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Wiley LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Thomas J. Navin
202.719.7487
tnavin@wileyrein.com

REDACTED – FOR PUBLIC INSPECTION

January 7, 2014

ACCEPTED/FILED

JAN - 7 2014

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Wireline Competition Bureau Announces Availability of Version 4.0 of the Connect America Fund Phase II Cost Model and Seeks Comment on Adopting Current Default Inputs in Final Version of Model*, Public Notice, WC Docket No. 10-90, DA 13-2304 (rel. Dec. 2, 2013)

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRT") hereby files Comments in the proceeding cited above, which contain information that is proprietary and highly confidential to PRT under the terms of the Second Protective Order in WC Docket No. 10-90.[1]

Accordingly, PRT has marked each page of its Stamped Highly Confidential Filing with the legend required in the Order, and filed these Comments under seal. Copies are provided for Katie King and Charles Tyler as required in the Public Notice, and two extra Highly Confidential copies are provided for Katie King as required by the Order. Two copies redacted for public inspection are filed herewith. The redacted version is also being filed electronically via ECFS. Materials that are Highly Confidential are omitted in their entirety in the redacted version.

Please contact me with any questions.

[1] *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Second Protective Order, 27 FCC Rcd 1494 (WCB 2012).

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Best regards,

Thomas J. Navin

cc: Katie King, Wireline Competition Bureau
Charles Tyler, Wireline Competition Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

REDACTED – FOR PUBLIC INSPECTION

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	
	)	DA 13-2304
Public Notice: Wireline Competition Bureau Announces Availability of Version 4.0 of the Connect America Fund Phase II Cost Model, and Seeks Comment on Adopting Current Default Inputs in Final Version of Model	)	

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Francisco J. Silva
Walter Arroyo
PUERTO RICO TELEPHONE COMPANY, INC.

Nancy J. Victory
Thomas J. Navin
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

January 7, 2014

Counsel for Puerto Rico Telephone Company, Inc.

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COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. ("PRT") hereby submits these Comments in response to the Federal Communications Commission ("Commission") Wireline Competition Bureau's ("Bureau") Public Notice announcing the availability of the Connect America Fund Phase II Cost Model ("CAM") version 4.0.[1]

I. INTRODUCTION AND EXECUTIVE SUMMARY

In spite of the Bureau's effort to improve the latest version of the CAM "to reflect the unique circumstances and operating conditions in the non-contiguous areas of the United States,"[2] the revisions to the model do not address the systemic flaws in the CAM that make it an inappropriate mechanism for determining Connect America funding for Puerto Rico. The CAM still relies on three problematic bases.[3]

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1 *See Wireline Competition Bureau Announces Availability of Version 4.0 of the Connect America Fund Phase II Cost Model and Seeks Comment on Adopting Current Default Inputs in Final Version of Model*, Public Notice, WC Docket No. 10-90, DA 13-2304 (rel. Dec. 2, 2013 WCB) ("Notice").

2 *Id.* at 1.

3 The CAM also suffers from serious legal infirmities; namely, its lack of transparency and the Bureau's unlawful subdelegation of its decision-making authority to a private party to

First, the model underserves insular areas by failing to accommodate the substantially higher labor charges of excavation for buried and underground plant. Second, the CAM continues to rely on assumptions regarding take rate, and thus cost recovery, that simply do not reflect the reality of service provision in Puerto Rico. Third, the CAM is based upon National Broadband Map ("NBM") data that are widely acknowledged—including by the very parties providing the data and the Bureau itself—to be inaccurate. The result is a proposed CAM that would severely cut support to insular areas, which the Commission itself has identified repeatedly as most in need of support for broadband Internet access.[4]

Because the CAM "does not provide sufficient support" to Puerto Rico, the Bureau should either adopt a model that accurately represents the funding needs of this insular area, or it should maintain the frozen funding level for Puerto Rico consistent with the express delegation from the Commission in the *2011 USF Transformation Order*.[5]

