

**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 BROADBAND VI, LLC

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Table of Contents

Summary	iii
Discussion	2
I. THE COMMISSION SHOULD CONDUCT A COMPETITIVE APPLICATION PROCESS OPEN TO BROADBAND PROVIDERS THAT WERE SERVING CUSTOMERS AS OF JUNE 30, 2017	2
A. The Commission Should Reject Viya’s Efforts To Be The Sole Recipient Of Stage 2 USVI Fund Support	2
B. The Commission Should Reject Viya’s Proposal To Eliminate All Other Providers From Stage 2 Eligibility	6
C. The Record Supports Providing Stage 2 Support For The Entire Virgin Islands	8
D. The Commission Should Adopt Broadband VI’s Recommendations Regarding Performance Requirements	9
II. THE COMMISSION SHOULD REJECT AT&T’S PROPOSAL TO SHORTEN STAGE 2 AND ADD “STAGE 3”	10
III. THE COMMISSION SHOULD PERMIT APPLICANTS TO RELY ON PERFORMANCE BONDS	11
Conclusion	12

Summary

In its Reply Comments, Broadband VI, LLC (“Broadband VI”) reiterates its support for the establishment of Stage 2 of the Connect USVI Fund to promote the short-term and long-term interests of Virgin Islanders that need access to resilient voice and broadband networks that can withstand severe natural disasters and provide competitive choice.

The Commission should implement a competitive application process to select, from a small number of applicants, the provider or providers that will deploy cost-effective service. The Commission should not, as Viya, the sole incumbent local exchange carrier in the Virgin Islands contends, maintain and increase support only to Viya. Given that Viya has restored subsidized and insured service to only about 60 percent of its customers while Broadband VI has restored *and expanded* its *unsubsidized* service, it would be extremely unwise for the Commission to adopt a process that ignores the benefits of a competitive process. It also would be contrary to good policy and previous Commission decisions to establish novel eligibility obstacles that would require a provider to have provided both voice and broadband service to both business and residential customers, and to be designated as an eligible telecommunications carrier before applying for Stage 2 support. These proposed criteria should be summarily dismissed as a transparent attempt to foreclose Broadband VI, and perhaps others, from competing for Stage 2 support.

The record supports an approach under which applicants must propose to serve the entire Virgin Islands territory. Applicants should obtain a comparative credit for proposing to deploy networks that are resilient and offer 25/3 Mbps service. The build-out milestones the Commission proposes are acceptable to Broadband VI, and are preferred over the more unrealistic build-out timetable Viya suggests.

The Commission should not adopt a substantially shorter Stage 2 while it initiates another proceeding for a new “Stage 3” as AT&T recommends. The three-year term is not a sufficient amount of time for a resilient and robust network to be deployed, and would therefore discourage participation in the Stage 2 process to the detriment of consumers and businesses in dire need of broadband access.

The Commission should follow the recommendation of the Surety & Fidelity Association of America and the National Association of Surety Bond Producers and permit Stage 2 applicants to obtain performance bonds as an alternative to letters of credit, which are likely to be difficult for recipients to secure.

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Broadband VI, LLC (“Broadband VI”), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to certain comments filed in the above-captioned proceeding regarding Stage 2 of the Connect USVI Fund (the “USVI Fund”).¹

Based on a review of the record, Broadband VI maintains its belief that the Commission should implement a competitive application process to evaluate proposals from the few companies that were providing voice or broadband service before the 2017 hurricanes struck.² Proposals to direct support to a single incumbent or to require prior experience in providing

² The Commission conditionally authorized Broadband VI to receive \$931,211.69 in Stage 1 funding. *See Public Notice*, “Wireline Competition Bureau Announces Stage 1 Restoration Funding for the Uniendo a Puerto Rico and the Connect USVI Fund,” WC Docket Nos. 18-143 and 10-90, DA 18-825 (rel. Aug. 7, 2018) (“*Stage 1 Notice*”), Attachment B. Broadband VI intends to meet the Commission’s October 9, 2018 deadline to be designated as an eligible telecommunications carrier (“ETC”).

voice service are transparent attempts to exclude successful broadband providers like Broadband VI that serve thousands of consumers with cost-effective technology and have actually invested their own funds to expand their customer base in the last year. Likewise, it makes little sense to shorten Stage 2 to a three-year term limited to restoration funding before commencing another proceeding for “Stage 3.” In sum, the Commission should adhere to the framework proposed in the *NPRM*, with the refinements Broadband VI recommends.

