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April 5, 2019

**FILED VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Broadband VI, LLC**  
**The Uniendo a Puerto Rico Fund and the Connect USVI Fund,**  
**WC Docket No. 18-143**  
**Ex Parte Presentation**

Dear Ms. Dortch:

Broadband VI, LLC (“Broadband VI”) hereby responds to the March 22, 2019 ex parte presentation submitted by ATN International, Inc. on behalf of its subsidiary Virgin Islands Telephone Corp. dba Viya (“Viya”)<sup>1</sup> and the April 1, 2019 ex parte presentation submitted by Hughes Network Systems, LLC (“Hughes”).<sup>2</sup>

***Response to the Viya Presentation***

On a number of points, Broadband VI agrees with Viya. As Broadband VI has made clear from the outset,<sup>3</sup> the U.S. Virgin Islands market is different than the Puerto Rico market, and the Commission should not feel compelled to adopt the same Stage 2 approach or even the

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<sup>1</sup> See Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, FCC Secretary, WC Docket No. 18-143 (filed March 22, 2019) and attached presentation (“Viya Presentation”).

<sup>2</sup> See Letter from Jodi Goldberg, Associate General Counsel, Hughes, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 18-143, 10-90 and 14-58 (filed April 1, 2019) and attached talking points (“Hughes Presentation”).

<sup>3</sup> See Comments of Broadband VI, WC Docket No. 18-143 (filed July 26, 2018) (“Broadband VI Comments”); Reply Comments of Broadband VI, WC Docket No. 18-143 (filed Aug. 8, 2018) (“Broadband VI Reply Comments”).



same timeline.<sup>4</sup> Of particular relevance, there are many more fixed broadband providers serving Puerto Rico than serving the U.S. Virgin Islands, where only Viya and Broadband VI have significant fixed broadband operations.

Viya also correctly acknowledges that it took it 13 months – until October 2018 – to complete its restoration efforts following Hurricanes Irma and Maria.<sup>5</sup> Viya cites a number of challenges that it faced – the same challenges that Broadband VI met without the benefit of federal subsidies or support from a non-local parent. Yet Broadband VI restored service within eight months and has *increased* the number of its subscribers by about 25 percent over the number it had before the 2017 hurricanes.

Viya leaves out a significant self-inflicted difficulty, however – its poor decision to rely on a significant amount of aerial coaxial cable in an environment susceptible to major hurricanes. The two storms that struck back-to-back in September 2017 destroyed more than 90 percent of Viya’s network, leading to the long delay in service restoration. Of all terrestrial broadband architectures, cable strung on telephone poles is the least resilient deployment architecture. Because this infrastructure is largely composed of utility poles that cannot withstand major hurricanes, federal universal service dollars have been squandered to build and then re-build Viya’s inferior network. To the extent it now proposes undergrounding, “where feasible,”<sup>6</sup> Viya cannot reasonably be critical of Broadband VI’s plans to use Stage 2 support to construct and operate an underground fiber broadband network of its own.<sup>7</sup>

Nevertheless, Viya continues to press for a Stage 2 process that guarantees that Viya, and only Viya, would be eligible to receive more than \$186 million in Connect USVI Fund support. Its not-so-subtle shift from a proposal that would positively exclude all other providers from competing for Stage 2 support<sup>8</sup> to one in which it would obtain a right of first refusal is totally meaningless – Viya will certainly accept the funding if it does not have to compete for it and can foreclose others, like Broadband VI, that have provided broadband service in the U.S. Virgin Islands and have expressed strong interest in Stage 2 support. By contrast, Broadband VI’s proposed Stage 2 process and comparative criteria do not prevent any provider operating in the U.S. Virgin Islands as of June 2017 from participating in the application process.

Viya also pretends that its coverage of 95 percent of the locations on the U.S. Virgin Islands is somehow unique and should give it an upper-hand to support its proposed right of first

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<sup>4</sup> Viya Presentation at 15.

<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> *Id.* at 14.

