



Written Testimony of

**Joseph Torres**  
**Senior Director of Strategy and Engagement**  
**Free Press and Free Press Action Fund**

Before the

**Congress of the United States**  
**House of Representatives**  
**Committee on Energy and Commerce**  
**Subcommittee on Communications and Technology**

Regarding

**“Strengthening Communications Networks to Help Americans in Crisis”**

February 27, 2020

## **Introduction**

Chairman Doyle, Ranking Member Latta, Chairman Pallone, Ranking Member Walden, and esteemed members of the Subcommittee, thank you for inviting me to testify about the life-or-death issue of ensuring that communications networks properly serve all people in the United States, especially in times of crisis.

I am the Senior Director of Strategy and Engagement at Free Press and Free Press Action. I am here today on behalf of our 1.4 million members in all fifty states, the District of Columbia, and Puerto Rico. Over the past couple of years since Hurricanes Irma and Maria hit in the Fall of 2017, Free Press has worked with allies to ensure that lawmakers and regulators crafting policies to restore and rebuild communications in Puerto Rico hear directly from Puerto Ricans impacted by the disasters. Puerto Ricans are U.S. citizens, but tragically their voices have been largely absent from this crucial debate — and the restoration and rebuilding processes have suffered as a result.

I am Puerto Rican and I grew up in New York City. Like so many Puerto Ricans growing up in the states, as a kid I often traveled to the islands to visit my family — in my case, my grandmother. Four of my Free Press colleagues, including one who was born on the islands, also have this personal connection to Puerto Rico, and many of them still have family who live there. When the storms hit many of us were consumed with connecting to our loved ones, and for one of my colleagues it took up to two weeks to get through.

In other words, this issue is very personal to me. Together with my Puerto Rican colleagues, we have been working to learn more about how the loss of communication impacted the lives of Puerto Ricans, including how it contributed to the death toll.

In October of 2018, my colleagues and I traveled to Vieques, an island off the southeast coast of mainland Puerto Rico, and to Comerío, a small town located in the mountains of Puerto

Rico. We worked with allies such as Resilient Just Technologies and the Center for Embodied Pedagogy & Action to conduct story circles, so that we could hear from some of the local residents. We learned that communications failures limited their mobility because they didn't know where to search for food or water. They were afraid to leave their houses due to lack of information about mudslides in the area. There were no media outlets informing them of where it was safe to travel, find medical care or seek out loved ones.

This legislative hearing is a critical step in ensuring that our communications networks are resilient. Whether more and more catastrophic disasters will strike is not a matter of if, but when. Climate change will almost certainly increase the ferocity and frequency of these crises. We must prepare now to ensure that our communications networks can protect life and safety during and after these catastrophes.

### **The Communications Crisis in Puerto Rico**

*For me, not having any cellphone connection or access to internet in the immediate aftermath of the storm was worse than not having electricity or water service. We had little idea what had happened in the rest of the country.”*

— Maritza Stanchich in San Juan, Puerto Rico (January 31, 2018)

In the weeks and months following Hurricanes Irma and Maria, we witnessed the deadly consequences of public safety communications systems failures during and after a disaster. Hurricane Irma struck the islands on September 6, 2017, leaving more than a million people without power, and also weakening the islands' already fragile infrastructure.<sup>1</sup> Then on September 20, 2017, Hurricane Maria — a Category 4 storm when it made landfall in Puerto Rico — obliterated that infrastructure. It left the entire population of Puerto Rico without power, resulting

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<sup>1</sup> See Alex Johnson, Daniel Arkin, Jason Cumming & Bill Karins, “Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power,” *NBC News* (Sept. 6, 2017).

in the “largest power blackout in US history and the second-largest in the world.”<sup>2</sup> The second storm also knocked out Puerto Rico’s communications networks, resulting in the lengthiest communications blackout in modern U.S. history. Immediately following the storm, the Federal Communications Commission (“FCC” or “Commission”) reported that:

- 95 percent of cell sites were out of service.
- 97 percent of radio stations were off the air.
- No TV stations were broadcasting.<sup>3</sup>

We now know that between 3,000 and 5,000 people died due to Hurricane Maria.<sup>4</sup> Many perished because they could not access life-saving information. The near total blackout of communications exacerbated the suffering and death toll,<sup>5</sup> making Hurricane Maria one of the deadliest disasters in U.S. history, and severely hindered recovery work. In a report, the Federal Emergency Management Agency (“FEMA”) conveyed its struggle, along with other federal agencies, “to gain situational awareness and assess the status of critical infrastructure, in part due to communications outages across Puerto Rico.”<sup>6</sup> And Nazario Lugo, president of Puerto Rico’s

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<sup>2</sup> Grace Panetta, “Puerto Rico just quietly conceded that Hurricane Maria killed over 1,300 more people than it originally estimated,” *Associated Press* (Aug. 9, 2018).

<sup>3</sup> See Federal Communications Commission, “Communications Status Report for Areas Impacted by Hurricane Maria” (rel. Sept. 23, 2017).