The record also reflects support for allowing support recipients to provide performance bonds in lieu of letters of credit. The Commission should adopt this proposal.

Discussion

I. THE COMMISSION SHOULD CONDUCT A COMPETITIVE APPLICATION PROCESS OPEN TO BROADBAND PROVIDERS THAT WERE SERVING CUSTOMERS AS OF JUNE 30, 2017

A. The Commission Should Reject Viya’s Efforts To Be The Sole Recipient Of Stage 2 USVI Fund Support

In its Comments, Broadband VI recommended that the Commission implement a competitive application process to determine recipients of fixed broadband Stage 2 USVI Fund support.³ Broadband VI explained that this process could be implemented quickly and objectively in light of the small number of expected applicants,⁴ and that other processes – especially those that would either continue funding only the sole local exchange carrier (“ILEC”) or institute a negotiated process – would be unfair, less transparent, and less competitive, and would not advance the Commission’s objectives.⁵ In its Comments, AT&T similarly cited the small number of expected eligible providers and the extensive resources that would be required

³ See Broadband VI Comments at 4-5.

⁴ See *id.* at 4. But see Viya Comments at 40 (speculating about the time and expense of a competitive application process).

⁵ See Broadband VI Comments at 5, n.10.

for the Commission to conduct an auction for Stage 2 support.⁶ It also did not support the negotiated solution, and directly opposed Viya's petition for support based on customer service disruption credits.⁷ Accordingly, in light of the substantial concerns surrounding other potential processes, the Commission should implement its proposal to award Stage 2 support via a competitive application process.

The Commission should reject the efforts of Viya, the ILEC, to be the sole beneficiary of Stage 2 support.⁸ As a policy matter, the Commission should heed the words of the Governor of the Virgin Islands: "The Commission proposes to distribute the bulk of the Stage 2 funds to the sole Eligible Telecommunications Carrier ("ETC") in the Territory. Providing such funding to a single entity is neither 'tailored' nor 'cost-effective,' as called for in the Order (¶ 5, p.2), and is non-competitive."⁹ Broadband VI wholeheartedly agrees that the Commission should encourage competition for Stage 2 funding.

The 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.¹⁰ Even with more than \$34 million in insurance proceeds,¹¹ Viya has restored service to less than 60 percent of its customers ten months after the hurricanes.¹² During that same time period, at substantial *unsubsidized* cost, Broadband VI quickly restored service

⁶ Comments of AT&T, WC Docket No. 18-143 (filed July 26, 2018) ("AT&T Comments"), at 16.

⁷ See *id.* at 20.

⁸ See Viya Comments at 18-24. The Commission allocated almost \$7 million in Stage 1 funding to Viya and another \$470,000 to its mobile wireless affiliates. See *Stage 1 Notice* at Attachment B.

⁹ See Letter from Kenneth E. Mapp, Governor, to Ajit Pai, Chairman, WC Docket No. 18-143 (dated July 11, 2018), at 5.

¹⁰ See Viya Comments at 3.

¹¹ See ATN International, Inc., 10-K Annual Report (March 2018), at 27, *available at* <https://www.last10k.com/sec-filings/atni#fullReport> (last visited Aug. 1, 2018) ("While we received approximately \$34.6 million in insurance coverage proceeds in the first quarter of 2018 for a combination of replacement costs of damaged property, extra expenses and business interruption, we believe that these amounts will not cover the total losses from the Hurricanes.").