II. THE CAM FAILS TO ADEQUATELY ADDRESS INSULAR AREAS AND SHOULD NOT BE USED TO DETERMINE SUPPORT FOR PUERTO RICO.

The Commission has long recognized that there are unique challenges to service provision in insular areas, and it has attempted to address these challenges through its universal service programs. In the *2010 Insular Order*, the Commission agreed that Section 254(b)(3) of the Communications Act requires the agency to ensure "reasonably comparable rates and

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develop the CAM. But PRT has already made these arguments in this proceeding. In order to avoid needless repetition, PRT directs the Bureau to its previous submissions on this matter: *see* Comments of Puerto Rico Telephone Company, Inc. at 3-7, WC Docket No. 10-90 (filed Sept. 12, 2013); *see* White Paper of Puerto Rico Telephone Company, Inc. on Legal and Policy Issues With Applying the CACM to Insular Areas at 17-24 *attached to* Letter from Thomas J. Navin, Counsel to PRT, to Chairwoman Mignon Clyburn, Commissioner Ajit Pai, Commissioner Jessica Rosenworcel, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 17, 2013) ("PRT Legal and Policy White Paper").

[4] *Eighth Section 706 Report*, GN Docket No. 11-121, 27 FCC Rcd 10342, ¶ 56 (2012) ("*Eighth Section 706 Report*").

[5] *Connect America Fund*, Report and Order, WC Docket No. 10-90, 26 FCC Rcd 17663, ¶ 193 (2011) ("*2011 USF Transformation Order*").

services" for consumers in insular areas.[6] In that Order, the Commission also acknowledged a telephone subscribership rate that fell approximately 21 percent below the national average as unacceptable and warranting universal service aid.[7]

Comparatively, the Commission determined in the *Eighth Broadband Progress Report* that broadband was not being deployed "'to all Americans' in a reasonable and timely fashion" because 6 percent of Americans do not have access to broadband.[8] Insular areas, in particular, lag far behind the rest of the country in voice and broadband deployment, are more expensive to serve than non-insular areas, and are among the poorest populations in the country, which invariably results in low customer adoption rates.[9] The situation is most dire in the U.S. territories, where the Commission has recognized that the percentage of unserved Americans "is approximately nine times the national average."[10] In Puerto Rico specifically, the Commission has observed that more than half the population lacks access to broadband Internet access

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6 *See High-Cost Universal Service Support*, WC Docket Nos. 05-337, 03-109, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136 ¶ 22 (2010) (*2010 Insular Order*).

7 *See id.*, ¶ 20 (recognizing moving from a subscriber rate deficit of 21 percentage points to one of just over 6 percentage points, although not fully satisfactory, as "a significant success of the universal service program").

8 *Eighth Section 706 Report*, ¶ 1.

9 *See, e.g.*, *Eighth Section 706 Report*, App. C (presenting data highlighting how underserved Puerto Rico is compared to the rest of the country); Letter from Thomas J. Navin, Outside Counsel, Puerto Rico Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 12, 2012) (updating the record with the troubling data from the Eighth Broadband Progress Report); Comments of Puerto Rico Telephone Company, WC Docket No. 10-90 (filed Aug. 24, 2011) ("The Commission has recognized that most insular areas, like Puerto Rico, currently lag dramatically behind the rest of the nation in telephone and broadband subscribership and deployment."); Comments of Virgin Islands Telephone Corporation, GN Docket No. 11-16 (filed Mar. 2, 2011) (noting low broadband deployment in the U.S. Virgin Islands); Comments of Public Services Commission of the U.S. Virgin Islands, WC Docket No. 10-90, at 4-7 (filed Jul. 12, 2010) (discussing limitations on telecommunications infrastructure in the territory and challenges to deployment in the Virgin Islands); Comments of the Virgin Islands Telephone Corporation, CC Docket No. 96-45, at 15 (filed Nov. 3, 2000) (describing low penetration rates in the U.S. Virgin Islands).