<sup>4</sup> See *New England Journal of Medicine*, “Mortality in Puerto Rico after Hurricane Maria” (July 12, 2018).

<sup>5</sup> See Milken Institute School of Public Health, George Washington University, “Ascertainment of the Estimated Excess Mortality from Hurricane Maria in Puerto Rico” (2018); Nishant Kishore *et al.*, “Mortality in Puerto Rico after Hurricane Maria,” 379 *New England Journal of Medicine* 162, 162-170 (2018); see also Nidhi Prakash, “A New Study Says Nearly 6,000 Died In Puerto Rico After Hurricane Maria. The Government Still Says 64 People Died,” *BuzzFeed News* (May 29, 2018) (noting that the collapse of the cell networks “prevented many people from seeking help if they were unwell,” and those “who relied on home oxygen and dialysis machines or refrigeration for diabetes medication were left vulnerable, cut off from medical professionals and unable to call for help”); Danica Coto, “Puerto Rico Unveils New Emergency Preparations After Maria,” *Associated Press* (Sept. 11, 2018) (noting the installation of direct emergency lines to nursing homes to address the fact that many of the people who died as a result of Maria were elderly).

<sup>6</sup> See Federal Emergency Management Agency, “2017 Hurricane Season FEMA After-Action Report” (2018).

Association of Emergency Managers indicated to the Associated Press that the “biggest crisis after Maria was communication. . . . [T]hat unleashed an endless number of problems.”<sup>7</sup>

Not only was the initial level of devastation to modern communications networks unprecedented, the pace of recovery was excruciatingly slow. Nearly three months after the storm, in December 2017, more than 95 percent of TV stations and 66 percent of radio stations were still out; and cable and landline phone services were, in the Commission’s own words, “generally nonexistent.”<sup>8</sup>

Yet this tragedy was not just a result of the storms. It was, in significant part, a man-made disaster. The protracted and still inadequate recovery efforts cannot be separated from the history of more than a hundred years of U.S. colonialism in Puerto Rico. It is a history of wealth extraction, systemic racism and economic exploitation that left the islands’ critical infrastructure — including the communications networks — fragile and vulnerable.<sup>9</sup> But even though Puerto Rico is currently a colonial possession of the United States, this does not mean that Puerto Ricans can be denied their civil and human rights to communicate.

### **Important Questions Remain Unanswered**

Free Press deeply studied these events as they unfolded after Hurricane Maria. We commented in several Commission proceedings,<sup>10</sup> collected stories from Puerto Ricans still living

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<sup>7</sup> Danica Coto, “Puerto Rico Lures Tech Developers as Hurricane Season Looms,” *Associated Press* (Mar. 20, 2019).

<sup>8</sup> See Federal Communications Commission, “Communications Status Report for Areas Impacted by Hurricane Maria” (rel. Dec. 6, 2017). Hurricane Maria’s severity forced the Commission to track and publish Disaster Information Reporting System (“DIRS”) outage reports for 182 days — the longest period, by a wide margin, for any U.S. disaster-recovery effort since DIRS’ creation.

<sup>9</sup> See, e.g., Nick Thieme, “After Hurricane Maria, Puerto Rico’s Internet Problems Go from Bad to Worse,” *NOVA* (Oct. 23, 2018) (chronicling key issues hampering equitable access to broadband service prior to Hurricanes Irma and Maria and noting that with “the Puerto Rican fiscal control board tightening the budget to pay creditors who own the equivalent of 70% of Puerto Rico’s GDP in debt, the pool of money and incentives for resilient internet improvements is shrinking”).

<sup>10</sup> See Comments of Free Press, PS Docket No. 17-344 *et al.* (filed Sept. 17, 2018); Letter from Joseph Torres, Senior Director of Strategy and Engagement, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-144 (filed July 20, 2018) (“2018 Free Press Letter on Uniendo Fund”).

on the islands and from the diaspora,<sup>11</sup> submitted FOIA requests to the Commission and FEMA,<sup>12</sup> traveled to Puerto Rico to hear in person from Puerto Ricans about the impacts of the communications networks' failures — and about their vision for a just communications system for their communities<sup>13</sup> — and authored an extensive report, “Connecting the Dots: The Telecommunications Crisis in Puerto Rico.”<sup>14</sup>

Our report called for investigation into the root causes for the collapse of the communications networks. We posed dozens of questions that have yet to be answered, with Chairman Pallone himself later asking many of the same questions,<sup>15</sup> such as:

- Did the actions or inactions of the Commission or communications providers prior to and following Hurricane Maria contribute to the prolonged outages for broadcast and telecom services? And how did the prolonged service disruptions contribute to the protracted recovery efforts for other types of critical services and infrastructure? How could lessons learned from the recovery failures in Puerto Rico have led to preventative or resiliency-building measures in other areas and other disasters, such as during the California wildfire season?
- Did the people in affected areas have equivalent access to disaster-related information (such as warnings, notifications and instructions) in their dominant language, Spanish? And does the Commission have a plan for ensuring that information is delivered in the languages spoken by people in affected areas?
- Did Puerto Ricans pay for communications services they did not receive following Hurricane Maria? If so, did communications providers reimburse customers for service they did not receive?
- Did communications providers restore service in a manner that produced a disparate impact, such as restoring service to affluent areas before poorer ones?