¹² See Broadband VI Comments at 4, n.7; Viya Comments at 3-4.

and actually *increased* its broadband subscribership by about 20 percent. Viya's expenditure of "substantial costs in constructing its network to preserve universal service in the USVI"¹³ is not persuasive evidence that it should be the sole recipient of Stage 2 support in light of the successful efforts of Broadband VI to restore and expand service while Viya continues to labor under financial stress, some of which is related to its own lack of due diligence.¹⁴

Viya offers other reasons for its contention that it, and only it, should be entitled to Stage 2 support. None of these arguments has merit. First, the Commission is conducting this proceeding because it believes that there are methods other than preserving frozen support and granting Viya's petition for additional support that will achieve the Commission's objectives.¹⁵ With interest in Stage 1 support from Broadband VI, interest in Stage 2 support expressed by commenters, and opposition to Viya's frozen support,¹⁶ Viya should not presume that its frozen support will be maintained, that its petition should be granted, and that it should therefore be entitled to "only \$1.67 million per year" more.¹⁷

Second, consistency with the Commission's 2015 offer of CAF Phase II support to price cap carriers in the contiguous states is an inappropriate basis for a 2018 program designed to restore and harden broadband networks in hurricane-ravaged areas. The Commission's 2015 program gave price cap carriers the option to accept model-based support for unserved areas within their study areas. As Viya observes, the Commission predicted that ILECs could extend supported services at lower costs than a new entrant.¹⁸ But that is not the case in 2018 in the Virgin Islands, where Broadband VI, without the benefit of federal subsidies, quickly restored service after the hurricanes and continued to expand its network. A much better analogy is the

¹³ Viya Comments at 19.

¹⁴ *See id.* at 9, n.30.

¹⁵ *See id.* at 19.

¹⁶ *See* Broadband VI Comments at 3-4; AT&T Comments at 20.

¹⁷ Viya Comments at 19.

¹⁸ *See id.* at 20.

Commission's decision in the CAF Phase II proceeding to conduct a reverse auction among broadband, voice or electric utility companies for areas where the price cap carrier declined support. A transparent competitive process will create appropriate incentives for the Commission to award support at a lower per-location cost than a process that hands over millions of dollars to a provider simply because it is an ILEC, without regard to its checkered track record and the relative benefits of competitive proposals.

Third, Viya is not "uniquely positioned, given the scope of its pre-storm network, to complete the restoration of service to the entire USVI territory quickly and ensure resilient, expanded voice and broadband service at affordable rates to all USVI residents and businesses over the long term."¹⁹ To the contrary, as its network restoration and subscriber growth in the last year demonstrate, Broadband VI is well-positioned to continue to expeditiously expand its network. It has been conditionally approved for some Stage 1 support to continue network construction, which will provide some short-term support. Depending on the requirements the Commission adopts in this proceeding and the amount of support it receives, Broadband VI plans to use a combination of both fixed wireless and underground fiber technologies for long-term Stage 2 deployment.

Finally, to the extent the Commission adopts a negotiation process over the transparent competitive application process Broadband VI recommends, such negotiations should be conducted with *all* eligible providers on fair, technology-neutral terms that focus on network resiliency, performance, and expected ability to meet build-out milestones.²⁰ Also, as Broadband VI suggests in its Comments, the Commission should consider awarding support to multiple

¹⁹ *Id.* at 22.

²⁰ See Broadband VI Comments at 5, n.10. Notably, Viya would commit to performance at the ILEC "floor" speed of 10/1 Mbps. See Viya Comments at 23. By contrast, the competitive application approach Broadband VI recommended would provide a credit for providers building networks capable of 25/3 Mbps speeds. See Broadband VI Comments at 8.

providers in the same areas of the Virgin Islands.²¹ While this notion would appear to be at odds with traditional universal support policy, the need for redundancy and a desire to incentivize build-out and leverage Commission financing may warrant an exception.