10 *Eighth Section 706 Report*, ¶ 56.

services meeting the benchmark speed of 4 Mbps downstream and 1 Mbps upstream—a disparity of approximately 45 percent compared to the national average.[11] Additionally, recent data submitted to the Commission by Connected Nation report that less than 1 percent of schools and libraries in Puerto Rico have access to broadband with download speeds of 100 Mbps or greater.[12] Because the Connect America Fund is the only mechanism intended by the Commission to address needs for 4 Mbps/1 Mbps broadband Internet access in price cap LEC territories, any failure by the Commission to provide Connect America Fund broadband support in Puerto Rico would necessarily violate its obligation under Section 254(b)(3) and prior Commission decisions addressing "reasonable comparability" for insular areas like Puerto Rico.

Consistent with its obligations under Section 254(b)(3), the Commission instructed the Bureau to "consider the unique circumstances" of non-contiguous U.S. and insular areas "when adopting a cost model" for the Connect America Fund.[13] The Commission directed the Bureau to "consider whether the model ultimately adopted adequately accounts for the costs faced by carriers" in insular areas, and if the Bureau determines that the cost model "does not provide sufficient support to any of these areas," *to maintain existing support levels for those areas.*[14] To satisfy this clear instruction from the Commission, the Bureau must ensure that a meaningful portion of the $9 billion in Connect America Fund Phase II support is allocated to Puerto Rico, whether through the CAM or through maintained frozen support.

Contrary to Section 254(b)(3) of the Act's requirements and the express delegation of authority to the Bureau in the *2011 USF Transformation Order*, CAM v. 4.0 would slash Puerto

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11 *Eighth Section 706 Report*, App. C.

12 *See* Notice of *Ex Parte* Communication of Connected Nation, WC Docket No. 13-184 (filed Sept. 10, 2013).

13 *2011 USF Transformation Order*, ¶ 193.

14 *Id.*

Rico's support level from more than $36 million to $7.2 million under the CAM. The fact that the model's illustrative results show an approximately 80 percent *decrease* in support for Puerto Rico despite the Commission's recognition that "[a]pproximately 54 percent of Americans residing in U.S. Territories are without access to fixed broadband . . . compared to only 6 percent of Americans overall,"[15] should alone be sufficient to demonstrate that the model as proposed "does not provide sufficient support" to these areas as required under section 254(b)(3).[16] These steep cuts are made more striking by the fact that the support budget for price cap carriers increases by 67 percent overall (from $1.076 billion to $1.8 billion per year), with all but one of the contiguous U.S. price cap carriers that funded the original development of CostQuest's models receiving significant increases in support. Obviously, any CAM in which Puerto Rico, with one of the nation's lowest broadband deployment rates, sees its support eviscerated while other carriers, with much higher current deployment rates, receive over a $100 million in additional annual support fails both section 254(b)(3) and the Commission's stated objective to ensure the "universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions."[17]

Based on the latest illustrative results, it should be clear that the proposed CAM does not adequately account for the "unique circumstances" of insular service provision in the territories, as required by the Commission.[18] This is because, as explained in PRT's Legal and Policy White Paper, the CAM is based on a platform designed to model broadband deployment and operation in the 48 contiguous United States, and therefore contains numerous assumptions and estimates

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15 *Eighth Section 706 Report*, ¶ 56.

16 *2011 USF Transformation Order*, ¶ 193.

17 *Id.*, ¶ 17.

18 *Id.*

that do not hold true for insular areas.[19] The CAM relies on three erroneous bases in particular; each will be addressed below.

