

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
The Uniendo a Puerto Rico Fund and the Connect	)	WC Docket No. 18-143
USVI Fund	)	

To: The Commission

**REPLY COMMENTS OF VPNET, INC.**

VPNet, Inc. (“VPNet”), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to the comments filed in the above-captioned proceeding regarding implementation of Stage 2 of the Uniendo a Puerto Rico Fund (the “Puerto Rico Fund”) for fixed services.<sup>1</sup> Given the devastating and wide-spread destruction suffered by Puerto Rico following Hurricanes Irma and Maria in 2017, commenters understandably and overwhelming support the Commission’s effort to provide long-term support to rebuild, improve and expand broadband networks in the Territory.<sup>2</sup> Where the commenters diverge is on how best to determine Stage 2 eligibility and implement the funding process. VPNet maintains that, with the limited exceptions set forth in its own Comments, the Commission’s proposals in the *NPRM*

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<sup>1</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order and Notice of Proposed Rulemaking, FCC 18-57, WC Docket Nos. 18-143, 10-90 and 14-58 (rel. May 29, 2018) (“*NPRM*”). *See also The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order, DA 18-670, WC Docket Nos. 18-143, 10-90 and 14-58 (rel. June 27, 2018) (extending Reply Comment deadline to August 8, 2018). As with VPNet’s Comments, these Reply Comments are limited to addressing the Puerto Rico Fund program, and VPNet takes no position on rules the Commission may adopt for the Connect USVI Fund.

<sup>2</sup> The only party opposed to Stage 2 is Tri-County Telephone Association, Inc. (“Tri-State”), which claims that the proposed funding is unrelated to the goals of preserving universal service and that the Commission lacks authority to award the support. *See* Comments of Tri-County Telephone Association, Inc., WC Docket No. 18-143 (filed July 26, 2018), at 5. Tri-State, however, overlooks the Commission’s policy recognizing that, as a non-contiguous area of the U.S., Puerto Rico presents a special case warranting extraordinary relief. *See* Comments of Liberty Cablevision of Puerto Rico, LLC, WC Docket No. 18-143 (filed July 26, 2018) (“Liberty Cablevision Comments”), at 4 (noting that, in light of the unique challenges that non-contiguous areas of the U.S. face, the Commission considers, as a matter of policy, funding levels and mechanisms outside the construct of the Connect America Fund program).

are an appropriate path forward towards a balanced, competitive Stage 2.<sup>3</sup> VPNet offers the following Reply Comments to address the positions of those commenters that take exceptions to this approach – in particular those positions that, if adopted, would unfairly and unjustifiably favor the interests of the incumbent local exchange carrier over those of its competitors.

## **Discussion**

### **I. THE PROPOSED STAGE 2 FUNDING LEVEL FOR FIXED PROVIDERS IS APPROPRIATE PROVIDED IT INCLUDES A REDISTRIBUTION OF EXISTING FROZEN HIGH-COST FUNDING**

#### **A. The Commission Should Reject PRTC’s Request To Retain Frozen High-Cost Support**

VPNet does not oppose comments that seek increased levels of Stage 2 support, but it disagrees strongly with the request of the Puerto Rico Telephone Company (“PRTC”) to maintain the frozen high-cost support that it includes as part of its request for increased funding.<sup>4</sup> As noted in its Comments, VPNet finds the proposed Stage 2 funding level to be appropriate, but that should only be the case if the legacy frozen support is reallocated as part of a competitive proposal process as the Commission proposes. To address the possibility of future funding, the Commission can and should reserve the right to budget for additional support if the adopted amounts are shown by annual reports to be inadequate to meet the needs of the Puerto Rico Fund objectives.<sup>5</sup>

#### **B. The Commission Should Reject AT&T’s Unnecessary Stage 3 Proposal**

The Commission proposes to allow Stage 2 support to be used for three broad categories of infrastructure relief: restoration, improvement and expansion. All three are necessary of course, and each merits a sufficient amount of time to allow for successful completion.

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<sup>3</sup> See Comments of VPNet, Inc., WC Docket No. 18-143 (filed July 26, 2018) (“VPNet Comments”).

