

FCC FACT SHEET^{*}
Connect America Fund Hurricane Maria Conditional Waiver
Order – WC Docket No. 10-90

Background: On September 20, 2017, Hurricane Maria caused catastrophic damage to the communications networks of Puerto Rico and the U.S. Virgin Islands. This impact has resulted in widespread outages for both wireless and wireline networks affecting millions of subscribers on the islands. This *Order* clarifies that carriers operating in Puerto Rico and the U.S. Virgin Islands may, consistent with their statutory obligations, use the high-cost support that they are currently receiving to repair telecommunications infrastructure damaged by Hurricane Maria and restore service to consumers. Additionally, in order to assist with carriers' immediate needs and anticipated large repair costs, carriers may elect a single advance payment of up to seven months of high-cost support.

What the Order Would Do:

- Takes action to make up to \$76.9 million immediately available for the restoration of communications networks in Puerto Rico and the U.S. Virgin Islands.
- Clarifies that carriers receiving high-cost support in Puerto Rico and the U.S. Virgin Islands can use funds to repair and restore damaged telecommunications infrastructure.
- Allows carriers to elect a single advance payment of up to seven months of high-cost support to aid with large repair costs.
- Finds that the catastrophic impact of Hurricane Maria has presumptively left all of Puerto Rico unserved by an unsubsidized competitor. No competitors reported qualifying service in U.S. Virgin Islands prior to Hurricane Maria.
- Grants a 60-day waiver to Puerto Rico Telephone Company to wind-down spending in areas following an unsubsidized competitor's reporting of restored service.
- Instructs carriers to coordinate restoration efforts with the Public Safety and Homeland Security Bureau to ensure that coverage is available to the most people.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 10-90, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Connect America Fund
WC Docket No. 10-90

ORDER*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. On September 20, 2017, Hurricane Maria "pounded Puerto Rico for hours as the third-strongest storm ever to hit a US territory." Maria caused massive damage to Puerto Rico and the U.S. Virgin Islands and "has had a catastrophic impact on Puerto Rico's communications networks." The Commission's Public Safety and Homeland Security Bureau reports that, as of October 1, 88.8 percent of cell sites were out of service in Puerto Rico and 68.9 percent were out of service in the U.S. Virgin Islands. And in both territories "the FCC has received reports that large percentages of consumers are without either cable services or wireline service."

2. Restoring and repairing communications networks is critical to bringing much needed immediate relief to these heavily damaged areas, and to beginning the long road to restoring normalcy. We must do our part to assist in that effort.

* This document has been circulated for tentative consideration by the Commission at its October open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 Kevin Loria, Hurricane Maria Is Thrashing the Caribbean (Sept. 22, 2017), http://www.businessinsider.com/hurricane-maria-path-track-update-2017-9.

2 Press Release, FCC, Chairman Pai Statement on Hurricane Maria (Sept. 21, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0921/DOC-346833A1.pdf.

3 FCC, Communications Status Report for Areas Impacted by Hurricane Maria at 2-3 (Oct. 1, 2017) (October 1 Communications Status Report), http://fcc.gov/sites/default/files/fcc-outage-report-maria100117.pdf.

4 Id. at 7.

3. In this Order, we take action to make up to \$76.9 million immediately available for the restoration of communications networks in Puerto Rico and the U.S. Virgin Islands. Specifically, we clarify on our own motion that eligible telecommunications carriers (ETCs) operating in Puerto Rico and the U.S. Virgin Islands may, consistent with their statutory obligations, use high-cost universal service support that they are currently receiving in order to repair and maintain telecommunications infrastructure damaged by Hurricane Maria and thus provide service to consumers, and we waive on our own motion certain programmatic requirements to the extent described below. We also allow carriers to elect a single advance payment of up to seven months of high-cost support to assist with their immediate needs and anticipated large repair costs in restoring their communications networks.