A. The Revised CAM Does Not Adequately Account for Labor Costs in Puerto Rico.

The CAM greatly underestimates labor costs in Puerto Rico. The model, as currently available, contains both CAM default data and the option to use a limited number of material inputs specific to the Virgin Islands. Why the model does not contain data specific to Puerto Rico and Alaska, even though such data has been provided in PRT and Alaska Communications Systems ("ACS") submissions, has not been explained. Further, although the Bureau has adopted some of the Virgin Island Telephone Company's ("VITELCO") material and equipment costs, it does not include any of the much greater Virgin Islands-specific labor costs also submitted. The cost of the specialized labor required to install outside plant in Puerto Rico, like that of the Virgin Islands and Alaska, is much higher than the CAM default values that were reportedly based on an average of mainland costs. The excavation cost required for buried and underground plant provides an example. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [* * *] [END HIGHLY CONFIDENTIAL INFORMATION]**

As has been discussed extensively over the course of this proceeding by the insular carriers, it is very difficult to compare and evaluate the CAM default inputs against PRT's actual costs because of the limited information provided by the Bureau concerning how the CAM's inputs were developed.[20] In the case of excavation cost, like many other inputs, it was explained to PRT representatives that the inputs were provided to CostQuest; and CostQuest's understanding was that the values represented the average excavation cost of the ABC Coalition

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19 PRT Legal and Policy White Paper at 7-14.

20 This is an example of the unlawful lack of transparency and subdelegation of decision-making to a private party that has plagued the entire modeling process. *See supra*, n.3.

members. No work papers were provided to support these values. PRT's costs are based on the currently effective outside plant contracts, which contain tables showing the number of "work units" required for each task and the agreed upon price per work unit.[21]

As seen in Highly Confidential Attachment A, these variables can significantly influence the development of excavation costs. The attachment shows that the different excavation situations in which underground and buried cable is placed require altogether different tasks and, therefore, result in drastically varying costs. PRT's costs are developed based on five excavation situations ranging from road crossings to non-backyard settings. When plant is placed under a road crossing, the pavement—including the road, sidewalks, and curbs—must be broken and then restored. This restoration requires re-establishing the road bed and repaving multiple lanes. At the opposite end of the cost spectrum, placing the plant in a non-backyard setting—or any area with no sidewalks, driveways, trees, or bushes to disturb—does not require replacement or the need to bring equipment to a private area, and is therefore the least costly. Each outside plant project includes a combination of these excavation situations; PRT engineers estimate that six percent of the total route footage underground placement will be in a road crossing, ten percent under asphalt and concrete roads, sixteen percent under asphalt-only roads, forty-eight percent in non-backyard settings, and twenty-percent in backyard settings. The CAM input values are not supported, at least publicly, with any such detail—certainly not to the level presented by PRT in Highly Confidential Attachment A.[22]

PRT also takes exception with the labor input associated with fiber splicing. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [* * *] [END HIGHLY CONFIDENTIAL**

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21 *See* Highly Confidential Attachment A for copies of PRT's Outside Plant Installation Prices and Work Units.

22 *See* Highly Confidential Attachment A.

INFORMATION] This evidence reliably demonstrates that the CAM v. 4.0 default installation labor costs are significantly less than the costs actually paid by PRT.

Another example of the CAM underestimating PRT's costs lies in the installation of "buried in conduit" plant. The Notice explains that the CAM does not include any "additional or excavation cost associated with 'buried in conduit' plant."[23] But PRT's outside plant contractor contracts show an additional cost of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [* * *] **[END HIGHLY CONFIDENTIAL INFORMATION]** if conduit is used. A further example is the addition to the model of beach manholes. The Notice accounts for only four beach manholes in Puerto Rico at an installed cost of $1,000,000.[24] But Puerto Rico has 12 manholes; each undersea route requires four, and there are three routes: from Puerto Rico to Florida, Vieques, and Culebrea. Incorporation of the unrepresented costs described above is critical to adequately funding PRT under the CAM.

B. Incorporating Puerto Rico-Specific Inputs into the State-Specific Capex File Significantly Increases Estimated Support Amounts.