<sup>4</sup> See, e.g., Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 18-143 (filed July 26, 2018) (“PRTC Comments”), at 23.

<sup>5</sup> See VPNet Comments at 4.

Nevertheless, AT&T asks the Commission to add a new Stage 3 focused on expanding broadband deployment after reducing the length of a revamped Stage 2 focused exclusively on restoration and hardening.<sup>6</sup> AT&T justifies its recommendation on the grounds that the various Puerto Rico Fund objectives are “in tension with one another” and combining them “will undermine the Commission’s goals of encouraging carriers to restore and harden their facilities.”<sup>7</sup> This approach, however, overlooks the fact that there is already a dedicated phase of funding for restoration (*i.e.*, Puerto Rico Fund Stage 1) that presumably relieves at least some of the tension that AT&T believes exists. More importantly, segregating the objectives will not necessarily result in more efficient restoration, improvement and expansion of broadband service. An artificially abbreviated Stage 2, for example, could lead some providers to accelerate restoration and hardening too quickly just to satisfy the three-year time limit, even assuming a network can be built in three years. Some providers may decide to skip Stage 2 or propose smaller geographic areas that are more likely to be built in three years, resulting in fewer areas where service can be quickly restored or provided. AT&T’s cramped one-size-doesn’t-fit-all timetable should be rejected.

## **II. THE COMMISSION SHOULD ADOPT A COMPETITIVE PROPOSAL PROCESS THAT DOES NOT FAVOR ONE SERVICE PROVIDER OVER ANOTHER**

### **A. The Commission Should Reject PRTC’s Scheme To Be The Sole Recipient Of Stage 2 Support**

The Commission should summarily reject the proposal by the PRTC that it be given the right of first refusal to all Stage 2 funding before any competitive allocation process is initiated.<sup>8</sup> PRTC’s transparent proposal amounts to a money grab that would leave every other qualified

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<sup>6</sup> See Comments of AT&T, WC Docket No. 18-143 (filed July 26, 2018) (“AT&T Comments”), at 12.

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

<sup>8</sup> See PRTC Comments at 20.

and deserving party with nothing to support their equally necessary restoration, hardening and expansion efforts. PRTC's sole justification for this patently uncompetitive approach is that it has "already made substantial broadband investments" and "no other broadband provider in Puerto Rico can combine the efficiencies, scale, scope and history of providing service to bring advanced broadband service to unserved areas."<sup>9</sup> But PRTC is hardly alone in making substantial broadband investments on Puerto Rico, as the comments repeatedly make clear.<sup>10</sup> And *no one* with terrestrial facilities has been immune to the costly rebuilding of infrastructure damaged by the hurricanes, including VPNet, which lacks any kind of universal support subsidies. Moreover, the "history" that PRTC relies upon should in fact give the Commission considerable pause before awarding support to the incumbent, given the comprehensive failure of the PRTC network following the hurricanes and the slow pace at which it has been restored. Indeed, given that wireless networks can be rebuilt more quickly and with less cost than wireline networks, the idea of earmarking Stage 2 funding exclusively, or even predominately, for incumbent wireline use is unwise and shortsighted.<sup>11</sup> As other commenters explained, the Commission needs to encourage the participation of PRTC's competitors to offer network redundancy using hurricane-resilient technology.<sup>12</sup> Foreclosing the participation of these

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<sup>9</sup> *Id.* at 21.

<sup>10</sup> See, e.g., Comments of WorldNet Telecommunications, Inc., WC Docket No. 18-143 (filed July 26, 2018) ("WorldNet Comments") at 2; Liberty Cablevision Comments at 2; Comments of Neptuno Media, Inc. d/b/a Neptuno Networks, WC Docket No. 18-143 (filed July 26, 2018) ("Neptuno Comments") at 1.

<sup>11</sup> See Neptuno Comments at 5 ("One key difference between the damage sustained by [wireless Internet service provider] Neptuno and that sustained by the wireline providers is that wireless-based networks like Neptuno's are quickly and cheaply repaired in comparison to wireline networks."). For instance, even underground fiber may become damage by excessive amounts of water or may be inaccessible in some areas. Having multiple networks with differing technologies and architectures will lessen the risk associated with a single network going down.

