

Minority Media and Telecommunications Council

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September 12, 2010

Hon. Julius Genachowski, Chairman
Hon. Michael Copps, Commissioner
Hon. Robert McDowell, Commissioner
Hon. Mignon Clyburn, Commissioner
Hon. Meredith Atwell Baker, Commissioner
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Ex Parte
Federal-State Joint Board on Universal Service (CC Docket No. 96-45); High-Cost Universal Service Support (WC Docket No. 05-337); Lifeline and Link-Up (WC Docket No. 03-109); 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 (GN Docket No. 09-137); A National Broadband Plan for Our Future (GN Docket No. 09-51)

Dear Mr. Chairman and Commissioners:

The July 20, 2010 *Sixth Broadband Deployment Report* (“*Broadband Report*”) documented that many areas of our country are still unserved by broadband.¹ In light of this finding, Chairman Genachowski properly and emphatically stated that “when up to 24 million Americans don’t have access to a communications technology that is essential to participation in our 21st Century economy and democracy, I think that is unacceptable.”² We agree that this is unacceptable. And we agree that failing to act now is unacceptable.

¹ *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, A National Broadband Plan for Our Future*, GN Docket No. 09-137, GN Docket No. 09-51, FCC 10-129, Sixth Broadband Deployment Report, 50 CR 1402 (rel. Jul. 20, 2010) (“*Broadband Report*”).

² Genachowski Urges Thrifty USF Overhaul, COMM. DAILY (July 29, 2010) at 6.

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The *Broadband Report* identifies with specificity the areas of our country that lack access to broadband. This is a critical starting point in any effort to bring broadband to all Americans. The report also finds that (1) unserved areas appear to have low-income levels; (2) unserved areas appear to be more rural; and (3) subscription rates are lower in Native Homeland Areas.

The *Broadband Report*, however, has a glaring hole in its analysis. While there is no mention of Puerto Rico in the text of the report, the broadband data appended to the report tells a shocking story: **As broadband is defined by the FCC, there is virtually no broadband service whatsoever in Puerto Rico and four million Hispanic citizens of our country are currently and totally relegated to second class digital citizenship.** The *Broadband Report* also fails to recognize that Puerto Rico, in contrast to other unserved areas, is not rural but rather high density in nature with a dramatically lower income level than other areas. **Since one-sixth of all Americans who lack broadband live in Puerto Rico, and the data shows that Puerto Rico has different challenges from other unserved areas, we call upon you and your fellow Commissioners to recognize these realities by treating Puerto Rico as a priority requiring focused attention.**

Specifically, the *Broadband Report* data shows that:

- 3,954,000 of the 24,042,000 Americans that do not have access to broadband live in Puerto Rico – roughly one sixth of unserved Americans reside in Puerto Rico.³
- The entire population of Puerto Rico lacks access to the advanced broadband services available to other Americans (4 Mbps down and 1 Mbps up) – no areas on the island have such service available.⁴
- The average median household income in Puerto Rico is \$13,189 as compared to \$34,809 for all areas of the United States and \$28,627 for unserved areas generally – by any metric, Puerto Rico has dramatically lower income levels.⁵
- The average population density for Puerto Rico is 1,315.85 as compared with an average for all areas of 283.47 and for unserved areas generally of 138.30 – Puerto Rico is dramatically higher in population density than other unserved areas.⁶

³ *Broadband Report*, Appendix B.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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- The average percentage of rural households for Puerto Rico is 11.5% while the percentage for all areas is 59.1%, and the percentage for unserved areas generally is 72.6% – in contrast other unserved areas, Puerto Rico is not rural in nature.⁷

Given these stark facts, the Commission cannot continue to sit idly by and allow the digital divide between Puerto Rico and the rest of America to grow even wider.

We are hoping the Chairman's recent statement signals an intent to take swift, aggressive steps to address the total lack of broadband in Puerto Rico. We are concerned, however, about the agency's historic disregard of the unique conditions in Puerto Rico. Past commissions have ignored Congress' directive to establish a universal service program for insular areas like Puerto Rico; have forced Puerto Rico into a high cost model that ignores the island's unique insular costs and low income demographics and terminated needed support; and have assumed that universal service is a problem limited to rural areas, not high density areas like Puerto Rico. Only recently has the Commission even collected broadband data regarding Puerto Rico and other insular areas. This second- class treatment of Puerto Rico has contributed to the sorry state of broadband infrastructure deployment contained in the *Broadband Report*.

We are also concerned that your Commission has so far proposed no plan to address the digital divide in Puerto Rico. In response to Congressional inquiries, Chairman Genachowski indicated that Puerto Rico will have to wait for comprehensive USF reform, but that has not been forthcoming in two decades and appears unlikely to be forthcoming anytime soon.⁸ Notwithstanding Puerto Rico having the nation's lowest telephony and broadband penetration rates by far, your National Broadband Plan does not address the situation in Puerto Rico or provide a strategy for remedying it.⁹ Your *Notice of Inquiry and NPRM* concerning a new Connect America Fund (CAF) also does not address the unique needs of Puerto Rico.¹⁰ The *Broadband Report* does not mention Puerto Rico once in the text of the report – the text focuses instead on rural and Tribal areas. Your recent *Seventh Broadband Deployment Report Notice of*

⁷ *Id.*

⁸ See Letters from Julius Genachowski, Chairman, Federal Communications Commission, to The Hon. José Serrano, the Hon. Nydia Velázquez, the Hon. Pedro R. Pierluisi, and the Hon. Luis Gutierrez, dated July 21, 2010, indicating that Puerto Rico ongoing improvement and lasting benefits for Puerto Rico depend on comprehensive universal service fund reform.