As discussed briefly above, the Bureau reports that CAM v. 4.0 incorporates a state-specific capex table and toggle "to provide an input source for situations in which a state-specific capex input is required."[25] The Bureau has included Virgin Islands-specific information, noting that "it would be reasonable to assume that certain materials would be more expensive in the Virgin Islands."[26] PRT has documented the reasons why broadband-related capital expenditures in Puerto Rico are inherently more expensive than in other states and has filed state-specific capex data reflecting Puerto Rico's forward-looking costs to obtain broadband materials,

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23 *See Notice* at n.22.

24 *See id.* at 3.

25 *Id.* at 8.

26 *See id.* at 5.

transport them from suppliers in mainland states to Puerto Rico, and deploy them in locations across the islands.[27] However, it does not appear that any state-specific capex information for Puerto Rico has been incorporated into CAM v. 4.0. The 2011 USF Transformation Order is clear that the Bureau must determine the location-specific costs of deploying broadband networks, especially in insular areas.[28] Where costs—such as the cost of materials purchased as part of broadband capital expenditures—materially differ in a particular area from costs in other areas, the Bureau should incorporate an adjustment into the model for the outlying area. Because of the most recent model changes, it is now possible for the Bureau to model Puerto Rico-specific expenditures for materials to be used in broadband-capable network deployment within the model itself. The Bureau has already done so for the Virgin Islands, and PRT requests that it do the same for Puerto Rico, as required by the 2011 USF Transformation Order.

In this filing, PRT includes a V21 capex input file for Puerto Rico, which includes twenty-nine individual material inputs changes representing the average price recently paid for plant materials. In addition, PRT has made twenty-seven installation labor input substitutions to incorporate the actual costs of excavation in Puerto Rico discussed earlier. The Capex V21 PR file attached to these comments includes the twenty-nine material input changes and twenty-seven installation labor input changes.[29] This file was used to populate the included State-

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27 *See* Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 10-90 (filed Sept. 12, 2013).

28 *2011 USF Transformation Order*, ¶193.

29 In its State Specific Capex files, PRT made a total of 56 changes to individual input values. The derivation of the Puerto Rico inputs is summarized and shown in Highly Confidential Attachment A. This attachment shows the Capex V21 tab and cell where each change was made, indicates the inventory code, and, in cases where more than one material was required, shows how the Puerto Rico-specific input was derived. PRT believes it likely that many of the other CAM v. 4.0 inputs are also not reflective of actual forward-looking costs in Puerto Rico. However, because of the limited information available about how the CAM v. 4.0 inputs were developed, it is impossible to be reasonably assured that evaluation of many of the inputs is made on an apples-to-apples basis.

Specific Capex V1 PR file that was adapted from the State Specific Capex V1 file currently included with CAM v. 4.0. The State-Specific Capex V1 PR file adds data from Puerto Rico to the existing Virgin Islands data and may be processed by the model using data from either territory using the process described in the Notice.[30] Including the adapted State-Specific Capex V1 PR file into a solution set will allow a user to run a Puerto Rico-specific report by setting the capex input toggle to "State Specific" and the state to "PR" in the model's solution set creation process.

The Puerto Rico-specific inputs provided by PRT were developed from its inventory system.[31] This system tracks the price of each piece of equipment and quantity of material based on an average of the most recent purchase prices. The data found in this system are developed from individual purchase orders and vendor invoices showing the amounts actually paid by PRT for materials to be used in network deployment. They thus provide a reliable source of forward-looking cost of materials for the capex calculation in the model. As discussed earlier, the twenty-seven installation labor input changes were based on PRT's currently effective outside plant labor contracts.

PRT respectfully requests that the Bureau direct CostQuest to run CAM v. 4.0 using Puerto Rico-specific capex information from the State-Specific Capex V1 PR workbook provided by PRT.[32]

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30 PRT has adapted the State-Specific Capex V1 file released by the Commission on December 2, 2013 to add Puerto Rico-specific inputs. *See Notice* at 5.

31 A printout of the Outside Plant materials currently in PRT's materials inventory is in Highly Confidential Attachment A.

32 PRT notes that its representatives discussed the addition of Puerto Rico data to State-Specific Capex V1input file with CostQuest to ensure that the files enclosed herewith could be incorporated successfully into the model.