<sup>8</sup> See Comments of Viya, WC Docket No. 18-143 (filed July 26, 2018) (“Viya Comments”) at 18-24.



refusal.<sup>9</sup> Viya fails to indicate how it determined the number of “locations” when there is simply no current or accurate data available to support a coverage percentage.<sup>10</sup> Moreover, Viya conveniently ignores the fact that Broadband VI’s fixed wireless footprint covers almost all of the inhabited portions of the U.S. Virgin Islands.<sup>11</sup>

Viya also complains that “[f]unding another network to catch up to the capabilities of Viya’s network is asking the residents of the USVI to accept a technological step backwards – to an inferior network – for a period of years.”<sup>12</sup> Viya cannot have it both ways – it cannot rely on its subsidized incumbency without dealing with the fact that its network proved to be vulnerable to catastrophic failure while Broadband VI was able to restore service without federal support much more quickly under the same challenging conditions while at the same time expanding service to new subscribers.

For these reasons, the Commission cannot simply take Viya at its word and grant it a right of first refusal. As the Commission implied by adopting the *Connect USVI Fund NPRM*, there are better methods and different criteria that should be adopted in place of simply continuing to give Viya millions of dollars in support that, as the evidence shown, it has not used to build networks that can withstand the elements.<sup>13</sup> The better policy choice is to allow the Commission to compare Viya’s commitments with those of other eligible Stage 2 applicants. Only if Viya’s deployment promises can withstand comparison and Commission vetting should it be entitled to some degree of benefit over other applicants that propose slower build-out. Viya has not earned any benefit of the doubt as a preferred subsidy recipient. To the contrary, its past failures suggest a need for the Commission to adopt other, better options.

Apparently sensing that the Commission should rightfully reject the right of first refusal, Viya pivots to supporting some form of comparative process. But again, Viya attempts to stack

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<sup>9</sup> Viya Presentation at 16.

<sup>10</sup> Broadband VI recently proposed a multi-step process by which the Commission can proceed with the Stage 2 funding process while an approach combining multiple datasets and crowdsourced visual verification are implemented. See Letter from Stephen E. Coran, Counsel to Broadband VI, to Marlene H. Dortch, FCC Secretary, WC Docket No. 18-143 (filed March 25, 2019). This plan is modeled on a pilot program that USTelecom, ITTA, WISPA and others recently announced. See Letter from B. Lynn Follansbee, USTelecom Vice President – Law and Policy, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 11-10 and 10-90 (filed March 21, 2019) (“Addresses are important, but an address does not provide the actual geographic location of where service is deployed or is needed.”).

<sup>11</sup> See, e.g., Letter from Stephen E. Coran, Counsel to Broadband VI, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 18-143, 10-90 and 14-58 (filed Feb. 13, 2019) (“Broadband VI February Letter”), Presentation at 3.

<sup>12</sup> Viya Presentation at 16.

<sup>13</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, 33 FCC Rcd 5404 (2018) (“*Connect USVI Fund NPRM*”).



the deck against Broadband VI by proposing criteria that will better ensure that only Viya will be eligible for Stage 2 support.

First, Viya asks the Commission to require applicants to submit a letter of credit similar to the requirements for the CAF Phase II reverse auction.<sup>14</sup> Broadband VI has suggested that, consistent with the views expressed by The Surety & Fidelity Association of America (“SFAA”) in the record, the Commission allow applicants to have the option to submit a performance bond as an alternative to the letter of credit.<sup>15</sup> As SFAA stated:

A surety bond would provide value and benefits to the FCC that are not provided by a letter of credit, while allowing small business ISPs the opportunity to participate in the second stage of awards under the Uniendo a Puerto Rico and Connect USVI Funds. Furthermore, expanding performance security creates greater competition and participation, which may reduce costs while still protecting the government’s financial interest.<sup>16</sup>

SFAA also observed that with a performance bond, “the FCC benefits from this prequalification. In comparison, a letter of credit is secured by a specific liquid asset(s), has a specific expiration date (generally one year, bonds remain in force until the duration of the contract), and simply does not provide the same financial guarantee to the government.”<sup>17</sup> The Viya Presentation makes no effort to explain why Viya believes that a performance bond should not be an acceptable alternative for Stage 2 applicants.<sup>18</sup>

Second, Viya argues that any comparative approach should apply only to “unserved areas,” but it fails to propose any sort of means or process to identify “unserved areas” or, more precisely, “locations” where broadband service is not available. Given that both Viya and Broadband VI claim to cover 95 percent of the U.S. Virgin Islands with some sort of broadband infrastructure, understanding precisely the actual geographic “locations” would appear to be extremely important.<sup>19</sup>

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<sup>14</sup> Viya Presentation at 20.