B. The Commission Should Reject Viya’s Proposal To Eliminate All Other Providers From Stage 2 Eligibility

Broadband VI agrees with Viya that only providers serving customers as of June 30, 2017 should receive support.²² The Commission should reject Hughes’ argument that any broadband provider, regardless of whether or when it commenced service in the Virgin Islands, should be eligible for Stage 2 support.²³ The proposed June 30, 2017 date is not “arbitrary” as Hughes contends, but rather represents a date immediately prior to the hurricanes and for which deployment data can be easily verified through Form 477 reporting.²⁴ Those providers were deeply affected by the hurricanes and are in need of support for restoration and resiliency, whereas latecomers suffered no infrastructure damage, no loss of customers, and no loss of revenue.²⁵ The Commission should adopt its proposal.

However, Broadband VI strongly disagrees with Viya’s suggestion that the June 30, 2017 Form 477 reporting should show that a provider must have offered both voice *and* broadband to residential *and* business customers by that date in order to be eligible for Stage 2 funding.²⁶ Viya wrongly assumes that a broadband provider that had not previously constructed a fixed network providing voice and broadband service “cannot initiate service as quickly or as cost-effectively

²¹ *See id.* at 5.

²² *See* Broadband VI Comments at 5-6; Viya Comments at 26.

²³ *See* Comments of Hughes Network Systems LLC, WC Docket No. 18-143 (filed July 26, 2018) (“Hughes Comments”), at 8.

²⁴ *Id.*

²⁵ Given that satellite infrastructure is located thousands of miles above the Earth and Hughes’ satellites were not damaged by the hurricanes, Hughes’ eligibility for support to restore service and harden networks would appear to be substantially limited.

²⁶ *See* Viya Comments at 26-29. Broadband VI is using Momentum Telecom’s VoIP services at its offices.

as a pre-existing provider.”²⁷ This ignores the facts – once a network is built, it can be used to deliver voice, broadband or both, to residences, businesses or both.²⁸ And with respect to the time required to construct such a network, one need only compare Broadband VI’s successful restoration and expansion efforts to Viya’s expensive and ongoing efforts in which 40 percent of its customers remain without service.²⁹

Viya’s arguments are squarely at odds with the Commission’s eligibility requirements for the CAF Phase II reverse auction. Based on a full record, the Commission rightfully concluded that applicants can establish eligibility if they “have provided voice, broadband, and/or electric distribution or transmission services for at least two years.”³⁰ This requirement is intended to “provide the Commission with sufficient assurance before the auction that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network.”³¹ The Commission further observed that “we do not require entities to have operated both a voice and broadband network, because those entities may have made business decisions not to offer a certain service that are independent of their qualifications to offer such a service.”³² The Commission also did not require an applicant to have served business and residential customers.

²⁷ *Id.* at 27. *See also id.* at 29 (“the Commission should not assume that a provider of broadband-only service will be able to quickly and seamlessly provide high-quality voice service (most likely VoIP) over a previously broadband-only network.”).

²⁸ Broadband VI fully appreciates that it must offer voice in connection with any USVI Fund support it receives and comply with applicable regulatory requirements. *See Viya Comments* at 29.

²⁹ Also unavailing is Viya’s claim that “[i]t is likely to be challenging for a provider that only provided service to businesses prior to the hurricanes to expeditiously introduce a new residential offering.” *Id.* at 30. The Commission has never made such distinctions in its universal service rules, and Viya’s attempt to use this false statement should not be used to exclude applicants from the Stage 2 process. In any event, Viya’s “knowledge of the USVI market” that established providers were offering service only to businesses is incorrect. *Id.* at 30, n.89. Broadband VI serves more than 1,000 business customers and more than 8,000 residential customers.

³⁰ *Connect America Fund*, Repot and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5182 (2016).

³¹ *Id.* at 5183 (footnote omitted).

³² *Id.* at 5182, n.196.

Viya presents no good reason why the Commission should reverse course and adopt gating requirements that would foreclose competition for Stage 2 USVI Fund support.