<sup>12</sup> See, e.g., WorldNet Comments at 3 ("[T]he second stage should not just be the 'incumbent LEC rebuilds Puerto Rico' stage. Single provider market dominance has left Puerto Rico at the back of the pack in terms of service, costs, and technology and innovation."); Neptuno Comments at 3 ("By ensuring the ability of both wireline and wireless providers to participate in the Stage 2 process[,] the Commission can encourage meaningful and thoughtful competition among participating providers to make proposals to

competitors would not further the goals of the Puerto Rico Fund to rebuild, improve and expand broadband capable networks in the Territory.<sup>13</sup>

In lieu of a “right of first refusal” approach that enriches one party at the expense of all others, the Commission should adopt its proposal to award support using a competitive process that replaces the existing frozen high-cost support mechanism.<sup>14</sup> Numerous parties recognize the competitive approach as the superior process, including even PRTC if the Commission (as it should) rejects the right-of-first-refusal approach.<sup>15</sup> Arguments in favor of alternative approaches are unavailing. Hughes’ preference for an auction process fails to account for the delay that such a process will entail and the unnecessary administrative burdens that an auction will impose,<sup>16</sup> as VPNet and other commenters recognize.<sup>17</sup> Those in favor of a negotiation process, including Liberty Cablevision and Data@ccess Communications, Inc.,<sup>18</sup> overlook the risk that negotiations can lack transparency and be dominated by parties with the longest history before the Commission.<sup>19</sup> VPNet also opposes the novel request-for-proposal process suggested by The Telecommunications Regulatory Board of Puerto Rico (“TRB”).<sup>20</sup> Although well intentioned, this approach as described by the TRB would insert another layer of administrative

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the Commission that highlight and utilize the most advantageous aspects of their business models, technologies, and services.”).

<sup>13</sup> As the incumbent fixed carrier, PRTC will benefit from Commission’s decision to offset the millions of dollars in emergency high-cost support it received immediately after the hurricanes, making PRTC’s plea for exclusive funding even less compelling.

<sup>14</sup> See *NPRM* at ¶ 36.

<sup>15</sup> See PRTC Comments at 22; see also Liberty Cablevision Comments at 13; AT&T Comments at 16.

<sup>16</sup> See, e.g., Comments of Hughes Network Systems LLC, WC Docket No. 18-143 (filed July 26, 2018), at 19

<sup>17</sup> See, e.g., VPNet Comments at 6; AT&T Comments at 16; Comments of The Telecommunications Regulatory Board of Puerto Rico, WC Docket No. 18-143 (filed July 26, 2018) (“TRB Comments”), at 10.

<sup>18</sup> See Liberty Cablevision Comments at 21; Comments of Data@ccess Communications, Inc., WC Docket No. 18-143 (filed July 26, 2018), at 5.

<sup>19</sup> See VPNet Comments at 6.

<sup>20</sup> See TRB Comments at 10.

oversight to that already provided by the Commission. The end result would invariably lead to the delay of the awarding of support rather than its expedited delivery.

**B. Only Parties Providing Service As Of June 30, 2017 Should Be Eligible**

The vast majority of commenters, including VPNet, agrees with the Commission's proposal that only those providers with existing networks as of the June 30, 2017 FCC Form 477 filing deadline should be eligible for Stage 2 support.<sup>21</sup> Hughes is an exception, on the grounds that it finds the June 30, 2017 date to be "arbitrary" and "irrelevant."<sup>22</sup> But as the Commission indicated in the *NPRM*, the date is indeed relevant because it identifies those providers best equipped to rebuild and expand service as quickly as possible.<sup>23</sup> Moreover, support intended for the restoration and hardening of damaged infrastructure naturally should flow only to those providers whose operations were affected by the hurricanes, and which suffered the loss of customers and revenue that followed.<sup>24</sup>

**C. The Commission Should Adopt Census Tracts As The Minimum Geographic Area And Not Rely On The Connect America Cost Model To Identify Locations**

The commenters offer varying approaches as to how to best define the minimum geographic area for purposes of satisfying specific service obligations, with some parties favoring using larger municipios in order to achieve economies of scale<sup>25</sup> and others favoring smaller census blocks or (in certain cases) combined barrios so as to encourage more effective

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<sup>21</sup> See, e.g., PRTC Comments at 17; Neptuno Comments at 7; AT&T Comments at 6; Liberty Cablevision Comments at 30.