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<sup>11</sup> See Comments of National Hispanic Media Coalition & Free Press, PS Docket No. 17-344 & WC Docket No. 17-287 (filed Apr. 17, 2018) (“Joint Comments of Free Press & NHMC”).

<sup>12</sup> See Letter from Carmen Scurato, Senior Policy Counsel, Free Press, to Federal Communications Commission (filed Nov. 9, 2018).

<sup>13</sup> In October 2018, Resilient Just Technologies, the Center for Embodied Pedagogy & Action (“CEPA”), and Free Press hosted small-group discussions in Vieques and Comerío to hear directly from Puerto Ricans about how the loss of communications had impacted them.

<sup>14</sup> Free Press, “Connecting the Dots: The Telecommunications Crisis in Puerto Rico” (May 2019) (“Free Press Report”).

<sup>15</sup> See Letter from Frank Pallone, Chairman, U.S. House Committee on Energy and Commerce, to Gene Dodaro, Comptroller General, U.S. Government Accountability Office, at 2-3 (Oct. 3, 2019) (citing to Free Press Report).

- How is the Commission tracking the USF advance money (in what it calls the “Uniendo Fund”) to ensure that money is being used for recovery and resiliency efforts, not simply to pay down debt or pad profits for the carriers receiving those funds?
- Are the telecom carriers — including those receiving USF funds — fully restoring the same types and quality of services offered prior to the hurricanes? Are they abandoning any types of services that communities used to receive? Are the networks they are building more resilient?
- To what extent did the Commission coordinate with FEMA on the communications outage, and how can that coordination improve?
- How often did the Commission’s Hurricane Recovery Task Force (led by Michael Carowitz, Special Counsel to Chairman Pai<sup>16</sup>) meet? What was the nature of the Task Force’s work and engagement with communications providers? Who served on the Task Force and how were they selected? What did the Task Force do, and what did members learn that could inform future government response to disasters? How did it interact with industry and coordinate with other government and emergency management officials?
- How did the Commission, then and now, institutionalize, if at all, its acquired experience and knowledge from disaster to disaster?

We requested that Congress demand answers to these questions as well, so that a communications crisis of this magnitude never happens again. We appreciate the efforts made to echo those questions thus far by Chairman Pallone, but we have yet to see the questions asked of and answered by the Commission and the communications providers on the islands. So today, we renew that request.

Unfortunately, additional disasters struck Puerto Rico before the recovery from the hurricanes was anywhere near complete. We appreciate Committee Vice Chair Yvette D. Clarke’s inquiry to FCC Chairman Pai regarding the status of Puerto Rico’s telecommunications following recent earthquakes.<sup>17</sup> In his response to the Rep. Clarke, Chairman Pai suggested that telecommunications providers learned lessons from Hurricane Maria that allowed them to restore

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<sup>16</sup> See Federal Communications Commission, “FCC Chair Announces Hurricane Recovery Taskforce” (Oct. 6, 2017).

<sup>17</sup> See Letter from Rep. Yvette D. Clarke, U.S. House of Representatives, to Chairman Ajit Pai, Federal Communications Commission (Jan. 17, 2020).

service more quickly following these earthquakes.<sup>18</sup> This simply begs the question: What are these lessons that the providers supposedly learned? The people of Puerto Rico deserve to know, and so do local communities across the country, so they can take action to ensure that their own telecommunications networks can withstand impending disasters.

### **One Thing is Clear: The FCC’s Response to the Puerto Rican Communications Crisis Was Unacceptably Lackluster**

The federal government failed to properly prepare for and respond to the hurricanes in Puerto Rico. The FCC, the government agency responsible for ensuring that media and telecommunications providers serve the public interest and public safety, has yet to conduct a truly rigorous investigation into what went wrong in Puerto Rico. The FCC also has failed to hold telecommunications providers accountable for their slow pace of service restoration.<sup>19</sup>

Three months after the storm, in December 2017, the Commission’s Public Safety & Homeland Security Bureau opened an inquiry into the “resiliency of the communications infrastructure, the effectiveness of emergency communications, and government and industry responses to the 2017 hurricane season.”<sup>20</sup> But this inquiry was not published in Spanish, nor did the Commission make any attempt to reach out to those most impacted by the storms.<sup>21</sup> Free Press

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<sup>18</sup> See Letter from Chairman Ajit Pai, Federal Communications Commission, to Rep. Yvette D. Clarke, U.S. House of Representatives (Feb. 14, 2020).

