



August 16, 2013

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Connect America Fund, High-Cost Universal Service Support,
WC Docket Nos. 10-90, 05-337

Dear Ms. Dortch:

USTelecom hereby responds to the July 17, 2013 letter (“Letter”) of Puerto Rico Telephone Company, Inc. (“PRT”) in the above-captioned proceedings concerning the Connect America Fund (“CAF”) Phase II program.¹ In the July 17th Letter, PRT transmits a white paper (“White Paper”) addressing the issues with applying the Connect America Cost Model (“CAM”) under development by the Wireline Competition Bureau (“Bureau”) to insular areas.

As a threshold matter, USTelecom believes that model-based support is the correct mechanism for determining high-cost support for all price cap companies, including those serving insular areas. We are confident that such an approach can yield the appropriate amount of support for insular providers, and provides a consistency that is especially important in the face of a budget that constrains support to all carriers. We also believe that such providers can and should work to have any unique circumstances addressed in the model. Alaska Communications Systems (“ACS”) is seeking to accomplish that goal with the proposal in its July 9th Letter.² There is no reason that the other insular providers, including PRT, cannot do so as well.

PRT has offered the false choice of determining its support based on its self-serving and self-invented model, the unmodified CAM or frozen support, instead of pursuing the reasonable path that ACS has chosen – proposing reasonable and targeted modifications to the CAM to address unique circumstances. Presumably at least some, if not most, of the CAM, which has

¹ Letter to Marlene Dortch, FCC Secretary, from Tom J. Navin, Counsel to PRTC, in WC Docket Nos. 10-90, 05-337, filed July 17, 2013 (“July 17th Letter”).

² Letter to Marlene Dortch, FCC Secretary, from Leonard A. Steinberg of ACS, in WC Docket Nos. 10-90, 05-337, filed July 9, 2013 (“July 9th Letter”).

undergone extensive public review, is applicable to insular areas. It is a waste of time and energy for the Commission and the public to review PRT's entire model which is completely different than the CAM when it can better allocate its resources by targeting its review on modifications to the CAM that reflect circumstances unique to Puerto Rico's insular situation. Moreover, the Bureau has no obligation to adopt a totally unique model for insular areas (or for each insular area), but instead, is mandated in the USF Transformation Order with adopting a cost model that adequately accounts for the unique costs of serving non-contiguous areas.³ That directive can more easily be met and should be accomplished with modifications to the CAM that reflect the unique costs of serving a particular insular area.

The Commission should adopt a consistent approach in which inputs to the CAM are modified based on the unique circumstances of each price cap insular carrier and all price cap insular carriers receive support based on a modified CAM. USTelecom does not support a "hold-harmless" approach whereby certain insular carriers receive model-based support and others continue to receive frozen support. Such an approach raises the concern that some support levels would not be fully justified by the cost characteristics of the recipient carrier's service area. Moreover, to the extent such an approach is taken within the Commission's budget for price cap areas, it would unfairly divert much-needed broadband funding from customers living in the rural areas served by price-cap carriers receiving model-based support. If the Commission adopts a hold-harmless approach, the frozen support provided to any insular company in excess of its CAM-derived model-based result should not be counted within the current budget for areas served by price cap carriers.

Contrary to PRT's implication, it is totally irrelevant to the proper determination of high costs that the *Order* increases support nationwide to areas served by price cap carriers.⁴ It is certainly not a justification for increasing or maintaining PRT's current excess level of support. First, the *Order* did not allocate more support to all price cap companies serving high cost areas. Second, the increase in the aggregate support for areas served by price cap companies bears no relevance to the determination of the legitimate costs of each price cap company. Having PRT receive support based on a modified CAM is consistent with the purpose of the model which is constructed to allow funding for price cap areas within the \$1.8B budget for price cap company areas.

Similarly, the income level of PRT's customer base and its impact on broadband adoption is irrelevant to the determination of the appropriate level of high cost support for Puerto Rico. PRT attempts to shoehorn adoption issues into the high cost determination through an imaginative reading of the term "unique circumstances" that the Bureau should consider when adopting a cost model for insular areas. That term is clearly used in the context of assessing

³ See *Connect America Fund, et al.*, WC Docket No. 10-900 *et al.*, FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶ 193 (rel. Nov. 18, 2011) ("*USF Transformation Order*" or "*Order*") (subsequent history omitted).

⁴ See Letter at 1.

costs through use of a *cost* model and does not encompass adoption issues. PRT's attempt to conflate service availability with service adoption⁵ is not new – the Commission rejected such an approach in 2010 when it declined to establish the universal service high cost mechanism proposed by PRT and instead proposed targeted rule changes to help eligible consumers in Puerto Rico take better advantage of existing universal service low-income support programs.⁶

The White Paper also raises the red herring of “subdelegation” of the Bureau’s decision-making authority. The use of CostQuest to mechanically perform calculations with respect to the development of a cost model by the Bureau merely provides the Bureau with factual information and does not subdelegate the Commission’s decision-making authority. The U.S. Court of Appeals for the DC Circuit has addressed this issue⁷ and noted that “there is some authority for the view that a federal agency may use an outside entity, such as a state agency or a private contractor, to provide the agency with factual information.”⁸ Moreover, the opinion states that “a federal agency may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decisions itself.”⁹ PRT presents no evidence that CostQuest has any final decision-making authority.

Another red herring is the unfounded allegation in the White Paper that the Bureau would violate the Administrative Procedure Act’s (“APA”) notice and comment requirements if it calculates insular support via the CAM because it is “riddled with hidden algorithms and erroneous assumptions that prevent PRT and other third parties from even attempting to evaluate the model’s accuracy.”¹⁰ First, the model is sufficiently transparent for ACS to propose modifications to it that would allow the modified CAM to address the unique circumstances found in Alaska. Second, the Bureau issued a Public Notice on August 13, 2013, to announce that the processing source code for the CostQuest LandLine (CQLL) and CostQuest Middle Mile (CQMM) applications are available upon request. The Bureau explained the CQLL and the CQMM will be used for the CAM for CAF Phase II implementation. Parties who have signed the confidentiality and nondisclosure documents released as attachments to the Third Supplemental Protective Order may request access to CQLL and CQMM’s processing source code.

⁵ See White Paper at 5.

⁶ See Order and Notice of Proposed Rulemaking, WC Docket Nos. 05-337 and 03-109 and CC Docket No. 96-45 (rel. April 16, 2010) at ¶ 3.

⁷ See U.S. Telecom Ass’n v. FCC, 359 F3d 554 (D.C. Cir. 2004).

⁸ *Id* at 16.

⁹ *Id* at 17.

¹⁰ See White Paper at 4.

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In compliance with the law, the authority delegated to it by the Commission, and good public policy, the Bureau should allocate support to insular areas served by price cap companies based on a modified CAM. This will ensure that the final version of the model will best serve the Commission's broadband deployment goals.

Please direct any questions concerning these matters to the undersigned.

Sincerely,



Jonathan Banks
Senior Vice President
Law & Policy

cc: Carol Matthey
Steven Rosenberg
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Katie King
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