<sup>15</sup> See Comments of The Surety & Fidelity Association of America, WC Docket Nos. 18-143, 10-90 and 14-58 (filed June 29, 2018) (“SFAA Comments”). See also Broadband VI Comments at 10.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> Broadband VI has no objection to the other oversight and accountability proposals Viya proposes. See Viya Presentation at 20.

<sup>19</sup> See note 10, *supra*.

Third, Viya recommends that the comparative process should yield a “single service area encompassing the entire USVI” so that “any player” does not “cream-skim.”<sup>20</sup> Broadband VI has likewise proposed that the Commission’s process designate a single Stage 2 recipient,<sup>21</sup> but has suggested that, as an alternative, the Commission could designate two separate funded areas (St. Thomas/St. John and St. Croix) or two recipients across the entire Territory.<sup>22</sup> And, of course, cream-skimming can be avoided through build-out milestones.

Fourth, Broadband VI strongly objects to Viya’s disregard of network resiliency and restoration as a comparative criterion, despite Viya’s admission that “[r]esiliency is important.”<sup>23</sup> According to Viya, “[t]he inherently subjective nature of resiliency decisions makes it difficult to rank objectively,” so in Viya’s estimation resiliency should be largely ignored.<sup>24</sup> Broadband VI proposed a detailed method to analyze and score network resiliency based on (1) the relative ability of certain network architectures to withstand hurricanes, (2) the type of diversity (network or path) proposed by the applicant, and (3) the applicant’s commitment to restore service.<sup>25</sup> The Commission should undertake this analysis upfront so that it is not considered after a recipient (or recipients) is provisionally selected. That it may be “difficult” to compare applications is no reason to exclude that criterion, specifically proposed by the Commission, from the selection process.

It should not be surprising that Viya would want to understate the importance of network resiliency as a key factor in the Commission’s Stage 2 selection process. Viya has proven over the years that it cannot construct networks that are capable of withstanding major hurricanes or of being restored quickly. As detailed above, Viya has constructed a federally subsidized aerial fiber network that, predictably, was almost entirely destroyed by Hurricanes Irma and Maria, and took more than a year for Viya to rebuild.<sup>26</sup> In the meantime, Broadband VI restored service on its unsubsidized fixed wireless network within eight months and has seen a 25 percent increase in its subscriber base.

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<sup>20</sup> *Id.*

<sup>21</sup> Broadband VI Comments at 6-7.

<sup>22</sup> See Letter from Michael Meluskey, CTO and Founder, Broadband VI, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 18-143, 10-90 and 14-58 (filed Nov. 9, 2018) (“Broadband VI November Letter”) at 2, 6.

<sup>23</sup> See Viya Presentation at 21-23. Viya implies that 0-20 percent of the scoring should be for resilience. See *id.* at 21.

<sup>24</sup> *Id.* at 23. Notably, Viya does not even mention network *restoration* as a factor in its presentation.

<sup>25</sup> See Broadband VI November Letter at 4-6.

<sup>26</sup> See Broadband VI Reply Comments at 3 (“Commission should not blindly hold out its hand to a company that used tens of millions of dollars of universal service support to help construct a network that was 97 percent destroyed in the hurricanes”).



Fifth, Viya proposes that 80-100 percent of the scoring criteria should be for network performance, speed of deployment, and cost-effectiveness – but it makes no effort to show the relative weight of each of these three categories.<sup>27</sup> Even so, it suggests a minimum broadband speed of 25/3 Mbps with a two-year build-out period. And while Viya states that points should be awarded for “faster deployment or higher speeds reached,” it fails to acknowledge that constructing networks at faster speeds across the entire U.S. Virgin Islands will take longer and cost more. If the Commission wants to support only quickly constructed, 25/3 Mbps networks that lack resiliency, then it should adopt comparative criteria that favors that outcome. If it wants to allow applicants to benefit from building faster-speed networks that are resilient and restorable, then it should adopt comparative criteria that give all eligible applicants an opportunity to make their case.