⁹ See Federal Communications Commission, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010), available at www.broadband.gov/plan/ (last visited Aug. 9, 2010).

¹⁰ See *Connect America Fund*, FCC 10-53, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (rel. Apr. 21, 2010).

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Inquiry does not mention Puerto Rico.¹¹ And surprisingly, even interactive broadband maps posted recently on the FCC website do not contain data for Puerto Rico – instead depicting the island similarly to areas outside of the U.S., like Cuba and Mexico.¹²

You even recently missed a golden opportunity to stimulate the deployment of broadband infrastructure in Puerto Rico. In April, you reversed a tentative conclusion of the prior Commission to establish universal service funding for insular areas, despite the Puerto Rico Telephone Company's commitment to use the funding to deploy much needed broadband infrastructure on the island.¹³ You acted despite the support of the Representative for Puerto Rico, the Chair of the Financial Services Subcommittee of House Appropriations Committee, the Chair of the House Small Business Committee, the Chair of the Puerto Rico Telecommunications Regulatory Board, and numerous Latino advocacy groups, and civil rights organizations including MMTC. This decision is unsupportable against the clear facts concerning the state of telecommunications and the poor economic situation in Puerto Rico, and it stands in stark and irreconcilable contrast with the Commission's decision – on the same day – to grant such supplemental support to Wyoming.¹⁴

¹¹ 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*, GN Docket No. 10-159, FCC 10-148, Seventh Broadband Deployment Notice of Inquiry (rel. Aug. 6, 2010).

¹² See <http://www.broadband.gov/maps/availability.htm> (last visited Aug. 10, 2010).

¹³ See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, FCC 10-57, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136 (rel. Apr. 16, 2010) (“2010 Insular Order”); see also *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (reaching tentative conclusion to 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).

¹⁴ *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, FCC 10-56 (rel. Apr. 16, 2010) (“Wyoming USF Order”). In the *2010 Insular Order*, the Commission – for the first time, and contrary to its own precedent – determined that it should assess the availability of wireless services in evaluating whether to establish a universal service mechanism for insular areas. By contrast, the companion *Wyoming USF Order* followed previous Commission decisions and thus focused predominantly on wireline providers' costs of serving the supported service areas in Wyoming. At bottom, the Commission decided to relegate Puerto Ricans to fewer communications choices than residents of Wyoming and other states by effectively

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Further, the alternative you offered – a *Notice of Inquiry* laying out a proposal to provide to certain low income customers a small one-time Link Up subsidy – does nothing to advance the building of infrastructure in Puerto Rico. Simply stated, a small subsidy to users is useless if no facilities or services exist. It’s not even weak tea, but rather no tea at all for the broadband thirsty.

Fortunately, you have within your power the ability to act and act now to correct this mistake and to begin the building of broadband infrastructure for the people of Puerto Rico. There is a pending petition for reconsideration of your rejection of the insular proposal that has been supported by the Congressional Hispanic Caucus, the Puerto Rico Telecommunications Regulatory Board, two telecommunications providers in Puerto Rico, and a broad coalition of national consumer, Latino, minority and civil rights organizations, including MMTC.¹⁵ The Commission can take a substantial step toward digital equality by granting the petition’s request to establish an insular fund and accepting the Puerto Rico Telephone Company’s commitment to use the monies to fund broadband infrastructure. Doing so would jumpstart the construction of broadband infrastructure in Puerto Rico immediately and facilitate a much-needed economic stimulus to the people of the island.

Mr. Chairman and Commissioners, you have embarked on a mission of vital importance to our country. You have committed yourself to ensuring that broadband reaches all Americans. We urge you to move now to begin realizing that vision by directing focused attention to one of the most glaring of all broadband inequities. The people of Puerto Rico need and deserve your support if they are ever to participate in our 21st century economy and democracy. Anything less is unacceptable.

deciding that wireline service in Puerto Rico is not worthy of support by virtue of the presence of wireless alternatives. But wireless broadband alternatives do not provide the far-reaching public interest benefits of wireline solutions. 12,000 foot-loop-DSL provides, among other things, an optimal path for transitioning to faster broadband services. As the Commission explained in the Connect America Fund proceeding, “in order to provide faster speeds..., DSL operators can bond loops and continue to shorten loop lengths ... Investment in 12 kft DSL ,therefore, provides a path to future upgrades, whether the upgrade is to 5 kft or 3 kft loops or FTTP.” See “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1, FCC, at 85, available at Appendix C of *Connect America Fund*, Notice of Inquiry, FCC 10-58 (rel. Apr. 21, 2010). Further, since “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.*

¹⁵ See Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 (filed Apr. 27, 2010).

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Sincerely,

A handwritten signature in black ink, appearing to read "David Honig". The signature is fluid and cursive, with a large initial "D" and "H".

David Honig
President and Executive Director