costs of goods and lead times for equipment and relies quite heavily on overseas shipping.”).

⁴⁷ PRT Comments at 12; Wireless Insular Comments at 4.

⁴⁸ PRT Comments at 12; Wireless Insular Comments at 4 (“In addition, seawater and humidity inherent in tropical climates are corrosive and inhospitable to telecommunications equipment, leading to accelerated deterioration of equipment, and higher operational costs associated with the climate of the Territories.”).

⁴⁹ PRT Comments at 12 (noting that, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities and that, in 2004, Hurricane Jeanne caused \$9.2 million in damage). The Wireless Insular Commenters explain that the severe tropical weather in the Caribbean and South Pacific often requires frequent reconstruction of existing telecommunications infrastructure due to storm and hurricane damage. The commenters note that “Puerto Rico and USVI lie at the boundary between the Caribbean and North American plates, which also produces earthquakes and tsunamis.” Wireless Insular Comments at 4. And that “Puerto Rico and the USVI also experience hurricane season annually, for approximately 5 months out of the year.” *Id.* Similarly, “American Samoa frequently experiences tropical cyclones, earthquakes and even tsunamis because of its positioning in the South Pacific Ocean” and in 2009 experienced an “8.1 magnitude earthquake produced [by] a devastating tsunami in American Samoa.” *Id.*

⁵⁰ *Id.* at 4.

B. The FCC Should Award Accelerated Broadband Funding to Insular Areas Through a RFP-Type Process that Distributes Funding to the Most Efficient Providers.

The Commission aims to bring broadband service to as many unserved individuals as quickly as possible. The FCC’s proposal to create an accelerated broadband funding mechanism is an important step in this direction. As detailed below, PRT supports using the RFP-type bidding process proposed in the NOI to distribute the accelerated funding. Under the RFP-type mechanism, the bidding parties would define the geographic units and other service characteristics associated with their bids.⁵¹ To select winning proposals, the FCC would establish a scoring rule to evaluate all proposals on an easily understood and unambiguous basis. The scoring mechanism should heavily favor proposals that foster broadband deployment to the greatest number of people in the shortest time. This efficiency-based metric comports with the Commission’s desire to adopt a simple, temporary vehicle to foster rapid broadband deployment while the Commission studies and finalizes a more comprehensive strategy for nationwide broadband deployment.⁵²

The need for this accelerated mechanism is particularly acute in Puerto Rico and other unserved insular areas. As detailed above, the people in these areas can no longer wait for private market forces to bring broadband to their neighborhoods. With the proposed accelerated mechanism, however, the Commission could realize tangible and rapid results by funding companies that can leverage existing infrastructure to deploy broadband to unserved areas. For

⁵¹ Funding from the accelerated mechanism should be recurring and not a one-time payment. Once the permanent CAF mechanism is established, the Commission would need to transition support from the accelerated mechanism to the permanent mechanism.

⁵² Indeed, the Commission has emphasized that the accelerated mechanism should be designed in a way that can “be implemented relatively quickly without addressing the full complexities inherent in other reverse auction proposals or cost and revenue models.” NOI at ¶ 45.

example, as an existing provider of wireline broadband, PRT understands the challenges of broadband deployment in Puerto Rico and the most cost-effective ways to deliver broadband to unserved areas. Unfortunately, PRT has been unable to establish a viable business case. But, with government assistance, PRT projects that it could run its broadband infrastructure into unserved areas for a fraction of what the Commission projects that it will cost per household in other unserved areas of the country. The National Broadband Plan (“NBP”) estimates that the most expensive 250,000 unserved housing units represent a disproportionate share of the total investment gap – \$14 billion.⁵³ In Puerto Rico, PRT could reach the same number of unserved housing units for a fraction of the cost.⁵⁴ Currently, there are 1,413,535 homes in Puerto Rico, and PRT passes by 1,214,546 of these homes with its wireline telephony network. Thus, PRT can leverage its existing wireline infrastructure to expand broadband service to hundreds of thousands of consumers in Puerto Rico for a modest increase in universal service funding.⁵⁵

⁵³ Omnibus Broadband Initiative, Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 138 (2010) (“*National Broadband Plan*”).

⁵⁴ This is so because PRT could leverage its infrastructure to provide broadband in the most cost effective manner possible. The FCC has recognized that 12,000 foot-loop-DSL provides the “best economics in delivering 4 Mbps down- and 1 Mbps up-stream to the unserved areas of the country.” See “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1, FCC, at 59, *available at* Appendix C of *Connect America NOI* (“*CAF Cost Model*”). Further, “[s]ince DSL is deployed over the same existing twisted-pair copper network used to deliver telephone service, it benefits from sunk costs incurred when first deploying the telephone network.” *Id.* at 85.

⁵⁵ PRT, as an existing wireline voice and broadband provider, would leverage its current network to cut costs when deploying to unserved areas. This would ensure faster and wider broadband deployment than what wireless providers could offer.

IV. COMMENTERS AGREE THAT THE PROPOSED HIGH COST MODEL DOES NOT ADDRESS THE UNIQUE CHARACTERISTICS OF PUERTO RICO AND OTHER INSULAR AREAS.

In addition to accelerated funding, insular areas eventually will require a distinct, permanent insular broadband mechanism.⁵⁶ The cost model is not reflective of the circumstances and needs of low-income, insular areas like Puerto Rico. Commenters from unserved areas across the nation – including Puerto Rico, American Samoa, USVI, Alaska, and various tribal areas – agree. Fortunately, the instant proceeding provides the current Commission a chance to start from scratch and bring broadband to these historically underserved areas.

