

**Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
AND THE U. S. DEPARTMENT OF AGRICULTURE
Washington, DC**

In the Matter of:

Docket No. 090309298-9299-01

Joint National Telecommunications and Information
Administration and Rural Utilities Service Request for
Information

COMMENTS OF THE PUERTO RICO TELEPHONE COMPANY, INC.

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. NTIA SHOULD DETERMINE BY RULE THAT IT IS IN THE PUBLIC INTEREST FOR FACILITIES-BASED BROADBAND SERVICE PROVIDERS TO RECEIVE FUNDING	4
III. An “Unserved” AREA Should Be Defined as Any Area of the Country THAT IS Not Served by a Terrestrially-Based Tier 1 Basic Broadband Provider	6
IV. NTIA Should Give Priority To Those "Unserved" and “underserved” Areas That Are In Particularly Poor Areas of the Nation.....	8
V. NTIA SHOULD NOT ADOPT ANY ADDITIONAL NONDISCRIMINATION AND INTERCONNECTION CONDITION ON THE BROADBAND GRANTS BEYOND COMPLIANCE WITH THE FCC’S CURRENT BROADBAND POLICY STATEMENT	10
VI. CONCLUSION.....	13

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I. INTRODUCTION AND SUMMARY

The Puerto Rico Telephone Company, Inc. (“PRT”) hereby respectfully submits these comments in response to the Department of Commerce – National Telecommunications and Information Administration’s (“NTIA”) and the Department of Agriculture – Rural Utilities Service’s (“RUS”) Joint Request for Information and Notice of Public Meetings.¹ The broadband funding provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”) ² give the United States an important opportunity to address the imbalance in broadband deployment in areas like Puerto Rico that have been left behind, in part, because of federal funding neglect.³ As the FCC recently recognized, these areas of the country “have very

¹ *Joint Request for Information and Notice of Public Meetings*, 74 Fed. Reg. 10,716 (March 12, 2009). These comments focus primarily on NTIA’s Broadband Technology Opportunities Program.

² Pub. L. No. 111-5 (2009), § 6001(e)(1)(A) (including “a territory or possession” of the United States).

³ *See Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (*Insular USF NPRM*).

different attributes and related cost issues than do the continental states.”⁴ To effectively implement the ARRA, NTIA, like the FCC, must recognize the unique conditions and challenges that exist in these areas of the country and ensure the implementation of the ARRA addresses their very real needs.

Indeed, unique characteristics, including intense poverty and the challenges inherent in serving an island population, warrant giving particular attention to the broadband access needs of Puerto Rico’s “unserved” and “underserved” populations. Currently, the Commonwealth has less than half the broadband penetration of most other states in the Nation, including other insular areas.⁵ This low rate of broadband penetration results from a combination of an extremely poor population and, as the FCC has recognized, high development costs for telecommunications infrastructure given the increased costs associated with serving an insular

⁴ *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, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, ___ FCC Rcd ___ at A-9, ¶ 13 (rel. Nov. 5, 2008) (*USF NPRM*).

⁵ Puerto Rico has approximately 3.9M people and only 413,332 residential broadband lines or 10% per capita penetration. See Census Bureau Data, available at www.census.gov/compendia/statab/tables/09s1272.xls; High-Speed Services for Internet Access: 1/09 Release, available at <http://www.fcc.gov/wcb/iatd/comp.html> (FCC High Speed Services Report). By way of comparison, Delaware, a state of a similar geographic size, has a population of approximately 864,764 and 223,672 broadband lines or 26% penetration. See Census Bureau Data, available at <http://quickfacts.census.gov/qfd/states/10000.html>; FCC High Speed Services Report at Table 13. Hawaii, another insular area, has approximately 26% per capita penetration (1.28M people and over 338,668 broadband lines). See Census Bureau Data, available at <http://quickfacts.census.gov/afd/states/10000.html>; FCC High Speed Services Report at Table 13.

area with mountainous, tropical terrain. Accordingly, Puerto Rico is the poster child for need-based federal funding for the development of broadband infrastructure.