### ***Response to Hughes Presentation***

Hughes reiterates its proposed scoring methodology for Stage 2 bids for the Uniendo a Puerto Rico Fund and the Connect USVI Fund.<sup>28</sup> As Broadband VI’s own comprehensive proposal makes clear, it agrees with Hughes that “[t]he Commission must adopt clear, unambiguous, and objective criteria.”<sup>29</sup> But Broadband VI reiterates that an untried “neutral third party arbiter” is not necessary for the Commission to select a Stage 2 recipient or recipients, and that the process to select and train an outside contractor that will ensure transparency and impartiality will unduly delay the proceedings well into the 2019 hurricane season.

Broadband VI also disagrees with Hughes’ proposed scoring criteria, which is deeply flawed in a number of respects. Hughes assumes that it will be eligible for Stage 2 funding, but the Commission has proposed that “only a provider that, according to June 2017 FCC Form 477 data, had an existing fixed network and provided broadband service in . . . the U.S. Virgin Islands prior to the hurricanes would be eligible to apply to participate. . . . We propose to limit participation to providers who had provided services before the hurricane because we believe they would be better equipped to rebuild and expand service as quickly as possible.”<sup>30</sup> Both Broadband VI<sup>31</sup> and Viya<sup>32</sup> have supported the Commission’s proposal, and the Commission should adopt it and reject Hughes’ approach for awarding Stage 2 support.

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<sup>27</sup> Viya Presentation at 21.

<sup>28</sup> See Hughes Presentation at 1. Broadband VI limits its advocacy to the Connect USVI Fund and has no comment on Hughes’ proposal as it applies to the Uniendo a Puerto Rico Fund process.

<sup>29</sup> *Id.* See Broadband VI November Letter. See also Broadband VI February Letter; Letter from Stephen E. Coran, Counsel to Broadband VI, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 18-143, 10-90 and 14-58 (filed March 7, 2019) (“Broadband VI March Letter”).

<sup>30</sup> See *Connect USVI Fund NPRM* at 5416 ¶ 42.

<sup>31</sup> See Broadband VI Comments at 5; Broadband VI Reply Comments at 6.

<sup>32</sup> Viya Comments at 26.



Assuming the Commission does not take those steps, it should reject Hughes' proposed scoring. First, Hughes proposes that price per location be worth up to 40 points (out of 100), but it offers no methodology for how to determine the number of "locations" or their actual geographic location. It also suggests that "bids" be weighed against a reserve price, but fails to indicate how the reserve price would be determined.<sup>33</sup> Hughes also does not indicate if support would be allocated across the Territory or in smaller geographic units.

Second, Hughes proposes that the Commission award a maximum of only 20 points for network resiliency, using the vague descriptions "non-hardened," "semi-hardened," and "fully hardened" to assign points.<sup>34</sup> Hughes does not explain these terms and, moreover, they appear to be far less specific than the "network diversity" and "path diversity" elements that Broadband VI proposed.<sup>35</sup>

Third, as discussed above, Broadband VI believes that awarding the highest number of network deployment timing points (20) for deployment within two years will lead to networks that are not sufficiently resilient or restorable quickly after a network outage.

Finally, Hughes' proposal to award up to 20 points for the combination speed, capacity and latency does not sufficiently value the benefits of speed and does not impose a sufficient penalty for low-latency architectures. Further, the Hughes proposal does not include a gigabit tier (1000 Mbps download), thereby creating no incentive for constructing underground fiber networks that can deliver such speeds.

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Broadband VI notes that the Commission intended that the Connect USVI Fund support term would run from January 2019 through December 2028.<sup>36</sup> Broadband VI appreciates that it takes time for the Commission to consider the record and make appropriate policy choices. With the 2019 hurricane season fast approaching, Broadband VI urges the Commission to act quickly and initiate the application process that Broadband VI has advocated.

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<sup>33</sup> The Commission proposed a three-step process to set reserve prices. *See Connect USVI Fund NPRM* at 5418 ¶ 52.

<sup>34</sup> Hughes Presentation at 1.

<sup>35</sup> *See, e.g.,* Broadband VI November Letter; Broadband VI February Letter; Broadband VI March Letter.

<sup>36</sup> *Connect USVI Fund NPRM* at 5416 ¶ 41.





Marlene H. Dortch, Secretary

April 5, 2019

Page 8

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-referenced proceeding.

Respectfully submitted,

/s/ Stephen E. Coran

Stephen E. Coran

cc: Michael Carowitz  
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