<sup>22</sup> See Hughes Comments at 8.

<sup>23</sup> See *NPRM* at ¶ 42.

<sup>24</sup> Unlike other service providers, the infrastructure employed by satellite operators to deliver broadband services was largely unaffected by the 2017 hurricanes. Accordingly, Hughes' eligibility for support to restore service and harden networks would appear far less necessary than those providers with badly damaged terrestrial facilities.

<sup>25</sup> See PRTC Comments at 19.

proposals.<sup>26</sup> VPNet reiterates its position that the most appropriate minimum geographic area is the census tract level because it strikes a balance between these two extremes.<sup>27</sup> The census tract level avoids the competitive advantage that municipios afford to the incumbent while still allowing for efficient delivery of service. Use of census tracts will also negate the need for package bidding in order to achieve the economies of scale noted by Liberty Cablevision.<sup>28</sup>

VPNet agrees with the commenters who take exception to use of the Connect America Cost Model (“CAM”) for purposes of identifying locations in the geographic areas targeted for support.<sup>29</sup> As the Commission notes, the reliability of CAM is dubious given the large number of Puerto Rican citizens that have migrated from the islands since the hurricanes.<sup>30</sup> In lieu of CAM, VPNet recommends that the Commission require award recipients to report the locations served on an annual basis.

#### **D. Bid Adjustments Should Favor Network Deployment Timing**

VPNet agrees with Liberty Cablevision that network deployment timing is the most critical of the adjustments proposed to be made when the Commission considers proposals based on price-per-location.<sup>31</sup> As Liberty Cablevision puts it, “[g]iven the devastation to Puerto Rico’s existing communications networks caused by the 2017 hurricanes, it is critical that broadband infrastructure is deployed in a speedy and efficient manner.”<sup>32</sup> VPNet, however, disagrees with Liberty Cablevision that an accelerated deployment timeline shorter than the proposed six years

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<sup>26</sup> See Liberty Cablevision Comments at 25 (proposing the use of census blocks); TRB Comments at 13 (proposing combined groups of barrios for towns in more rural, mountainous areas).

<sup>27</sup> See VPNet Comments at 9.

<sup>28</sup> See Liberty Cablevision Comments at 25.

<sup>29</sup> See, e.g., AT&T Comments at 15; TRB Comments at 14; PRTC Comments at 19.

<sup>30</sup> See *NPRM* at ¶ 49; see also PRTC Comments at 19.

<sup>31</sup> See Liberty Cablevision Comments at 17. No party took exception to the proposal that winning proposals be based on price-per-location, although PRTC does not believe that price should be “the most heavily weighted factor.” See PRTC Comments at 23. But price is appropriately the primary basis for informing the Commission’s selection process because of its obligations to manage universal service funds responsibly.

<sup>32</sup> See Liberty Cablevision Comments at 17.

is necessary.<sup>33</sup> Milestones calling for full deployment in the sixth year of support are appropriate here as they are with the CAF Phase II support.

#### **E. Faster Speeds Are Appropriate In Smaller Geographic Areas**

The commenters offered a variety of opinions as to the most appropriate performance metrics that the Commission should require from support recipients. Regarding download/upload speeds, Hughes takes the position that the Commission should *require* 25/3 Mbps over the term of support.<sup>34</sup> TRB is more measured, noting that while it supports the Commission's proposed minimum speed of 10/1 Mbps, it "would like to see" the speed of service raised to 25/3 Mbps so service in Puerto Rico matches that of the rest of the United States.<sup>35</sup> VPNet is in favor of the 25/3 Mbps performance metric if the Commission adopts census tracts as the minimum geographic area within which service obligations must be met.<sup>36</sup> Should the Commission opt for a larger geographic area such as municipios, then the proposed 10/1 Mbps speed is the better minimum speed because of the high costs associated with providing faster speeds over larger areas.