To accomplish the objectives of the ARRA, NTIA and RUS must ensure that the needs of deserving areas such as Puerto Rico are effectively met through the implementation of the broadband programs. To ensure that the “unserved” and “underserved” areas of the Commonwealth are adequately addressed, PRT makes four fundamental recommendations. First and foremost, NTIA should issue a rule that permits facilities-based broadband service providers to be eligible to receive NTIA grants. These entities have a proven track record, extensive technical expertise and familiarity with the area to be served, and are in the best position to ensure the swiftest and most effective deployment of broadband infrastructure. Excluding them from funding opportunities would be contrary to the goals of the ARRA. Second, the definition of “unserved” areas should include any area of the United States and its territories that is not currently served by a terrestrial-based broadband provider capable of delivering, at a minimum, 768 kbps broadband access in at least one direction. Third, the NTIA should give funding priority to “unserved” areas that are in particularly poor regions of the United States and its territories, as defined by Census Bureau data on average incomes. Finally, the NTIA should not adopt any additional nondiscrimination and interconnection conditions beyond the FCC’s current Broadband Policy Statement concerning Internet policy. Each of these recommendations is discussed in turn below.

II. NTIA SHOULD DETERMINE BY RULE THAT IT IS IN THE PUBLIC INTEREST FOR FACILITIES-BASED BROADBAND SERVICE PROVIDERS TO RECEIVE FUNDING

The ARRA provides that, in addition to states and similar governmental entities, political subdivisions thereof, and non-profits, “any other entity, *including a broadband service or infrastructure provider*, that the Assistant Secretary finds by rule to be in the public interest” shall be eligible for receipt of Broadband Technology Opportunities Program (“BTOP”) grant funding.⁶ Congress therefore expressly directed NTIA to consider, and when appropriate award, grant funding to a broadband service or infrastructure provider whose contributions resulting from the award of the grant are in the public interest.⁷ Further, the Conference Report for the legislation states unequivocally that wireless and wireline carriers, among others, should be eligible for funding.⁸ This makes tremendous sense because, facilities-based broadband providers, such as existing wireless and wireline carriers like PRT, are likely to be the ones best equipped to efficiently and effectively deploy infrastructure in an expeditious matter. Ensuring that monies are made available to such entities is plainly consistent with the intent of the ARRA.

Further, the public interest clearly requires that such entities be eligible for funding. The public interest is advanced by ensuring that BTOP monies made available under the ARRA

⁶ ARRA, § 6001(e) (emphasis added).

⁷ H. Report No. 111-6, at 775 (2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr016.111.pdf (Conference Report) (endorsing “a new, broad definition of entities that are eligible to receive grants. It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, public-private partnerships, and tower companies.”); *see also id.* at 774 (explaining that NTIA will select “grant recipients that it judges will best meet the broadband needs of the area to be served, whether by wireless provider, wireline provider, or any provider offering to construct last-mile, middle-mile, or long haul facilities”).

⁸ *Id.*

result in the swift and effective deployment of broadband to unserved and underserved areas of the country. It is essential that these monies not be squandered, but rather provided to proven, competent entities who can move quickly to make the appropriate and necessary investments in our country's broadband future. Existing facilities-based broadband providers are plainly such entities.

Facilities-based broadband providers are the entities with the most relevant expertise to carry out the projects contemplated under the ARRA's broadband programs. Such companies already have extensive experience with broadband deployment and thus possess the necessary technical expertise to assess the most appropriate and cost-effective broadband technology to serve a given area and to then deploy that infrastructure so it works effectively. Existing broadband providers also likely already understand customer needs in a given area as well as the particular challenges and costs associated with serving certain geographic locales. They are thus in the best position to incorporate those key elements into workable broadband deployment plans that can be completed on budget. Such providers may also be able to leverage existing assets and capabilities in or adjacent to a given unserved or underserved area to provide more cost-effective implementation.

Existing facilities-based broadband providers additionally have a proven record of performance with respect to broadband deployment. The public interest plainly demands that the broadband funding be distributed responsibly and with accountability to ensure that taxpayer money is invested wisely and not squandered. Broadband providers have a reviewable record of performance with respect to broadband infrastructure that other entities do not possess. Awarding grant monies to existing providers with eligible deployment plans thus represents a

sound and responsible investment through which the legislation's goals are most likely to be realized.