As PRT and other commenters point out, the proposed cost model admittedly ignores the unique characteristics and needs of the most deserving communities.⁵⁷ The proposed cost model

⁵⁶ See, e.g., PRT Comments at 5 (explaining why “Puerto Rico and other insular areas require their own broadband funding mechanism”); Wireless Insular Comments at 2 (“The circumstances in insular areas are far different than in the United States mainland and, therefore, must be treated differently when it comes to USF reform. Accordingly, any USF reform efforts considered by the Commission should significantly enhance high-cost support to wireless carriers serving insular areas.”); see also Regulatory Committee of Alaska Comments at 3-4 (“The RCA opposes the use of a model to calculate support levels for Alaskan providers. No national model has ever been developed that predicts accurately the cost of service throughout rural Alaska. Any model must consider the variety of factors that affect our cost of service including rugged terrain, extreme arctic weather, the presence of permafrost, the lack of road access, a widely dispersed population, remote and insular locations and reliance on satellite transport.”); *Id.* at 4 (“[F]ew individuals, including those developing cost support models, are likely to have the experience necessary to develop a model that accurately predicts costs of construction in arctic conditions, especially given the variation in those conditions for a state the size of Alaska.”); National Tribal Telecommunications Association (“NTTA”) Comments at 24, 29 (NTTA “urges the adoption of Native lands as separate study areas” and asks the Commission to “establish a Tribal Broadband Fund to meet the telecommunications needs of tribal telecommunications providers, both tribal and non-tribal.”); South Dakota Telecommunications Association Comments at 19 (“[T]he record is well developed that a model or reverse auction would not effectively determine the appropriate amount of support.”); NTCA Comments at 16 (The “FCC should not focus solely on cost models to the exclusion of other issues.”).

⁵⁷ In Puerto Rico, for example, the Commission tried to satisfy the communications needs of Puerto Rico based on a model that penalizes Puerto Rico for its population density without considering its poor population and high costs of deployment. As a result, the Commission’s most recent figure for Puerto Rico’s telephone penetration rate (91.9%) is still well below the

does not use any data from Puerto Rico or the other insular territories in its design. In fact, the Commission candidly explains in the cost model that “due to insufficient demographic and infrastructure data to calculate baseline availability for Puerto Rico and the U.S. Virgin Islands in the Caribbean, and Guam, American Samoa and the Northern Marianas in the Pacific, these areas are excluded from further analysis.”⁵⁸ Commenters widely agree that the Commission cannot apply a cost model to insular areas – or any other areas – if the Commission did not rely on data from the areas when formulating the model.⁵⁹

The lack of consideration for insular areas in the cost model is evident. First, the model makes demographic assumptions that are not accurate for Puerto Rico or other low-income, insular areas. The cost model assumes that “[t]he take rate for broadband in unserved areas will be comparable to the take rate in served areas with similar demographics.”⁶⁰ But no served area in the nation has demographics that are “comparable” to insular communities. As detailed

penetration rate in all U.S. states (98.2%) and New Mexico (95.7%), the state with the lowest penetration rate. *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2009). In fact, more than 200,000 households have no access to wireline infrastructure. See 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). Even the Commission candidly recognized “that there may be a significant number of low-income consumers in Puerto Rico who remain unable to afford access to voice telephone service” and that “subscriberhip in Puerto Rico remains materially lower than in any other jurisdiction reported by the Census Bureau.” *2010 Insular Order*, ¶ 49.

⁵⁸ *CAF Cost Model* at 17.

⁵⁹ See *Wireless Insular Comments* at 11-13 (discussing the lack of reliable data for assessing penetration rates in insular areas); *NTTA Comments* at 15, 19 (discussing lack of reliable data regarding Internet subscribership and provisioning of wireless data on Native lands and explaining that the FCC did not consult with any Tribal Government or tribal organizations while preparing the NPRM); *Comments of Wyoming Public Service Commission* at 2 (stating that the cost model “cannot reliably identify broadband gaps or target support for rural areas in Wyoming”).

⁶⁰ *Id.* at 3.

above, the customer bases in the insular islands have extremely low per capita incomes, with a massive number of people living below the poverty line.⁶¹ Historically, this poverty has fostered very low adoption rates for all services in these areas. PRT anticipates a similar result if the Commission shoehorns insular areas – as well as other low-income areas – into a single cost model instead of adopting distinct universal service mechanisms, or at least a mechanism that accounts for the unique problems with these areas.

Second, the model does not account for the impact of the Commission’s failed, legacy universal service policy in these areas, which did not incentivize wireline infrastructure investment. Commenters explain that insular areas already suffer from inadequate telecommunications infrastructure compared to the rest of the country.⁶² The Wireless Insular Commenters note that the “unique geographic, economic and social characteristics present in the [insular] Territories result in significantly higher costs in providing telecommunications service.”⁶³ Despite these unique problems, the FCC has adopted USF policies that “have inhibited insular area advancement, resulting in significantly lower subscriber penetration rates in the Territories than in the mainland U.S.”⁶⁴ The Commission cannot adopt a cost model for insular areas that is premised on leveraging existing networks, when the data on which cost conclusions are based comes from states with more extensive build-out than insular areas.

⁶¹ Alemayehu Bishaw and Trudi J. Renwick, *Poverty 2007 and 2008: American Community Survey*, *American Community Survey Reports* (Issued Sep. 2009), available at <http://www.census.gov/prod/2009pubs/acsbr08-1.pdf>.

⁶² PRT Comments at 7; Wireless Insular Comments at 10.

⁶³ Wireless Insular Comments at 3.

⁶⁴ *Id.*

V. CONCLUSION

The Commission should satisfy the broadband needs of unserved, insular areas by following the recommendations proposed above and in PRT's initial filing.

Respectfully submitted,

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