<sup>19</sup> See generally Joint Comments of Free Press & NHMC. The Commission failed to adequately engage with affected communities in the aftermath of Hurricanes Maria and Irma. We requested that the Commission ensure all documents and resources would be available in Spanish, and while the Commission eventually made some strides in this regard, major documents related to the disaster remain in English-language only. Finally, the Commission was not transparent, particularly around its Hurricane Recovery Task Force.

<sup>20</sup> See *Public Safety and Homeland Security Bureau Seeks Comment on Response Efforts Undertaken During 2017 Hurricane Season*, PS Docket No. 17-344, Public Notice, 32 FCC Rcd 10245 (Dec. 7, 2017).

<sup>21</sup> See Joint Comments of Free Press & NHMC at 26-27. The bureau did hold a single public workshop in the District of Columbia on its inquiry, but did not include industry stakeholders, the very communications providers the agency is supposed to regulate. See *Public Safety and Homeland Security Bureau Announces Workshop to Identify Critical Information Needs to Improve Communications During Disasters*, Public Notice, DA 18-292 (rel. March 23, 2018); see also Federal Communications Commission, “Public Safety and Homeland Security Bureau announces the agenda for the April 13, 2018 public workshop to identify critical information needs to improve communications during disasters,” Public Notice, DA 18-357 (rel. April 10, 2018).



and the National Hispanic Media Coalition filed joint comments highlighting the stories of people living on the islands and from the diaspora, and demanding that the agency fully engage with Puerto Ricans by holding field hearings on the islands, publishing key documents in Spanish, and sharing information about the task force with the public.<sup>22</sup> The FCC concluded its lackluster inquiry into the 2017 hurricane-response inquiry by releasing a paltry 36-page report that failed to reflect the gravity of the situation.<sup>23</sup> The report also failed to determine whether any Commission-regulated entity should be held accountable for failures in preparing for the storms and restoring service afterwards, and included no new information beyond what was available through aggregating daily DIRS reports released to the public.

FCC Commissioner Jessica Rosenworcel lambasted the report, stating that:

[R]eleasing this report 85 days into the current hurricane season and as an historic storm gets closer to Hawaii's shores, is simply too little, too late.

After Hurricane Katrina, this agency established an independent panel that brought to bear a broad background of public safety and industry experiences, including first-hand knowledge of the devastation wrought. We didn't do that here. After Hurricane Sandy, this agency convened a series of field hearings to help inform recommendations and action to improve network resiliency. Again, we didn't do that here. Instead, we lump together four of the most destructive storms in recent history into one [short] report with a list of recommended, voluntary best practices for federal government partners, service providers, 911 call centers, and consumers. Harvey, Irma, Maria, and Nate all have had their names retired because of their high damage and loss of life. In short, this slim and long-overdue review fails to capture the gravity of these storms.

As we are already seeing, Mother Nature's wrath is sure to visit us again. I hope going forward we can make a greater effort to learn from disasters in a timely way, so we can do more to improve emergency response and infrastructure recovery.<sup>24</sup>

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<sup>22</sup> See Joint Comments of Free Press & NHMC.

<sup>23</sup> See *2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations*, PS Docket No. 17-344, Report, DOC-353805 (rel. Aug. 24, 2018).

<sup>24</sup> Federal Communications Commission, "Statement of Commissioner Jessica Rosenworcel in Response to FCC's 2017 Atlantic Hurricane Season Report" (rel. Aug. 24, 2018).

Yet even today, over two years later, the Commission has failed to heed even one of these important recommendations.

Instead, in May 2018 the Commission decided to provide federal funding to big telecommunications providers to solve the problem; but the Commission did not bother to make sure the money was well spent, nor that the companies receiving it would be accountable to the Puerto Rican people. The Commission proposed the “Uniendo a Puerto Rico Fund” and the “Connect USVI Fund” with the supposed goal of accelerating the restoration of communications services on the islands. It committed \$954 million of high-cost support funds in two stages over the subsequent 10 years<sup>25</sup> to rebuild the telecom networks in Puerto Rico and the U.S. Virgin Islands.<sup>26</sup> This initial FCC order and the additional funds from the Universal Service Fund (described below) to rebuild resilient telecommunications networks may have accelerated the still excruciatingly slow restoration process, but they had significant shortcomings.

First, the bulk of the funds were simply a rebranded delivery of previously obligated USF high cost support.<sup>27</sup> There also were smaller advances of \$65.8 million in October 2017<sup>28</sup> and then \$64.2 million in new support in August 2018.<sup>29</sup> But the Commission’s boasts (in press reports and to this Subcommittee) that it would send nearly \$1 billion to Puerto Rico were misleading at best, since most of that total was accelerated delivery of support already obligated to Puerto Rico’s carriers under existing USF mechanisms.

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<sup>25</sup> See *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143 *et al.*, Order, 34 FCC Rcd 9109, ¶¶ 6, 7 (2019) (“2019 Uniendo Fund Order”).