Finally, existing facilities-based broadband providers are the entities best able to effect the deployment of broadband to unserved and underserved areas rapidly so as to meet the needs of consumers in these areas as quickly as possible. Devising appropriate broadband plans for particular geographic areas and deploying them cost-effectively is part of the day-to-day business of such providers. They can mobilize quickly to design the project and then rapidly to implement it – achieving the ARRA's goal of swift broadband deployment. Some of the other eligible applicants under the legislation, like government entities and nonprofits, will not be able to move as quickly as they will need to locate and contract for the necessary technical, planning and implementation capabilities. With an existing broadband provider applicant, there is no middleman. Rather, funding can go directly to the entity with the expertise and experience to implement the project – resulting in faster broadband availability to consumers and more cost-effective implementation.

For these reasons, achieving the goals of the ARRA and promoting the public interest requires that existing facilities-based broadband providers be eligible applicants under the BTOP program. These experienced, proven entities are in the best position to ensure the taxpayer's investment delivers a bright broadband future for consumers in unserved and underserved areas.

III. AN “UNSERVED” AREA SHOULD BE DEFINED AS ANY AREA OF THE COUNTRY THAT IS NOT SERVED BY A TERRESTRIALLY-BASED TIER 1 BASIC BROADBAND PROVIDER

Section 6001(a) of the ARRA instructs NTIA to establish the BTOP “in consultation” with the Federal Communications Commission.⁹ Indeed, the Conference Report encourages

⁹ ARRA, §6001(a).

NTIA to “coordinate its understanding of [the term, broadband] with the FCC.”¹⁰ Section 6001(b)(1) states as the first purpose of the new program “to ... provide access to broadband service to consumers residing in unserved areas of the United States[.]” NTIA should follow the FCC’s recent decision to establish a new threshold for “basic broadband” as a minimum of 768 kbps in at least one direction.¹¹ In turn, NTIA should define “unserved” areas under the ARRA to be those areas that do not have access to a terrestrially-based broadband provider that provides a minimum of 768 kbps in at least one direction. Although this speed is significantly less than the broadband speeds offered to most consumers in the mainland United States, this minimum threshold would lead to a significant improvement in broadband access deployment in an areas like Puerto Rico where so many still have no terrestrial broadband options today. Equally important, NTIA should ensure that its BTOP funding goes first to “provide access to broadband services” to consumers in “unserved” areas of the United States and its territories.¹²

For incumbent telephone companies like PRT, Digital Subscriber Line ("DSL") broadband availability is mainly determined by the overall distance from a Digital Subscriber Line Access Multiplexer ("DSLAM") (which is normally in the central office in which the DSL signal originates) to the consumer's residence where the signal is received. The farther a consumer is from the DSLAM, the less likely he or she will be able to get DSL service. Because

¹⁰ Conference Report at 776.

¹¹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9700, ¶ 20 n. 66 (2008). Although the FCC has not technically updated its definition of “broadband” since 1999, this Order recognized the need to evolve its speed thresholds for reporting purposes.

¹² ARRA, § 6001(b) (“The purposes of the program are to ... (1) provide access to broadband services to consumers residing in unserved areas of the United States”).

of the technical limitations inherent in its long loop lengths, many of PRT's voice customers today have no broadband alternatives. As described in detail below, PRT has a large number of long loops because of the geographic, economic, climatic, and demographic challenges.¹³ NTIA must ensure that its implementation of the ARRA assists the thousands of consumers in Puerto Rico that have no access to terrestrial broadband today. Without an emphasis on initial broadband infrastructure deployment, NTIA will fail to achieve the most basic goal of the ARRA – which is to ensure that all consumers first have some access to basic broadband services.

IV. NTIA SHOULD GIVE PRIORITY TO THOSE "UNSERVED" AND "UNDERSERVED" AREAS THAT ARE IN PARTICULARLY POOR AREAS OF THE NATION.

NTIA should give priority to “unserved” and “underserved” areas in poor regions of the nation, as defined by the Census Bureau’s data on median income levels. Although the Telecommunications Act of 1996 requires that every American have access to affordable telecommunications services¹⁴ too many residents of Puerto Rico and other poor areas presently have limited or no telecommunications services at all.

