

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

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

COMMENTS OF:

**COMMUNICATIONS WORKERS OF AMERICA
DIALOGUE ON DIVERSITY
THE HISPANIC INSTITUTE
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
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I. INTRODUCTION AND SUMMARY

The above-referenced ten national organizations (“Commenters”) support the Petition for Reconsideration of the Commission’s *Insular Order* filed by Puerto Rico Telephone Company, Inc. (“PRT”).¹ As PRT has demonstrated, the *Order* unlawfully treats the people of Puerto Rico as second-class citizens. In failing to fulfill its statutory duty to adopt a specific insular mechanism, the Commission arbitrarily determines not to provide sufficient support for Puerto Rico’s wireline infrastructure even though it provides such support throughout the rest of the nation. In the place of such support, the Commission proposes to provide an additional \$70 in Link Up support, which is well below what Puerto Rico needs for infrastructure deployment and upgrades. The *Order* therefore leaves Puerto Rico, which has, by far, the nation’s poorest population and lowest telephone and broadband penetration rates, to fall even further behind the rest of the United States. And, as a result, telecommunications and information services that are by no means “reasonably comparable” to those in urban areas will continue to persist in Puerto Rico in violation of Section 254 of the Communications Act, 47 U.S.C. § 254.

Given the substantial existing hurdles to increasing broadband deployment and subscribership in Puerto Rico, the Commission’s *Order* suggests that the Commission is not serious about improving broadband access in Puerto Rico. But even beyond broadband, the *Order* opens the door to potential harmful policy implications, such as

¹ 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) (“PRT Petition” or “Petition”); *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*”).

redlining to deny poor populations the benefits of broadband, that the Commission must work to prevent. Moreover, the Commenters, which include representatives from a broad range of the Latino community, are deeply concerned that the *Order* does not uphold the Commission's duty to ensure that all people of the United States have access to telecommunications services. For all of these reasons, the Commenters request that the Commission reconsider its *Order* as requested by PRT.

II. THE ORDER UNLAWFULLY TREATS THE PEOPLE OF PUERTO RICO AS SECOND-CLASS CITIZENS.

The *Order* ignores the plain terms of Section 254 and the Commission's own past statements by failing to adopt an insular-specific mechanism to treat Puerto Rico in a comparable manner to other areas of the country where costs of providing service are elevated. By denying Puerto Rico support based on the costs of wireline infrastructure, the *Order* arbitrarily treats Puerto Rico differently than the rest of the nation. Rather than provide such support, the Commission proposes to provide a small amount of additional Link Up support that will do virtually nothing to increase broadband or telephone subscribership in Puerto Rico. The Commission takes these actions even though Puerto Rico experiences unique deployment challenges due to its insular nature and poor population, which make it particularly deserving of high cost support. Without support based on the costs of wireline infrastructure, the digital divide between Puerto Rico and the rest of the nation will continue to persist and to widen. As such, the Commission should grant PRT's Petition and end its unlawful and disparate treatment of the people of Puerto Rico as second-class citizens.

A. Section 254 Mandates That the Commission Adopt an Insular Mechanism.

The Commenters support PRT’s Petition because Section 254 mandates that the Commission adopt an insular-specific support mechanism, as it already has for both rural and high cost areas. Section 254(b) provides that the Commission “shall” ensure that “Consumers in all regions of the Nation, including low-income consumers, and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas. . . .”² As PRT notes, 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.³

Indeed, the Commission has previously acknowledged this mandate in 2005 when it unanimously tentatively concluded to adopt an insular mechanism that would address the grave disparities in access to telephone services in non-rural insular areas like Puerto Rico.⁴ The Commission recognized 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.”⁵ And to satisfy this mandate, the Commission determined to adopt “a special support mechanism, in combination with the

² 47 U.S.C. § 254(b).

³ PRT Petition at 4 (citing *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

⁴ 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”).

⁵ *Id.*

Commission’s low-income program, [to] help to combat the problem of low subscribership in Puerto Rico.”⁶ But contrary to these previous conclusions, the *Order* reversed course and determined not to adopt an insular mechanism.