Likewise, Viya's proposal to "require applicants to obtain high-cost ETC status before filing an application" is contrary to rules the Commission rightfully adopted for the rural broadband experiment program and the CAF Phase II auction to encourage participation by experienced broadband providers that were not otherwise required to subject themselves to state or territory jurisdiction.³³ Here again, Viya is trying to game the system so that it, and only it, can be eligible to receive USVI Fund fixed support.

In sum, Viya offers no legitimate basis for the Commission to deviate from its settled eligibility decisions. Given the number of ways Viya tries to erect eligibility barriers, there can be little doubt that Viya wants to preclude Broadband VI and others, which may be able to build networks more quickly and more cost-effectively than Viya, from getting a seat at the USVI Fund table. That effort is diametrically opposed to the approach the Commission should adopt.

C. The Record Supports Providing Stage 2 Support For The Entire Virgin Islands

Both Broadband VI and Viya urged the Commission to require entities seeking Stage 2 support to apply for support at the Territory level, and to not award support based on smaller geographic areas.³⁴ No commenter disagreed with this proposal.³⁵ The Commission therefore should adopt this recommendation.

³³ Viya Comments at 35. As stated in its initial Comments, on June 27, 2018 Broadband VI filed an application with the Virgin Islands Public Service Commission to be designated as an ETC. *See* Broadband VI Comments at 2, n.2. It expects to receive ETC approval by the October 9, 2018 deadline established in the *Stage 1 Notice*.

³⁴ *See* Broadband VI Comments at 6-7; Viya Comments at 32-35.

³⁵ AT&T did not express a position, but did ask the Commission "to limit the winning bidder's service obligations to the eligible census blocks within that geographic area (e.g., municipio) and *not* require the bidder to offer service to every location in that area." AT&T Comments at 14 (citation omitted) (emphasis in original).

D. The Commission Should Adopt Broadband VI's Recommendations Regarding Performance Requirements

Broadband VI proposed that the Commission require Stage 2 applicants to meet the same basic requirements that the Commission adopted for CAF Phase II – namely, minimum speed of 10/1 Mbps, roundtrip latency of no greater than 100 milliseconds, and a minimum usage allowance of the higher of 170 GB or the nationwide average.³⁶ Broadband VI urged the Commission to adopt comparative preferences based on resiliency and speed up to 25/3 Mbps.³⁷

Viya concurs on the latency and usage elements, but asks the Commission to set a minimum broadband speed of 25/3 Mbps.³⁸ Given the dire conditions in the Virgin Islands and the need to restore service quickly across three rugged islands, requiring a more robust network build would involve tradeoffs of time and expense that, on balance, should be disfavored. Although it is true that a majority of Americans subscribe to service with speeds greater than 10/1 Mbps, it does not necessarily follow that the Commission should be using finite USVI Fund support to subsidize faster speeds where deployment costs may be higher and the build-out time may be greater. The Commission has agreed to support 10/1 Mbps speeds in CAF Phase II, with a preference for 25/3 Mbps service.³⁹ Broadband VI believes that the same approach should apply to the USVI Fund. Of course, any broadband provider may choose to offer faster speeds, and receiving support to deploy a 10/1 Mbps network may help in that regard.

Viya offers an alternative to the build-out milestone dates the Commission proposed and which Broadband VI supports.⁴⁰ It asks the Commission to require recipients to deploy service to 90 percent of the service territory by the end of the first year and 99.5 percent within five

³⁶ See Broadband VI Comments at 9.

³⁷ See *id.*

³⁸ See Viya Comments at 36-37. See also Hughes Comments at 11 (Commission should require no less than 25/3 Mbps).

³⁹ See *Connect America Fund*, 31 FCC Rcd 5949 (2016).

⁴⁰ See *NPRM* at ¶ 63; Broadband VI Comments at 9.

years of receiving support.⁴¹ Broadband VI believes that these milestones are overly aggressive given the need to hire construction personnel, secure building permits and access to rights of way, and obtain interconnection agreements. Moreover, the timeframes Viya proposes would occur much sooner than those applicable to both price cap carriers that accepted the CAF Phase II offer and to bidders that are participating in the CAF Phase II auction. With about 60 percent of its network already rebuilt and with the benefits of insurance proceeds and frozen support, it can only be presumed that Viya is proposing build-out rules that only it can expect to satisfy. The Commission should disregard Viya's gamesmanship in crafting reasonable requirements that will encourage competition for fixed USVI Fund support.