For example, a large number of consumers in Puerto Rico have no access to wireline communications capabilities whatsoever.¹⁵ Basic telephone subscribership levels on the island

¹³ See *infra* Section III.

¹⁴ 47 U.S.C. § 254(b)(3); see also *Federal-State Joint Board on Universal Service*, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8096-97, ¶ 39 (1999) (“all Americans, regardless of income, should have access to the network at reasonably comparable rates”).

¹⁵ The FCC has historically given special consideration to insular areas and tribal regions given that they are often unserved or underserved. See e.g., *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, 21180, ¶ 5 (1999) (noting that telephone penetration rates among low-income consumers,

are approximately 80 percent (while mainland telephone subscribership exceeds 95 percent on average).¹⁶ Some of the more isolated geographic areas and communities in Puerto Rico have telephone subscribership rates as low as 50 percent.¹⁷ And approximately 200,000 households have no access whatsoever to telephone service due primarily to a lack of infrastructure.¹⁸

This situation results from widespread poverty in combination with the high cost of building and maintaining telecommunications infrastructure in Puerto Rico. Puerto Rico's rural interior is mountainous and sparsely populated.¹⁹ The dispersed nature of the population results in much longer loop lengths and difficult installations for many areas of the island. Moreover, this dispersed population often must be reached by circumnavigating dense tropical vegetation. The insular nature of the island also imposes substantial additional costs to ship and store materials, not to mention the cost of delay while needed materials are in transit to the island. All facilities-based providers must overcome geographic, climatic, economic, and demographic issues to construct telecommunications infrastructure and deliver service in Puerto Rico. To do so is very challenging and costly.

Without federal assistance, these high costs must be recovered from a resident population with a very low average income level, whose median household income is just \$20,425 (versus

and in insular, high-cost, and tribal lands lag behind the penetration rates of the rest of the country).

¹⁶ *Telephone Subscribership in the United States*, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289169A1.pdf.

¹⁷ *See ex parte* letter from Bennett L. Ross, Wiley Rein, LLP, to Marlene Dortch, Secretary, FCC, dated Aug. 8, 2008.

¹⁸ *Id.*

¹⁹ Puerto Rico has three urban areas. The rest of the population lives in low-density rural regions. Comments of Puerto Rico Telephone Company, Inc., *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, at 4-5 (filed Dec. 17, 1999).

the mainland average of \$58,526).²⁰ That is, per capita income in Puerto Rico is half that of the poorest state and close to half of Puerto Rico's residents live below the poverty line.²¹

Because of the collective low income of Puerto Rico residents, the very high costs of deploying broadband in certain areas of Puerto Rico cannot be recouped from customers. The BTOP program provides the only viable means for funding broadband infrastructure in such areas. It is thus essential that unserved areas in particularly poor areas of the country, like Puerto Rico, receive priority in the grant process.

V. NTIA SHOULD NOT ADOPT ANY ADDITIONAL NONDISCRIMINATION AND INTERCONNECTION CONDITION ON THE BROADBAND GRANTS BEYOND COMPLIANCE WITH THE FCC'S CURRENT BROADBAND POLICY STATEMENT.

The ARRA requires that NTIA "shall, in coordination with the FCC, publish nondiscrimination and network interconnection obligations that shall be contractual conditions of grant awards, including, at a minimum, adherence to the principles contained in the FCC's broadband policy statement."²² NTIA should define the nondiscrimination and network interconnections obligations that will be contractual conditions of broadband grants consistent with the existing law.

The existing regulatory framework will adequately ensure that the purposes of the ARRA are met without creating new regulatory burdens that will deter broadband investment. Under Title II of the Communications Act, common carriers are prohibited from engaging in

²⁰ Census Bureau Data, *available at* http://www.census.gov/Press-Release/www/releases/archives/american_community_survey_acs/011755.html.

²¹ Puerto Rico Census Data, *available at* <http://www.puertorico.com/forums/politics/21807-census-puerto-rico.html>.