B. The Order Arbitrarily Treats Puerto Rico Differently From the Rest of the Nation.

The *Order* arbitrarily treats Puerto Rico differently from the rest of the nation by determining that the people of Puerto Rico need not have access to wireline infrastructure. The *Order* finds that additional high cost loop support is not required in insular areas like Puerto Rico due primarily to the fact that, as the *Order* states, “the wireless subscription rate in Puerto Rico has grown substantially.”⁷ The Commission has never previously determined for any other state or U.S. jurisdiction that “a decline in wireline subscribership . . . is not determinative” with respect to access to universal service support.⁸ Aside from the fact that this determination directly contradicts the FCC’s past findings that mobile wireless service and wireline telephone services are not perfect substitutes,⁹ it places Puerto Rico at a severe disadvantage compared to the rest of the nation. Indeed, as the Minority Media & Telecommunications Council and others previously stated on this record, wireless services are no substitute for access to wireline infrastructure that is critical to access to advanced communications.¹⁰

⁶ *Id.*

⁷ *Insular Order* ¶ 33.

⁸ *Id.* ¶ 27.

⁹ PRT Petition at 11.

¹⁰ *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,

Moreover, on the same date that the Commission denied relief to Puerto Rico, it granted additional monies based on wireline costs in Wyoming¹¹ despite Puerto Rico's far more compelling demographic characteristics. For instance, Wyoming has just approximately one-eighth the population of Puerto Rico.¹² And Wyoming is also substantially wealthier than Puerto Rico: Just 9.4 percent of the population in Wyoming lives below the poverty line (which is less than the national average) unlike an enormous 44.8 percent in Puerto Rico.¹³ Wyoming's per capita income is also above the national average and well above that in Puerto Rico.¹⁴ What is more, Wyoming's telephone penetration rate is 98.7 percent – above the national average and almost 7 percent higher

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).

¹¹ *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 ¶ 84 (rel. Apr. 16, 2010) ("Qwest Remand Order").*

¹² The most recent population estimates show that Wyoming's population is 522,833 compared with 3,940,626 in Puerto Rico. *See Puerto Rico & Wyoming Selected Population Profile 2006-2008, American Fact Finder, available at <http://factfinder.census.gov/>.*

¹³ 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>.*

¹⁴ 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 Wyoming, is \$27,873. *See United States Selected Economic Characteristics 2009, American Community Survey, American Fact Finder, available at <http://factfinder.census.gov/>.*

than that in Puerto Rico.¹⁵ The *Order's* disparate treatment of Puerto Rico compared to other U.S. jurisdictions cannot be the outcome of reasoned decisionmaking.

C. The Order Allows Telecommunications and Information Services Options That Are Not “Reasonably Comparable” to Those in Urban Areas to Persist in Puerto Rico.

Rather than promote telecommunications and information services in insular areas that are “reasonably comparable” to those in urban areas as Section 254(b) requires, the *Order* will cause telecommunications and information services in Puerto Rico to fall even farther behind by continuing policies that preclude necessary capital investment. Puerto Rico’s telephone penetration rate under any measure lags far behind the mainland U.S.¹⁶ And, as PRT, points out, the Commission has relied on statistically unreliably data, a product itself of discriminatory treatment toward Puerto Rico, to determine that the telephone penetration rate in Puerto Rico had substantially increased.¹⁷ The *Order* also failed to address adequately evidence which showed that Puerto Rico suffers uniquely because of significant lack of wireline infrastructure throughout many areas in Puerto Rico. In particular, as PRT notes, 200,000 households lack access to wireline infrastructure.¹⁸ The people of Puerto Rico have never enjoyed ubiquitous access to wireline infrastructure, which is critical not only to telephone services but to advanced

¹⁵ See *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”).

¹⁶ See *Insular Order* ¶20 (citing a telephone penetration rate for Puerto Rico that is more than 6 percentage points below the national average).