II. THE COMMISSION SHOULD REJECT AT&T'S PROPOSAL TO SHORTEN STAGE 2 AND ADD "STAGE 3"

AT&T asks the Commission to shorten Stage 2 to three years and then add a "Stage 3" based on CAF Phase II standards.⁴² It contends that the objectives of supporting short-term restoration and long-term broadband expansion "are in tension with each other" and thus should be addressed in different proceedings.⁴³ But a three-year support term will provide little incentive for providers to obtain permits, hire construction crews, and pursue viable build-out strategies and activities. A substantially shorter Stage 2 term will lead to limited build-out that will hinder and delay the Commission's ultimate objectives. By contrast, Broadband VI believes that reassessing Stage 2 deployment at the five-year mark will both enable the Commission to adjust program requirements without conducting a follow-on rulemaking proceeding and provide recipients with the assurance of long-term support.⁴⁴

⁴¹ See Viya Comments at 37.

⁴² See AT&T Comments at 3.

⁴³ *Id.* at 12.

⁴⁴ See Broadband VI Comments at 9.

As an alternative to the location reconciliation process outlined in Broadband VI's Comments,⁴⁵ Broadband VI does not oppose AT&T's proposal to award fixed Stage 2 support based on population⁴⁶ if it appears that location-based support may be too difficult to determine given the shortcomings in determining the actual number of locations. Broadband VI also does not oppose AT&T's suggestion that the Commission require a recipient to certify that it is offering voice and broadband service "to all the locations it is able to locate in the eligible census blocks" or other geographic unit.⁴⁷

III. THE COMMISSION SHOULD PERMIT APPLICANTS TO RELY ON PERFORMANCE BONDS

Broadband VI recommends in its Comments that Stage 2 USVI Fund applicants be permitted to submit either a letter of credit ("LOC") or a performance bond as security for funding.⁴⁸ Viya disagrees, citing only the CAF Phase II requirement that recipients must obtain LOCs.⁴⁹ This misses the point. As Broadband VI stated, obtaining a letter of credit "is an extreme challenge in the Virgin Islands due to the inherent limitations of local banking operations."⁵⁰ The Surety & Fidelity Association of America and the National Association of Surety Bond Producers (the "Associations") agree that the Commission should accept performance bonds, noting the "value and benefits to the FCC" and that "rural internet service providers (ISPs) [are] having difficulty in securing sufficient collateral to obtain an LOC to meet security requirements under CAF Phase II."⁵¹ Thus, without even acknowledging the local conditions, the Associations present compelling reasons why a performance bond may be

⁴⁵ *See id.* at 7.

⁴⁶ *See* AT&T Comments at 12-13.

⁴⁷ *Id.* at 16.

⁴⁸ *See* Broadband VI Comments at 10.

⁴⁹ *See* Viya Comments at 38.

⁵⁰ Broadband VI Comments at 10.

⁵¹ Comments of the Surety & Fidelity Association of America and the National Association of Surety Bond Producers, WC Docket No. 18-143 (dated June 29, 2018), at 2.

preferred to a LOC. Absent the flexibility to rely on a performance bond, the Commission would likely be faced with fewer bidders and a lower level of security.

Conclusion

The rules adopted in this proceeding should not concede the distribution of Stage 2 USVI support to a single company based on its legacy status as the sole Virgin Islands ILEC, but should balance the goals of expeditious service, resilient networks, cost-effectiveness, and affordable voice and broadband services. The proposals advanced by Broadband VI will accomplish these goals. Broadband VI stands ready to work with Commission staff and, upon receiving support, work diligently to build and operate a network that will ensure success.

Respectfully submitted,

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