VPNet opposes the position of the satellite industry calling for elimination of the latency requirement of 100 ms.<sup>37</sup> Low latency is necessary for quality voice communications, and the Commission should not lower its well-settled metric to satisfy a narrow class of entities that were not even serving customers as of June 30, 2017, and thus may not be eligible for Stage 2 support. While VPNet supports a Stage 2 process that is technologically neutral, the Commission must at

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<sup>33</sup> *See id.* at 18.

<sup>34</sup> *See* Hughes Comments at 11.

<sup>35</sup> *See* TRB Comments at 16-17.

<sup>36</sup> *See* Section II.C., *supra*.

<sup>37</sup> *See* Hughes Comments at 14-15; Comments SES Americom, Inc. and O3b Limited, WC Docket No. 18-143 (filed July 26, 2018), at 3.



some point draw lines separating eligible performance from ineligible performance. Roundtrip latency at 100 ms is an appropriate place to draw that line.

#### **F. Award Recipients Should Be Permitted To Post Performance Bonds In Lieu of Letters of Credit**

In its Comments, VPNet urged the Commission to give an award recipient the option to post a performance bond in lieu of obtaining a burdensome letter of credit (“LOC”).<sup>38</sup> The Surety & Fidelity Association of America and National Association of Surety Bond Producers agree, and specifically recommend performance bonds as a low-risk alternative to LOCs because a surety only provides a performance bond to those carriers “it believes can perform.”<sup>39</sup> In this way, the performance bond helps assures “that the successful carrier is qualified to perform the obligations of the award.”<sup>40</sup> VPNet agrees, and reiterates its position that the Commission offer the performance bond option to winning bidders.

### **III. MEANINGFUL DISASTER RESPONSE MEASURES SHOULD BE TRACKED TO THE BEST OF A SUPPORT RECIPIENT’S ABILITY**

In its Comments, VPNet explained that, as a condition of receiving Stage 2 support, a recipient should be required to use best efforts to participate in the Disaster Information Reporting System (“DIRS”).<sup>41</sup> The TRB agrees, correctly noting that the Puerto Rico Fund is “an investment in the development of this nation’s infrastructure, and it must be carefully safeguarded.”<sup>42</sup> Simply put, there is no point in awarding Stage 2 funding to support projects that will pose an undue risk of being destroyed when the next Category 5 hurricane strikes Puerto

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<sup>38</sup> See VPNet Comments at 12.

<sup>39</sup> See Comments from The Surety & Fidelity Association of American and the National Association of Surety Bond Producers, WC Docket No. 18-143 (filed June 29, 2018) at 2.

<sup>40</sup> *Id.*

<sup>41</sup> See VPNet Comments at 13.

<sup>42</sup> See TRB Comments at 19. Although the TRB is correct to advocate for network resiliency, VPNet disagrees with its recommendation that the Commission prioritize trenching or “similar measures.” See *id.* It would be premature at this stage to identify specific measures that are necessarily more resilient than others. As noted above, even fiber in the ground can be susceptible to water damage. See n. 11, *supra*.

Rico. AT&T may believe that it would be a “mistake” to impose specific disaster response measures because Hurricane Maria was a “once in a lifetime weather event.”<sup>43</sup> VPNet believes that the citizens of Puerto Rico cannot afford to take that chance. Given the potential consequences of another Hurricane Maria, requiring participation in the DIRS as a means of encouraging thorough hardening efforts is amply justified.

### **Conclusion**

When adopting the rules and requirements governing Stage 2 of the Puerto Rico Fund, the Commission should not be swayed by self-serving comments from one provider to receive all, or a significant majority, of the support available. Instead, the Commission should favor, as its proposals generally do, a competitive process that can identify those entities, technologies and plans best able to restore, improve and expand broadband services to the Puerto Rican islands.

Respectfully submitted,

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<sup>43</sup> See AT&T Comments at 17.