<sup>26</sup> See *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143 *et al.*, Order & Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (2018) (“PR-USVI Fund Order”).

<sup>27</sup> See *id.* ¶ 30 (proposing “to spend up to an additional \$126 million through the second stages” and making “available about \$444.5 million over a decade for fixed broadband (an \$84 million increase over current funding levels) and about \$254 million over 3 years for 4G LTE mobile broadband (a \$16.8 million increase)”) (emphasis added).

<sup>28</sup> See Letter from Center for Media Justice, Color Of Change, Free Press, National Hispanic Media Coalition and Public Knowledge, to Chairman Ajit Pai, Federal Communications Commission (filed Oct. 6, 2017) (“2017 Public Interest Advocates Letter”).

<sup>29</sup> See PR-USVI Fund Order, 2018 Uniendo Fund Order at 5407-08 ¶¶ 10-12.

Second, the speed with which the Commission got these initial additional, smaller tranches of money out quickly was probably necessary given the immediate material needs of the communications providers.<sup>30</sup> However, we still do not know how these funds were spent. Without greater oversight, these funds could simply be used to offset already-planned deployments, line the pockets of shareholders or facilitate the bailout of corporations.<sup>31</sup> Additionally, the plan did not include any robust accountability measures. Our concerns are based on what CEOs told their investors about not fully restoring networks in Puerto Rico. For instance, the CEO of América Móvil said during an investor call in 2017 that 99 percent of that company’s mobile network was back in operation at that time. But when it came to repairing its fixed lines, he said:

“[W]e are working very hard in the fixed and I think it’s going to take us a little bit of time to do that. We are, let’s say, renewing some part of our fixed network. So in places where we don’t have the fixed service already fixed, we’re giving them some wireless phones for them to use them.”<sup>32</sup>

Notably, FCC Commissioner Jessica Rosenworcel criticized the Commission for not having a “clear picture” of how providers are spending recovery funding from the Commission or the precise status of communications facilities on the islands. She called the Commission’s approach “an invitation for waste because it fails to ensure we are directing funding to areas with the greatest need” and emphasized the need for a new playbook in how the Commission responds to disasters.<sup>33</sup>

In September 2019, the Commission finally disclosed how it planned to ensure that the funds would accelerate recovery and promote network resiliency through additional accountability

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<sup>30</sup> See 2017 Public Interest Advocates Letter.

<sup>31</sup> See 2018 Free Press Letter on Uniendo Fund. That a hedge fund recently pressed for AT&T, which has received millions in Uniendo funds, to leave the islands should not be surprising given the long, extractive history of Wall Street on the islands.

<sup>32</sup> See *id.* (citing Comments of Daniel Hajj Aboumrad, América Móvil, Chief Executive Officer, Fourth Quarter 2017 Earnings Call (Feb. 14, 2018)).

<sup>33</sup> See 2019 Uniendo Fund Order, Concurring Statement of Commissioner Jessica Rosenworcel.

processes and requirements for the next tranche (“Stage 2”) of funding. Aspects of the Commission’s lately announced actions have good potential, including requiring recipients of Stage 2 funds to participate in DIRS, even though that system for collecting outage reporting information during disasters is typically voluntary. Requiring carriers to incorporate network resilience proposals into their submissions as part of the bidding process for Stage 2 funds is also a good step. However, a better yet step would be to require DIRS participation and resiliency planning for all carriers, not just funding recipients, as today’s bills suggest. Furthermore, these kinds of measures are not enough on their own as they defer too much to the promises of communication providers, and the FCC must provide greater transparency to the public in Puerto Rico and fully engage with the affected communities to develop a more comprehensive set of policy approaches to fostering resilient and equitable networks.

The FCC’s response in Puerto Rico is even more offensive when contrasted with its response to Hurricane Michael, which struck the Florida Panhandle in 2018,<sup>34</sup> and to the George W. Bush-era Commission’s response to Hurricane Katrina. After Hurricane Michael, the FCC quickly criticized the lack of coordination between wireless and wireline service providers, electrical crews, and municipalities in restoring communications in the wake of the storm.<sup>35</sup> These same issues were present in the aftermath of Hurricane Maria.<sup>36</sup> The damage in Puerto Rico was

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<sup>34</sup> See Federal Communications Commission, “Statement of Chairman Pai on Hurricane Michael Restoration Efforts” (rel. Oct. 16, 2018) (“Chairman Pai Hurricane Michael Statement”).

<sup>35</sup> See *October 2018 Hurricane Michael’s Impact on Communications: Preparation, Effect, and Recovery*, Report, PS Docket No. 18-339 (rel. May 9, 2019) (“FCC Hurricane Michael Report”).