¹⁷ PRT Petition at 12-13.

¹⁸ See *id.* at 14.

communications and broadband deployment, the way the rest of the nation has. Now the *Order* ensures that Puerto Rico will continue to lag behind.

D. The Commission’s Proposal to Provide an Additional \$70 in Link Up Support Fails to Satisfy Section 254 and Will Not Improve Telephone or Broadband Subscribership in Puerto Rico.

While denying Puerto Rico any meaningful support for wireline infrastructure, the Commission proposes instead to provide an additional \$70 of Link Up support for a maximum subsidy of \$100 per eligible low-income customer.¹⁹ This proposal falls well short of the Commission’s statutory mandate under Section 254 to support infrastructure deployment in insular areas. Additional telephone service initiation support is insufficient to cover the costs of line extensions to unserved areas in Puerto Rico or to relieve broader affordability problems for low-income consumers in the Commonwealth.

The construction costs of extending lines to eligible individuals in unserved areas – made even greater by the additional costs faced in insular areas – will always significantly exceed the maximum available subsidy of \$100. Additionally, unlike a loop support mechanism that averages network construction costs over a larger base of customers, the Link Up proposal fails to facilitate infrastructure deployment because it does not accommodate basic network engineering efficiencies that seek to reduce costs by constructing new plant at the community-level, regardless of whether all of the individuals in a community are eligible for Link Up support.

Moreover, the Commission’s proposal ignores the historically poor results of the Link Up program in Puerto Rico. To date, the program has done little to help poor communities gain access to modern communications networks. Despite the fact that

¹⁹ See *Insular Order* ¶¶47-52.

eight eligible telecommunications carriers, including three wireline carriers, can offer Link Up services in Puerto Rico, disbursements to Puerto Rico over the last several years have ranged from \$200,000 – \$880,000—well below the amount required to support infrastructure deployment and expansion in Puerto Rico.²⁰ As such, the limitations of Puerto Rico’s existing wireline infrastructure demand that Puerto Rico receive high cost support targeted effectively to its needs as an insular area.

E. Puerto Rico is Particularly Deserving of Support.

The *Order* does not adequately address the unique needs of insular areas like Puerto Rico. The record clearly demonstrates that Puerto Rico is particularly deserving of universal service support. PRT has demonstrated in its Petition and throughout the proceeding that insular carriers face very high operational costs related to shipping and the island’s topography and climate.²¹ Aside from these high insular-specific costs, almost half of Puerto Rico’s residents live below the poverty line, and the average per capita income is just one-third of the national average. These staggering economic indicators, coupled with the formidable challenges in serving Puerto Rico, merit federal assistance with the high costs of loop deployment that takes into account the unique circumstances of insular areas like Puerto Rico. As Commissioner Copps explained, “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

²⁰ See Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 at 11 (filed June 7, 2010).

²¹ See PRT Petition at 17.

national median household income—create a unique situation which should not be overlooked any longer. More is needed here.”²²

In sum, the *Order* ignored the Commission’s congressional mandate and record evidence of the unique needs of insular areas and instead took an unprecedented step to determine that the people of Puerto Rico need not have access to wireline infrastructure that the rest of the country enjoys. Thus, the *Order* unlawfully treats the people of Puerto Rico as second class citizens and must be reconsidered as PRT petitions.

III. THE ORDER SUGGESTS THAT THE FCC IS NOT SERIOUS ABOUT IMPROVING BROADBAND IN PUERTO RICO.

Even though the people of Puerto Rico have already waited fourteen years for congressionally mandated universal service support, the *Order* asks them to wait even longer until the Commission engages in further study of universal service reform. There is no debate that there is an identifiable problem with communications deployment in Puerto Rico. Rather than take some action to begin to ameliorate this unfairness, as required by the 1996 Act, the Commission proposes to further study the issue in yet another protracted proceeding. This action strongly suggests that the Commission is not serious about improving broadband services in Puerto Rico.