C. The Revised CAM Continues to Rely on Assumptions Regarding Take Rate that Do Not Comport with Realities in Insular Areas.

Despite repeated requests from PRT and other insular carriers, the CAM continues to assume an 80-percent take rate. That number is simply unrealistic for insular territories like Puerto Rico, where the economy is struggling and personal income levels are extremely low. Indeed, even USTelecom, a staunch supporter of the CAM, agrees that insular areas face unique challenges that require lower take rates.[33] And Puerto Rico's economic situation certainly makes it unique. As the Obama administration observed in a 2011 survey of Puerto Rico, the territory suffered "the sharpest economic contraction on the Island since the late 1980s. Per capita income remains at less than one-third that of the mainland . . . ."[34] And, unfortunately, the Island's struggles likely will continue: the Puerto Rico Planning Board "recently pulled back from a forecast of 0.2 percent growth for the current fiscal year to a prediction of a 0.8 percent contraction."[35] Puerto Rico's economic malaise has resulted in actual take rates ranging from 25 to 35 percent in areas where broadband currently is available, far below the CAM's assumption of 80 percent. This exaggerated take rate assumption inflates the expected per-location revenue used by the model's support module to determine support. The support module assumes that expected revenue from the customer, plus support, is equal to estimated cost. For a given estimated cost, the exaggerated per-location revenue makes it appear that less support is needed. The result is an aggregate support amount that grossly underfunds carriers in low-take rate areas, such as PRT.

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33 *See* Notice of *Ex Parte* Communication of USTelecom, WC Docket 10-90 (filed Oct. 17, 2013).

34 *Report by the President's Task Force on Puerto Rico's Status* (Mar. 11, 2011), *available at* http://www.whitehouse.gov/sites/default/files/uploads/Puerto_Rico_Task_Force_Report.pdf.

35 "Puerto Rico economy shrinking, gov't index shows," REUTERS (Dec. 9 2013), http://www.reuters.com/article/2013/12/09/puertorico-economy-idUSL2N0J710Q20131209.

PRT suggests that the Bureau instead employ a variable take rate that accounts for the unusual circumstances in insular areas. Because take rates can be expected to increase over time, using only terminating take rates overestimates the revenues that can be expected during the funding period.[36] A variable take rate—starting at a reasonable, yet aggressive level such as 50% and gradually tracking customer subscription as it increases over the duration of CAF Phase II—would better comport with reality by matching expected revenues with CAM costs.[37] This method would much better estimate the support required to make CAF Phase II viable in insular areas.

D. The CAM is Based on National Broadband Map Data that is Widely Acknowledged to be Inaccurate and that Underserves Insular Areas.

The CAM continues to rely on the NBM for data regarding broadband deployment, but PRT has shown that this data does not accurately depict the current state of broadband deployment in Puerto Rico.[38] For example, PRT has certified that thousands of locations listed by the NBM as served with broadband Internet at speeds of at least 3 Mbps downstream and 768 upstream actually only have dial-up Internet access available. Indeed, the Commission itself recognized the fundamentally flawed nature of the data when it awarded Puerto Rico Phase I Round 2 funding for areas that showed on the NBM as covered by 3 Mbps downstream and 768 upstream broadband Internet access.[39] As such, because the CAM relies on the seriously flawed

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36 *See* Notice of *Ex Parte* Communication of ABC Coalition, WC Docket No. 10-90 (filed Nov. 20, 2013).

37 *See id.*

38 *See* Letter from Tom Navin, Counsel to Puerto Rico Telephone Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 23, 2013); Letter from Mario R. Barrera, Chief Operating Officer, Puerto Rico Telephone Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 20, 2013).

39 *See Over $32 Million of Connect America Funding Authorized to Connect Unserved Homes and Businesses in Alaska, Hawaii, and Puerto Rico*, Public Notice, WC Docket No. 10-90, DA 13-2103 (rel. Oct. 31, 2013 WCB).