II. BACKGROUND

4. In the *USF/ICC Transformation Order*, the Commission adopted a two-phase Connect America Fund to provide support to high-cost areas served by price cap carriers.⁵ In Phase I, the Commission froze high-cost support for price cap carriers and their affiliates.⁶ In Phase II, the Commission offered each price cap carrier the option to accept model-based support for a defined term in exchange for a state-level commitment to serve specified high-cost areas within the state that are not served by an unsubsidized competitor, subject to specific service obligations.⁷

5. The Commission also recognized that price cap carriers serving specific non-contiguous areas of the United States – including Puerto Rico and the U.S. Virgin Islands – face different operating conditions and challenges from those faced by carriers in the contiguous 48 states.⁸ The Commission granted the Wireline Competition Bureau (Bureau) the discretion to maintain existing support levels for those carriers if, in the Bureau’s determination, the model did not provide these areas with sufficient support.⁹ Puerto Rico Telephone Company (PRTC), which operates in Puerto Rico, and Vitelco d/b/a VIYA (VIYA), which operates in the U.S. Virgin Islands, both elected to continue receiving frozen support instead of model-based support.¹⁰ PRTC and VIYA continue to receive annual high-cost support of approximately \$36 million and approximately \$16.3 million respectively, pending the Commission’s adoption of specific service obligations tailored to the individual circumstances of each carrier.¹¹

6. With respect to mobile services, the *USF/ICC Transformation Order* also initiated significant changes. The Commission sought to achieve the universal availability of “mobile networks capable of delivering mobile broadband and voice service” while minimizing the universal service fund contribution burden on businesses and consumers.¹² In furtherance of that aim, the Commission established the two-phase Mobility Fund.¹³ The second phase (MF-II), which is intended to allocate up to

⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.* In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

⁶ *Id.* at 17712, para. 128.

⁷ *See* 47 CFR § 54.309.

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193.

⁹ *Id.*

¹⁰ Letter from Russell M. Blau, Counsel to Virgin Islands Telephone Corporation d/b/a Innovative Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 29, 2014); Letter from Thomas J. Navin, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 22, 2014).

¹¹ *December 2014 Connect America Order*, Report and Order, 29 FCC Rcd 15644, 15662, para. 46 (2014).

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, paras. 53, 57.

¹³ *Id.* at 17773, para. 299.

\$4.53 billion over ten years in ongoing support, has not yet taken place.¹⁴ In the *USF/ICC Transformation Order*, the Commission decided to phase down legacy support to competitive ETCs (CETCs) by 20 percent each year, but the process would pause after two years (with legacy support remaining at 60 percent) if MF-II were not operational by July 1, 2014.¹⁵ Accordingly, like the price cap carriers discussed above, CETCs continue to receive frozen legacy support for providing mobile services, and they will continue to do so pending implementation of MF-II.

7. Hurricane Maria ripped through Puerto Rico as a Category 4 storm with 155-mph winds, according to the National Hurricane Center.¹⁶ Maria was the strongest storm to hit the island in almost a century.¹⁷ Following on the heels of Hurricane Irma, its damage was particularly devastating. The governor of Puerto Rico noted that power could be out for months, explaining that the island's power grid is "a little bit old, mishandled and weak."¹⁸ The situation in the U.S. Virgin Islands is similarly dire. Hurricane Maria "unleashed powerful winds and heavy rainfall, tearing off roofs, downing trees and decimating the communications and power grid across" St. Croix, the largest of the U.S. Virgin Islands.¹⁹ And the "[t]wo other main islands, St. John and St. Thomas, were pummeled by Hurricane Irma just 14 days earlier."²⁰ The challenges Puerto Rico and the U.S. Virgin Islands face in rebuilding will be enormous and the recovery process long. Restoration of reliable communications networks will be critical to that effort and to serving the public safety needs of these islands.

III. DISCUSSION

8. Section 254(e) of the Act and Section 54.7 of the Commission's rules provide that carriers receiving federal universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."²¹ We determine that, in the context of Hurricane Maria's devastation of Puerto Rico and the U.S. Virgin Islands, high-cost support may be used to aid in the restoration of telecommunications capabilities in these areas.²² While the full extent of the impact on communications facilities and capabilities remains unclear due to the extent of the hurricane's devastation, we believe that immediate action on our part is necessary to enable carriers serving Puerto Rico and the U.S. Virgin Islands to plan and execute repair efforts as rapidly and widely as possible, so as to restore service as quickly as possible. Rapid restoration of communications capability is also critical to other relief and reconstruction efforts across the islands.

¹⁴ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2154-55, para. 5, 2160, para. 23 (2017).

¹⁵ 47 CFR § 54.307(e)(5); *Connect America Fund*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7132, para. 252 (2014).

¹⁶ Kevin Loria, *Hurricane Maria Is Thrashing the Caribbean* (Sept. 22, 2017), <http://www.businessinsider.com/hurricane-maria-path-track-update-2017-9>.

¹⁷ Gadi Schwartz et al., *All Power Out as Hurricane Maria's Winds, Floods Crush Puerto Rico* (Sept. 21, 2017), <https://www.nbcnews.com/news/weather/hurricane-maria-makes-landfall-puerto-rico-category-4-storm-n802911>.