<sup>36</sup> Compare *Public Safety and Homeland Security Bureau Seeks Comment On Hurricane Michael Preparation and Response*, PS Docket No. 18-339, Public Notice, 33 FCC Rcd 11239, 11241 (rel. Nov. 16, 2018) (asking “[w]hat do service providers believe were the obstacles to restoring communications systems almost a week after Hurricane Michael”) (emphasis added), with *Public Safety and Homeland Security Bureau Seeks Comments on Response Efforts Undertaken During 2017 Hurricane Season*, PS Docket No. 17-344, Public Notice, 32 FCC Rcd 10245, 10247 (2017) (asking what were the “major causes for communications outages due to the hurricanes?”). As we previously noted in a December 17, 2018 letter to the Commission, the FCC’s tone was far more critical and its speed far greater in the aftermath of Hurricane Michael, even though the destruction was far greater after Hurricane Maria.

massively more widespread, and the outages lasted far longer. Yet the FCC didn't show the same level of concern or start asking questions as quickly as it did following Hurricane Michael. With Hurricane Michael, the FCC Chairman criticized a days-long outage and publicly demanded that wireless providers credit consumers for an entire month of service;<sup>37</sup> in contrast, he largely deferred to telecommunications carriers in Puerto Rico. Then, on the Commission's own initiative, it announced an investigation and later issued a standalone report on the impact of Hurricane Michael — having lumped all four storms into the same report after the far more damaging 2017 hurricanes.<sup>38</sup>

Following the massive destruction in the wake of Hurricane Katrina in 2005, the Commission responded by convening an independent commission to conduct an investigation which then resulted in a report containing several recommended reforms based on lessons learned from the communications failures in Hurricane Katrina.<sup>39</sup> With the hard lessons learned after Katrina, and in part guided by these recommendations, the Commission established the Public Safety and Homeland Security Bureau, created the DIRS reporting system, and expanded the Lifeline program to cover wireless service to help displaced people stay connected.<sup>40</sup> All of this and more, was accomplished in a bipartisan manner under a Republican administration. We do not wish to suggest that the Commission's actions following Hurricane Katrina were some kind of

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<sup>37</sup> See Chairman Pai Hurricane Michael Statement (“I’m concerned that their actions on the ground aren’t matching the urgency that we have conveyed during those conversations. I am therefore joining Governor Scott in calling on wireless carriers to waive the bills of Floridians in these affected areas for the month of October and to allow them to change carriers without penalty. These carriers also need to immediately disclose publicly to Floridians how they will quickly restore service. In addition, I have directed our Public Safety & Homeland Security Bureau to promptly initiate an investigation into this matter.”).

<sup>38</sup> See FCC Hurricane Michael Report.

<sup>39</sup> See generally Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, EB Docket No. 06-119, Order, 22 FCC Rcd 10541 (2007) (“FCC Hurricane Katrina Report”).

<sup>40</sup> See, e.g., *Establishment of Public Safety and Homeland Security Bureau*, Order, 21 FCC Rcd 10867 (2006); *Fed.-State Joint Bd. on Universal Serv. Sch. & Libraries Universal Serv. Support Mechanism Rural Health Care Support Mechanism Lifeline & Link-Up*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 16883 (2005).

“gold standard” and beyond reproach, or that the Commission could not have examined the need for network resiliency in the years prior to that 2005 storm. But the Katrina response was far and away better than the government’s paltry response following Hurricane Maria. Hurricane Maria should have at least prompted the Commission to assess whether the lessons learned from Hurricane Katrina were still applicable, and to study how the intervening period of changes to communications systems and to environmental threats may have required new approaches.

The FCC’s failure to provide a critical analysis of exactly what went wrong in Puerto Rico after the 2017 hurricanes, and its failure to include the Puerto Rican people in any such process, dramatically reduces Puerto Ricans ability to stay connected, safe, and healthy during disasters. Free Press Action continues to urge the Commission, Congress, and other federal government agencies involved in recovery efforts to deeply engage with the people of Puerto Rico. We remain hopeful that this work will happen, and that it will prove invaluable in preventing massive communications blackouts and ensuring that people can stay connected and informed — before, during and after a disaster.

### **Free Press Action Supports Bills Being Considered at this Hearing**

The eight bills under consideration at today’s hearing provide some first steps towards better ensuring that people in the United States can communicate in times of disaster. Taken together, the bills would equip the government with better data and information it needs to assess disaster impacts; to eventually institute reforms that will result in providers building more resilient communications systems; and then to hold corporations accountable following disasters if they have not taken adequate steps to build resilient networks and restore service after outages. Specifically, the bills would incrementally improve existing law around coordination between carriers and government agencies, and would require regulatory agencies to further solicit

comment and study such matters of coordination, public notification, and network resiliency. While we do not take a position on all eight bills, Free Press Action offers its support for several of them as described below, especially the RESILIENT Networks Act, which requires a comparative audit of the Commission’s response to Puerto Rico’s 2017 hurricane season.