²² ARRA § 6001(j).

unreasonable discrimination, and an interconnection obligation exists for all telecommunications carriers.²³ Additionally, the FCC’s *Broadband Policy Statement* – which applies to broadband service providers – sets forth principles that “preserve and promote the vibrant and open character of the Internet.”²⁴ As such, existing common carrier and broadband access regulations are sufficient to satisfy the ARRA’s nondiscrimination and network interconnection obligations.

In addition, the FCC’s *Broadband Policy Statement* serves to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers, and thereby protects consumers, providers, and network operators from anticompetitive and destructive conduct.²⁵ The *Broadband Policy Statement*, which was adopted by two Democratic and two Republican Commissioners, reflects carefully calibrated principles that preserve and promote the vibrant and open character of the Internet while ensuring that regulation does not act to discourage broadband providers from building the very networks that the principles seek to protect. To maintain this balance, the non-discrimination and interconnection obligations imposed by the NTIA should be consistent with, and no greater than, those arising from the *Broadband Policy Statement*.

This balanced approach has worked for the American consumer and broadband access providers for the past four years. As is evident from the record compiled in response to the

²³ See 47 U.S.C. §§ 202(a), 251(a)(1) and (c).

²⁴ *Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986, 14988, ¶ 5 (2005) (outlining the following four principles: 1) consumers are entitled to access the lawful Internet content of their choice; 2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement; 3) consumers are entitled to connect their choice of legal devices that do not harm the network; and 4) consumers are entitled to competition among network providers, application and service, and content providers. All of these principles are subject to reasonable network management practices).

²⁵ *Id.*

FCC's *Broadband Practices NOI*, there are no systemic harms that require the implementation of new obligations.²⁶ In the very few cases in which a concern has arisen, the FCC has acted to address the issue.²⁷ There is thus no need for NTIA to craft new conditions when the existing requirements are appropriate and effective.

In addition to being unnecessary, crafting new interconnection and nondiscrimination obligations in such a short amount of time would likely do more harm than good. New obligations would create uncertainty and confusion which would deter, rather than advance, the broadband deployment objectives of the ARRA. New obligations would impose different standards for NTIA and RUS grant applicants and would thereby eliminate the level playing field for grant applications with respect to the two agencies. In addition, new obligations may force NTIA to treat grantees in a disparate fashion – depending on which new obligations should or should not apply to them – while also serving as the adjudicator for disputes relating to the same. Perhaps most significantly, the imposition of additional and new obligations could discourage otherwise capable applicants from participating in the BTOP program, potentially depriving an area of the benefits of a grant and thus denying consumers in that area access to broadband. These negative consequences are avoidable because existing interconnection and nondiscrimination obligations and the obligations outlined by the FCC's Broadband Policy Statement are working.

²⁶ See, e.g., *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Inquiry, 22 FCC Rcd 7894 (2007).

²⁷ See *Formal Complaint of Free Press and Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications*, File No. EB-08-IH-1518, *Broadband Industry Practices Petition of Free Press et. Al for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management,"* WC Docket No. 07-53, Memorandum Opinion and Order, 23 FCC Rcd 13,028 (2008).

VI. CONCLUSION

The broadband programs in the ARRA provide an important opportunity to address the broadband needs in areas like Puerto Rico that have been left behind in part because of federal funding neglect. To address one of the most “unserved” areas of the Nation, NTIA should adopt rules consistent with the following four recommendations:

- Facilities-based broadband service providers are eligible to receive NTIA grants as these entities have a proven track record, extensive technical expertise, and are in the best position to ensure the swiftest and most effective deployment of broadband infrastructure;
- NTIA should define an “unserved” area to be any area of the United States and its territories that is not currently served by a terrestrial-based broadband provider capable of delivering, at a minimum, 768 kbps broadband access in at least one direction;
- NTIA should give funding priority to “unserved” areas that are in particularly poor regions of the United States and its territories as defined by Census Bureau data on average incomes; and
- NTIA should not adopt any additional nondiscrimination and interconnection conditions beyond those contained in existing FCC rules and policies including the FCC’s current Broadband Policy Statement.

PRT strongly urges the incorporation of these recommendations into the BTOP rules to ensure that consumers in Puerto Rico and other deserving areas realize the important benefits intended by the ARRA.

Respectfully submitted,

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