¹⁸ CNN, *Puerto Rico Governor: Power Could Be Out for Months* (Sept. 20, 2017), <http://www.cnn.com/2017/09/20/americas/hurricane-maria-caribbean-islands/index.html>.

¹⁹ Morgan Winsor, *US Virgin Islands in Ruins from Hurricane Maria* (Sept. 29, 2017), <http://abcnews.go.com/amp/International/us-virgin-islands-ruins-hurricane-maria/story?id=50178300>.

²⁰ *Id.*

²¹ 47 U.S.C. § 254(e); 47 CFR § 54.7(a).

²² This approach is consistent with the approach the Commission took to facilitate restoration of communications facilities following Hurricane Katrina. See *Federal-State Joint Board on Universal Service, et. al*, Order, 20 FCC Rcd 16883, 16911-12, paras. 54-56 (2005).

9. We find that high-cost carriers operating in Puerto Rico and the U.S. Virgin Islands currently face tremendous challenges. We are informed that commercial power remains out in most of Puerto Rico, rendering cable and wireline services largely unavailable.²³ Further, we have learned that nearly 90 percent of cell sites there remain out of service.²⁴ In the U.S. Virgin Islands, the situation is also grim. Nearly 70 percent of cell sites remain out of service, and that figure rises to 100 percent for the island of St. John.²⁵

10. In the 1996 Act, Congress established the following guiding principle for universal service: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services” of reasonably comparable quality and at reasonably comparable rates to services provided in urban areas.²⁶ Because most consumers throughout Puerto Rico and the U.S. Virgin Islands currently lack access to any telecommunications services, we clarify that high-cost support may be used to reestablish the level of service available before Hurricane Maria consistent with Section 254(e) of the Act and the Commission’s rules. Due to Hurricane Maria, those consumers currently lack access to services comparable to those available in urban areas on the mainland.

11. We note further that, unlike carriers that elected to receive model-based support, neither PRTC nor VIYA currently has specific obligations to deploy broadband to a certain number of locations each year. Instead, both carriers must annually certify that “all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider’s own retail broadband service in areas substantially unserved by an unsubsidized competitor.”²⁷ Use of high-cost support for hurricane relief thus will not impede the completion of required deployment obligations. Indeed, bringing broadband-capable networks online is precisely why ETCs in Puerto Rico and the U.S. Virgin Islands receive high-cost support.

12. The Commission’s rules direct PRTC and VIYA to use high-cost support only in areas substantially unserved by unsubsidized competitors.²⁸ The Commission’s Form 477 data indicate that, although there are no unsubsidized providers reporting qualifying service in the U.S. Virgin Islands, several unsubsidized competitors reported qualifying service in Puerto Rico prior to Hurricane Maria. However, we understand that the hurricane has significantly impaired competitors’ ability to provide service, and indeed has left Puerto Rico without power (probably for at least several months in some areas). Under these particular circumstances, we find that until an unsubsidized competitor can provide service, the rule does not prohibit PRTC from using high-cost support in any part of Puerto Rico. In other words, we find that, at this time, all of Puerto Rico is presumptively unserved by unsubsidized competitors.²⁹ That presumption will end once an unsubsidized competitor of PRTC informs the Bureau

²³ *October 1 Communications Status Report* at 7.

²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ 47 U.S.C. § 254(b)(3).

²⁷ 47 CFR § 54.313(c)(4). This clarification also applies to the approximately \$15,488 per month VIYA receives in CAF ICC support to offset reductions in access charges, for which it has similar obligations. *See* 47 CFR § 54.313(d).

²⁸ 47 CFR § 54.319(a), (d). An unsubsidized competitor is “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.” *Id.* § 54.4.

²⁹ Given that there are no unsubsidized providers offering qualifying service in the U.S. Virgin Islands, as noted *infra*, we similarly find that all of the U.S. Virgin Islands is presumptively entirely unserved by unsubsidized competitors.

and PRTC that it has brought its qualifying voice and broadband services back online in a given area.³⁰ At that point, PRTC will have 60 days to wind down use of high-cost support in the identified area. We provide this limited 60-day waiver on our own motion to PRTC due to the special circumstances of widespread service disruption to both the incumbent and competitors and the public interest of restoring service as soon as possible to all parts of the island.³¹ Moreover, we will independently review in six months whether this presumption should continue. In light of the widespread destruction that has taken place in Puerto Rico, we believe that this is an appropriate timeframe for reassessment. But, as explained above, should any unsubsidized competitor succeed in restoring service within six months, PRTC's 60-day window to wind down use of high-cost support will begin when the competitor informs the Bureau and PRTC that qualifying voice and broadband service has been restored.