H.R. 5926, Reinforcing and Evaluating Service Integrity, Local Infrastructure, and Emergency Notification for Today’s Networks Act (RESILIENT Networks Act)<sup>41</sup>

Free Press Action supports The RESILIENT Networks Act, which amends Title VII of the Communications Act to include a new section on Network Resiliency Cooperative Requirements. This section directs the Commission to enact a number of new legal duties for carriers. This bill touches on the following areas: coordination, physical network resiliency, network power resiliency, and 5G network resiliency specifically. It also requires the Comptroller General to conduct a comparative audit of the Commission’s response to Puerto Rico’s 2017 hurricane season.

By requiring coordination among providers and between agencies, this bill calls for planning to allow people to stay connected before, during, and after disaster strikes. The RESILIENT Networks Act requires the Commission to issue rules providing for “coordination among providers of advanced communications service during times of emergency.” This is a much needed change — to make the Wireless Resiliency Cooperative Framework mandatory — given that the Commission has been unable to make any significant improvements despite a series of attempts. The rules also would require providers to put in place “reasonable” roaming agreements that can be employed without additional negotiation during emergencies, and agreements “for the provision of mutual aid during times of emergency.”

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<sup>41</sup> See RESILIENT Networks Act, H.R. 5926, 116th Cong. (2020).

To further aid in coordinating recovery efforts, the RESILIENT Networks Act compels the Commission to issue rules requiring all providers to participate in DIRS. This is a significant improvement from the current voluntary DIRS system. The rules would require that all providers report information to “public safety answering points and other public safety entities” in an “easily accessible” format. The bill requires this information to be sufficiently granular so as to be useful to public safety entities, and mandates that it be reported in a manner that makes integration into mapping and computer-aided dispatch systems rapid and reliable, and secure. This bill balances reporting speed with reporting accuracy, releasing providers from liability as long as they engage in “reasonable efforts” to identify outages.

The RESILIENT Networks Act also requires the Commission, in consultation with the Secretary of Energy, to establish a “master point-of-contact directory” that enables “effective” communications between public safety entities, electric utilities, and communications providers. It requires the Commission to conduct a Triennial Review of its coordinated response policies and assess whether those policies are substantially improving network resiliency, and directs the Commission to seek out further input and consider changes to those rules if they aren’t getting the job done.

Finally, and most relevant for Puerto Ricans, the bill specifically requires an audit of the Commission’s response to 2017 Hurricane Season in Puerto Rico. It directs the Comptroller General (“CG”) to conduct a performance audit of Commission’s efforts to restore “Advanced Services” and other communication services in Puerto Rico during and following the 2017 hurricane season. The CG is required to examine the timeliness of the FCC’s actions, and how the FCC responded to the crisis in Puerto Rico as compared to how it responded to other natural disasters before or after 2017 hurricane season. The CG is also required to issue a standalone report



on its findings, along with recommendations. Notably, two years after enactment of RESILIENT Networks Act, the Commission is required to start a proceeding to determine what actions are appropriate in response to the findings and recommendations in the CG’s report.

Free Press Action has called for the FCC to convene an independent commission to investigate what happened in Puerto Rico after the 2017 hurricanes and to provide recommendations, similar to what the Commission did after Hurricane Katrina. We have recommended as well that the government and providers be held accountable for unacceptable delays. We encourage this Subcommittee to embrace robust transparency about provider and government responses, as one way to empower the people of Puerto Rico and elsewhere in the U.S. to make decisions on how to make their communities safer. The audit requirement in the bill is a welcome step towards providing this much-needed investigation, especially since the Trump administration has blatantly ignored the needs of the Puerto Rican people.

H.R. 3836, Wireless Infrastructure Resiliency during Emergencies and Disasters Act (WIRED Act)<sup>42</sup>

Free Press Action supports the WIRED Act, which amends Section 332(c)(3)(A) of the Communications Act.<sup>43</sup> Section 332 pertains to mobile services, with subsection (c) governing common carrier mobile services, and subsection (c)(3) specifically preempting the States from regulating wireless carriers’ entry into the market or the rates they can charge. Yet that same subsection (c)(3) of the existing statute specifies that the States can indeed “regulat[e] the other terms and conditions of commercial mobile services.”<sup>44</sup>

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<sup>42</sup> See WIRED Act, H.R. 3836, 116th Cong. (2020).

<sup>43</sup> See 47 U.S.C. § 332(c)(3)(A).

<sup>44</sup> Though not germane to the WIRED Act, this section also makes clear that providers of commercial mobile radio services (“CMRS”) are still obligated to follow State-imposed regulations that are required of all telecommunications services in order to ensure universal availability at affordable rates. It also outlines a mechanism for states to petition the Commission to gain the authority to regulate rates, if they can demonstrate that “market conditions” are not protecting subscribers from unjust and unreasonable or unjustly discriminatory rates, or CMRS services are a

The WIRED Act simply clarifies that these “other terms and conditions” that the States may regulate “includ[e] reasonable requirements to promote resilient wireless communications infrastructure for situational awareness during a natural disaster.”

This amendment to current law does not require any state to adopt any specific or even general regulation, but it clarifies that State regulations requiring CMRS carriers to operate resilient networks during a natural disaster are not preempted by Section 332.