NBM, it significantly underestimates the number of currently unserved locations in Puerto Rico requiring CAF support.

In evaluating the need for broadband funding in Puerto Rico, the Commission cannot simply rely on the NBM because the NBM data lacks the accuracy necessary to be used in the calculation of Puerto Rico's support amount. First, the data contained in the NBM overstates the number of households with broadband connectivity. This is discussed in the *Official April 2013 Update Submission To The National Telecommunications And Information Administration Under The State Broadband Initiative Grant Program For The Commonwealth Of Puerto Rico*, which is the most recent filing of data by Connect Puerto Rico for the NBM. In it, Connect Puerto Rico notes,

> [D]ue to the nature of the SBI data collection methodology as defined by the NTIA and based on both census block geographic units and street segment data, the estimates of broadband availability derived from provider-validated data may include an overstatement of the actual number of households with broadband availability. Under the census block-based data collection method, a provider will typically report broadband availability for an entire census block whether its network is present across the whole or only a subset of that census block. This potential overestimation at the census block level can be amplified as the data is aggregated across the entire island.[40]

This quote acknowledges that the underlying data in NBM is likely overstated and that the overstatement becomes amplified when the entire island is considered. The fact that this flaw is understood and clearly-articulated at the level of the underlying data generation makes the NBM a poor choice for use in funding decisions.

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[40] Connect Puerto Rico, *Official April 2013 Update Submission to The National Telecommunications and Information Administration Under the State Broadband Initiative Grant Program for the Commonwealth of Puerto Rico* at 14 (April 1, 2013) *available at* http://www2.ntia.doc.gov/files/broadband-data/PR-NBM-CSV-Dec-2012.zip (File name PR_Methodology_2013_04_01.pdf).

Not surprisingly, a number of parties have publicly disputed the estimates of broadband availability and speed found in the NBM data. For example, the Wisconsin State Telecommunications Association wrote a report entitled, "Wisconsin's Broadband Internet Availability" which heavily questioned both the speed and availability of broadband for Wisconsin contained in the NBM. The report noted that,

> The National Broadband Map reliance on data that includes "advertised speed" may produce misleading and inaccurate rankings of broadband availability, access, and use because advertisements covering a media market will not and do not translate to actual telecommunications company service availability. They also do not take into account the fine print that may appear in advertisements such as "speeds up to" or "service not available in all areas."[41]

Various parties have communicated directly with the Commission regarding inaccuracies in the NBM. The Governor of Mississippi sent a letter to the Commission, contradicting the information found in the NBM for his state. In that letter, the Governor writes that the NBM, "grossly misrepresents the wireline broadband coverage in Mississippi," which could result in, "unjustly depriv[ing] the citizens of Mississippi of the funding that would be available," if the data were accurate.[42]

In its comments on the Connect America Fund, Windstream also disputes the broadband availability portrayed by the NBM. In those comments, Windstream claims that the NBM shows

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41 *See* Wisconsin State Telecommunications Association, *Wisconsin's Broadband Internet Availability* at 9 (Jan. 2012) *available at* http://c.ymcdn.com/sites/www.wsta.info/resource/resmgr/wisconsin's_broadband_intern.pdf.

42 *See* Letter from Phil Bryan, Governor, State of Mississippi to Julius Genachowski, Chairman, Federal Communications Commission at 1-2, *attached to* Comments of the Mississippi Office of the Governor, WC Docket No. 10-90 (filed Jan. 9, 2013). The population of Mississippi, like Puerto Rico, suffers from extremely low income rates: the 2010 U.S. Census ranked Mississippi 50th and Puerto Rico 51st by per-capita income.

unsubsidized competitors in census blocks in which none actually exist. Specifically, Windstream states that,