13. Similarly, we clarify that Section 254(e) of the Act and Section 54.7(a) of the Commission's rules permit CETCs receiving frozen high-cost support in Puerto Rico and the U.S. Virgin Islands to use their frozen support for restoration efforts to reestablish the level of service available throughout their respective designated service areas prior to Hurricane Maria.

14. Finally, in order to assist with carriers' immediate needs and anticipated large repair costs, we direct the Universal Service Administrative Company (USAC) to make available, at the carrier's election, a single advance payment of up to seven months of high-cost support.³² We note that, to the extent these funds are not used in accordance with the provisions set forth herein, carriers may be subject to enforcement action. At this time, we do not authorize additional support but only accelerate the delivery date of existing funding levels. Carriers should notify USAC no later than November 13, 2017 by sending an email to HCquestions@usac.org or calling 202-772-4537.³³ Subsequent to the one-time advance payment that carriers may elect, monthly payments should continue at normal monthly amounts for five months. We will revisit the support payment schedule prior to the May 2018 payments and will consider at that time a schedule for offsetting advanced funds against future payments due.

15. Advanced payment of high-cost support is intended to facilitate expeditious restoration of essential communications services across all affected areas subject to this Order. Carriers that choose to access accelerated high-cost support should, during the periods covered by the advanced payments, coordinate their network repair activities to ensure that the greatest coverage is available to the most people and to minimize duplicative coverage. To facilitate coordination of network restoration activities,

³⁰ Competitors should provide notice directly to PRTC and to the Bureau by filing a letter certified by an officer of the company in WC Docket No. 10-90 in the Commission's Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>) identifying the specific area where qualifying voice and broadband service has been restored by census block number(s).

³¹ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

³² See Appendix for available support amounts. USAC should use available funds from the high-cost cash account when it disburses the advance payment. USAC shall continue to project existing funding levels for affected carriers when it calculates demand for the high-cost program until further notice. We note that the Paperwork Reduction Act does not apply because Form 477 data indicate that there would not be "ten or more persons" subject to the reporting requirement. See 44 U.S.C. § 3502(3)(A)(i).

³³ This date is administratively necessary because USAC processes payments by a middle-of-the-month cycle. Any ETC that does not notify USAC by this deadline may subsequently notify USAC to elect a single advance payment of the remainder of its seven-month amount.

carriers should contact Renee Roland, Special Counsel, Public Safety and Homeland Security Bureau, Federal Communications Commission, at (202) 418-2357 or renee.roland@fcc.gov. At a minimum, we expect carriers' coordination activities to be consistent with the Wireless Resiliency Cooperative Framework Commitments set forth in the Commission's *Order on Improving the Resiliency of Mobile Wireless Communications Networks and on Reliability and Continuity of Communications Networks, including Broadband Technologies*.³⁴

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's rules, 47 CFR § 1.3, Section 54.313(c)(4) of the Commission's rules, 47 CFR § 54.313(c)(4), IS WAIVED to the extent described above.

17. IT IS FURTHER ORDERED that, pursuant to Section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ *Improving the Resiliency of Mobile Wireless Communication Networks and Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 11-60, 13-239, Order, 31 FCC Rcd 13745, para. 1 (2016).

APPENDIX

Amounts of Seven Months of Advanced High-Cost Support

Territory	SAC	Company Name	Election Total
PR	633200	P R T C - CENTRAL	\$3,621,002
PR	633201	PUERTO RICO TEL CO	\$17,410,414
PR	639001	CENTENNIAL PUERTO RICO OPERATIONS CORP.	\$5,379,780
PR	639003	SUNCOM WIRELESS PUERTO RICO OPERATING CO. LLC	\$8,205,890
PR	639005	CINGULAR WIRELESS	\$11,158,399
PR	639006	PUERTO RICO TELEPHONE COMPANY D/B/A VERIZON WIRELESS PU	\$15,763,608
PR	639007	PR WIRELESS INC.	\$5,510,645
PR	639008	WORLDNET TELECOMMUNICATIONS, INC.	\$171,885
VI	643300	VITELCO-INNOVATIVE D/B/A VIYA	\$9,651,894
VI	649002	CHOICE COMMUNICATIONS, LLC	\$39,235
Totals			\$76,912,752