Because broadband services rely on the wireline infrastructure for build-out, the *Order* condemns the people of Puerto Rico to a future of substandard broadband service. Even the National Broadband Plan recognizes that wireless broadband services will not be a perfect substitute for wired services for the foreseeable future. Yet, the *Order* does

²² *Insular Order* at 41 (Concurring Statement of Commissioner Copps).

not support wireline infrastructure.²³ As PRT notes, the Commission’s data indicate that Puerto Rico already lags far behind the rest of the nation in broadband availability and deployment.²⁴ The *Order* also ignores the voluntary commitments made by PRT to use high cost funding to build out and improve broadband infrastructure. Thus, by denying Puerto Rico support that would have led directly to increased wireline investment and further delaying – perhaps infinitely – the receipt of funds for wireline infrastructure support in Puerto Rico, the *Order* demonstrates a lack of commitment to improving broadband access in Puerto Rico.

IV. THE ORDER COULD ALSO HAVE BROADER, HARMFUL POLICY IMPLICATIONS FOR PUERTO RICO AND OTHER LOW INCOME AREAS, SUCH AS REDLINING.

The *Order* could result in broader, harmful policy implications for Puerto Rico and other low-income areas, such as redlining – the practice of avoiding the provision of service to low-income areas, which is clearly contrary to the Communications Act’s goals. The Commission has noted in the past that it “is deeply committed to ensuring that broadband and advanced services are deployed to all Americans, regardless of their race, ethnicity, or income level” and that “[d]eployment of facilities or the provision of services in a discriminatory manner would be contrary to section 1 of the

²³ “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>.

²⁴ See PRT Petition at n.25.

Communications Act and the fundamental goal of the 1996 Act to bring communications services ‘to all Americans.’”²⁵

By denying Puerto Rico support, the *Order* adopts the stunning position that wireline service is not necessary if wireless service is available for some classes of consumers. This inherently discriminatory treatment is completely antithetical to the principles upon which universal service was founded. Indeed, this suggests that it would be allowable for a company to cease its wireline operations or decline to deploy broadband to certain areas that are economically challenged or less cost-effective to serve as long as wireless service is available. Such a result cannot be tolerated and should be avoided through reconsideration and reversal of the *Order*.

V. THE COMMENTERS, WHICH INCLUDE A BROAD RANGE OF REPRESENTATIVES FROM THE LATINO COMMUNITY, ARE TROUBLED BY THE ORDER.

Congress created the FCC for the express purpose of ensuring that “all the people of the United States” have comparable access to telecommunications services “without discrimination on the basis of race, color, religion, national origin, or sex.”²⁶ The *Order’s* treatment of Puerto Rico illustrates that the Commission has failed to fulfill one

²⁵ Applications for Consent to the Assignment &/or Transfer of Control of Licenses Adelpia Communications Corp., Assignors, to Time Warner Cable Inc., Assignees Adelpia Communications Corp., Assignors & Transferors, to Comcast Corp., Assignees & Transferees Comcast Corp., Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶210 (2006) (citations omitted); see also Application of Worldcom, Inc. & MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to Worldcom, Inc., Memorandum Opinion and Order, 13 FCC Rcd 18025 ¶208 (1998); Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 As Amended by the Cable Television Consumer Prot. & Competition Act of 1992, 22 FCC Rcd 5101 ¶92 (2007).

²⁶ 47 U.S.C. §151 (the phrase “on the basis of the basis of race, color, religion, national origin, or sex” was added in the 1996 Telecommunications Act.)

of its most important duties. The Commenters, which include a broad range of representatives from the Latino community, is therefore troubled by the *Order* and questions whether the FCC has lived up to its commitment to ensure that Latinos have comparable access to telecommunications services. Given the substantial evidence in the record showing that the people of Puerto Rico do not enjoy the same basic telephone services that the rest of the nation enjoys, the Commenters believe that the Commission should reconsider and reverse its decision.

VI. CONCLUSION

For the foregoing reasons, the Commenters support PRT's Petition for Reconsideration of the *Insular Order*.

Respectfully submitted,



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