> Windstream has gathered aggregated records of customer churn and number porting and has determined that there are a sizeable number of areas that are shown by the National Broadband Map as being served in whole or in part by an unsubsidized competitor but for which Windstream has received zero requests in the past two years from customers for any number ports that include cancellation of the customer's Windstream broadband service. Windstream submits that the complete absence of such a porting request over a reasonable historical period in a given area establishes, at the least, a presumption that there is no competitor providing 3/768 service in the area, and thus any locations within that area should be eligible for CAF Phase I support if the incumbent is not offering access to 4/1 broadband.[43]

In addition to disputing the availability of broadband, commenters have also questioned the speeds shown in the NBM data. For example, the Rural Associations submitted comments on the Connect America Fund pointing out that the collection methodology may also overstate the speeds in a census block. According to their comments, the map may report that an entire census block is served by faster speeds when the majority of the area is served by a lesser speed.[44]

Estimates of broadband availability in the NBM seem overstated for Puerto Rico when compared to other data sources. The Commission produces a report entitled the Internet Access Services Report which uses information contained in responses to the FCC Form 477 regarding Local Telephone Competition and Broadband Reporting.[45] As of December 31, 2012, the

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[43] *See* Comments of Windstream Corporation at 2-3, WC Docket No. 10-90 (filed Jan. 9, 2013).

[44] *See* Comments of NCTA, NECA, OPASTCO, and WTA at 3, WC Docket No. 10-90 (filed Jan. 9, 2013).

[45] *See, e.g.*, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *Internet Access Services: Status as of December 31,*

Internet Access Services Report shows only 42.4 percent of the connections in Puerto Rico with download speeds greater than 3 Mbps and upload speeds greater than 200 kbps.[46] In contrast, the NBM data for Puerto Rico as of December 31, 2012 claims that 94.2 percent of the population is covered by download speeds greater than 3 Mbps and upload speeds greater than 768 kbps.[47] This means that the NBM represents over two times as many connections served with higher speed then the Internet Access Services Report. In light of the numerous questions raised about the veracity of the NBM data, given the huge disparity between the Form 477 data and the NBM figures, the Commission should not accept the NBM statistic about Puerto Rico as being reliable.

Given the likely inaccuracy of the NBM's data with regard to Puerto Rico, it should not be used in determining funding amounts for the island. This conclusion is further supported by data PRT filed during the CAF Phase I Interim Support proceeding showing that (1) 7,521 Puerto Rico census blocks contain at least one household not listed in the NBM data for Puerto Rico; and (2) 593 census blocks listed in the NBM as having speeds in excess of 10 Mbps downstream and 768 Mbps upstream only have dial-up internet access available. As the above discussion indicates these errors are the result of problems with the methodology used to develop the NBM data and, therefore, these data should not be used in determining funding amounts for the island.

III. CONCLUSION

From the start, the Commission has recognized the need to address the "unique circumstance" faced by insular service providers in this proceeding. However, as described

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2012 (December 2013) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-324884A1.pdf.

46 *See id.* at 42, Tbl. 18.

47 *See* National Broadband Map, "Analyze: Summarize: State: Puerto Rico" http://www.broadbandmap.gov/summarize/state/puerto-rico (last visited Sept. 12, 2013).

above and previously by PRT, the proposed CAM does not adequately address the needs of insular areas. While the Bureau has taken steps to try to improve the model, it still fails to accurately reflect the reality of service provision in insular areas, and as a result use of the model would severely underfund broadband deployment in these areas, contrary to the express direction of the Commission and federal policy. Accordingly, PRT urges the Bureau to base its decisions on the Commission's clear instructions and ensure that insular areas are treated fairly during CAF Phase II by either accommodating them through a transparent model or by maintaining their frozen support.

Respectfully submitted,

Francisco J. Silva
Walter Arroyo
PUERTO RICO TELEPHONE COMPANY, INC.

By: *Thomas J. Navin*

Nancy J. Victory
Thomas J. Navin
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Counsel for Puerto Rico Telephone Company, Inc.

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HIGHLY CONFIDENTIAL ATTACHMENT A

[REDACTED FOR PUBLIC INSPECTION]