H.R. 4856, Reliable Emergency Alert Distribution Improvement Act of 2019 (READI Act)<sup>45</sup>

Free Press Action supports the READI Act, which amends the 2006 WARN Act<sup>46</sup> to prevent subscribers from opting out of receiving alerts issued by the FEMA Administrator. Currently subscribers can elect to opt out of receiving alerts, except for those issued by the President. FEMA’s ability to issue non-opt out wireless messages may improve public awareness of critical disaster information. The bill also encourages governors to establish a State Emergency Communications Committee — which could lead to greater attention and planning at the state level, in coordination with the federal government, in an open and transparent manner.

H.R. 5918 Legislation ”[t]o direct the Federal Communications Commission to issue reports after activation of the Disaster Information Reporting System and to make improvements to network outage reporting.”<sup>47</sup>

Free Press Action supports this bill because it requires the Commission to conduct a field hearing four months after DIRS is deactivated. Although this requirement alone does not ensure that the people affected by a disaster will have a chance to directly engage with the Commission,

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replacement for landline services in a “substantial” portion of the state. The latter condition is certainly met, though Free Press action is unaware of any State authority filing a petition seeking to gain the authority to regulate rates.

<sup>45</sup> See READI Act, H.R. 4856, 116th Cong. (2020).

<sup>46</sup> See WARN Act, H.R. 5785, 109th Cong. (2006) (which governs emergency alerts on cellular services).

<sup>47</sup> See H.R. 5918, 116th Cong. (2020).

it does at least provide people with an opportunity to engage with the Commission and improve the chances that the Commission will be directly answerable to them.

Additionally, the bill establishes enhanced reporting requirements for the Commission. For example, no later than six weeks after DIRS is deactivated the Commission must issue a preliminary report on the number of outages, denoted by technology type; the number of mobile users impacted; and the number of and duration of outages at Public Safety Answering Points. This preliminary report would include an initial status report on recovery efforts. After the preliminary report and field hearing, the Commission must issue a final report eight months after DIRS deactivation. This report must include the data from the preliminary report, and FCC recommendations on how to improve the resilience of the affected networks.

### **Necessary Next Steps**

While Free Press Action supports the Subcommittee's efforts here, we note that the government cannot compel network resiliency through small tweaks or patch ups. The challenge before us is systemic, and will require sunlight, comprehensive reform, and courageous leadership from this body. History teaches us that corporations, even those committed to public safety, need oversight and regulations to hold them accountable and prevent them from putting profits over the well-being of their customers. The FCC must have authority to oversee public safety and other consumer protection measures over all telecommunications services, including broadband. Thankfully, the U.S. House of Representatives has passed the Save the Internet Act to restore that authority, but the bill has yet to become law, leaving U.S. residents vulnerable.

Free Press Action also continues to recommend the following structural changes to improve our communications system and adequately protect all U.S. residents during emergencies:

- Congress should adopt legislation that directs the Commission to promulgate regulations and recommend the same for other relevant federal, state and territorial agencies to address the underlying causes of the prolonged communications outage in Puerto Rico.
- Congress should adopt legislation that enables the Commission to affirmatively and proactively identify structural challenges to improving network resiliency and require the Commission to act swiftly when those challenges imperil life and property.
- Congress should direct the Commission to oversee whether recovery work occurs in a just and reasonable fashion. It should require the Commission to provide regular status reports to this Subcommittee in support of its oversight function. And Congress should empower the Commission to ensure that carriers' recovery efforts are completed in an equitable fashion.
- Congress and the Commission should provide even more funding to accelerate restoration, incorporate network resiliency measures, and spur the development of innovative new technologies to improve resiliency. Lawmakers and agency officials should ensure that affected communities are part of the design and governance of their local infrastructure and that allocated funds support self-sustaining and resilient communities.
- The Commission must adopt and enforce rules to ensure that consumers are billed only for services they receive during outages caused by disasters.
- The Commission must establish better tracking mechanisms for funds set aside for disaster recovery work, such as the Uniendo Fund, and must issue regular progress reports to Congress.
- The Commission must be transparent about the work of any task force it creates, reporting who is appointed to serve on it. The task force must also meet with the members of communities impacted by communications failures.
- The FCC should examine new data collection methods to assess recovery efforts, and ensure this data is accurate, publicly available, and sufficiently useful.
- Congress should direct the Commission to develop a means to collect and disseminate effective practices and institutional knowledge gained during times of disaster, and to hold providers accountable to measurable recovery and resiliency standards.

## **Conclusion**

The history of U.S. colonialism in Puerto Rico and the systemic racism and economic exploitation left the islands' critical infrastructure — including the communications networks — fragile and vulnerable. The climate crisis has accelerated the intensity of storms and of extreme or unpredictable weather incidents, making this issue even more urgent. Hurricanes like Maria will soon become the norm. That is why Free Press Action supports these bills as a first step to improve our communications networks and ensure they can withstand disasters and save lives.