

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WT Docket No. 18-120
Transforming the 2.5 GHz Band)	

COMMENTS OF VIYA

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TABLE OF CONTENTS

I.	INTRODUCTION AND EXECUTIVE SUMMARY.....	1
II.	VIYA’S LONGSTANDING INVESTMENTS IN THE 2.5 GHz BAND HAVE GREATLY BENEFITED THE TERRITORY	3
III.	INCUMBENT PROVIDERS SUCH AS VIYA ARE BEST POSITIONED TO MOST RAPIDLY, EFFECTIVELY, AND EFFICIENTLY UTILIZE EBS SPECTRUM	7
	A. The Commission Should Issue Full Licenses to Incumbent 2.5 GHz Providers Currently Operating Under STAs	9
	B. The Commission Should Provide Full Eligibility and Operational Flexibility for 2.5 GHz Licensees	12
	C. The Commission Should Issue to Incumbents, Including 2.5 GHz STA Holders, Licenses That Already Are Rationalized to County Borders	14
	D. The Commission Should Not Impose Special Encumbrances on New 2.5 GHz Licenses Issued to Current 2.5 GHz STA Holders	16
IV.	CONCLUSION.....	18

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I. INTRODUCTION AND EXECUTIVE SUMMARY

¹ Choice and Vitelcom are among a group of affiliated companies that provide mobile and fixed voice and broadband wireless service, wireline voice and broadband telecommunications, and cable television service to residents and businesses in the USVI under the Viya brand (formerly known as Innovative). The Viya group of USVI communications providers are under the common ownership of ATN International, Inc. (“ATN”). Choice has been a USVI subsidiary of ATN since 1999, and ATN acquired Vitelcom and its wireline and cable affiliates in July 2016. *See Applications of National Rural Utilities Cooperative Finance Corporation and Atlantic Tele- Network, Inc. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6913 (2016). ATN is a publicly traded Delaware corporation that provides, through its subsidiaries, international and domestic terrestrial and submarine fiber-optic services and wireless and wireline voice and data services to retail residential and enterprise customers, including mobile wireless solutions, local exchange services, and broadband Internet access services, as well as wholesale connectivity and related services to carrier customers.

² *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, FCC 18-59 (rel. May 10, 2018) (“*Notice*”). The comment deadline for this proceeding was extended by the Commission. *See Transforming the 2.5 GHz Band*, Order, DA 18-647 (rel. June 21, 2018).

In these comments, Viya describes its longstanding investment and operation in the 2.5 GHz band in the USVI, including the Territory's reliance on Viya's new 4G LTE network that Viya operates using this spectrum. Because of Viya's investment, and because it is one of the few operators making full and efficient use of the band under Special Temporary Authority ("STA"), Viya's comments specifically focus on the status of operators utilizing the band pursuant to an STA. It demonstrates that incumbent operators are best positioned to build out the 2.5 GHz band in areas where they are already providing service.

The Commission should grant full 2.5 GHz licenses to current STA holders that are making productive use of the band. These licenses should be issued in advance of the geographic rationalization of 2.5 GHz spectrum proposed by the Commission, which should be to county boundaries, to enable the new licensees to participate in the rationalization process on equal footing. This approach recognizes the substantial public interest benefits that incumbents have been providing to their communities and avoids stranding the networks and customers of these providers. Further, it would have no more than a *de minimis* effect on the availability nationwide of EBS white spaces for a later auction.

Viya also supports the following deregulatory actions discussed in the *Notice*:

- Issue licenses to incumbent 2.5 GHz providers that previously were providing service under STAs and permit such STA holders to rationalize their licenses to county boundaries;
- Provide additional flexibility to 2.5 GHz licensees by removing existing encumbrances on 2.5 GHz licenses, including educational use requirements and leasing restrictions, and decline to impose similar encumbrances on any new 2.5 GHz licensees;

- Expand eligibility for the 2.5 GHz band to commercial operators and permit them to purchase leased EBS spectrum; and
- Adopt service rules and secondary market rules that align with similar services.

In combination, the introduction of this sorely needed flexibility into the Commission's 2.5 GHz regulatory regime will speed the widespread broadband deployment of new 2.5 GHz fixed and mobile broadband services nationwide, including in underserved areas where they are most needed such as the USVI.

II. VIYA'S LONGSTANDING INVESTMENTS IN THE 2.5 GHz BAND HAVE GREATLY BENEFITED THE TERRITORY

Viya currently operates a state-of-the-art 4G LTE mobile broadband network throughout the USVI using, among other bands, 2.5 GHz spectrum. Viya has had longstanding access to 2.5 GHz spectrum through a combination of spectrum licenses, leases, and special temporary authorizations, and its current 4G LTE network is only its most recent use of the band. In fact, as further set forth below, Viya repeatedly has deployed private capital over the past twenty years to construct several generations of 2.5 GHz fixed wireless networks in the USVI. These networks were used to provide needed broadband and multi-channel video programming distribution ("MVPD") services to both residential and business customers throughout the Territory. The innovative services that Viya deployed in the 2.5 GHz band with these investments substantially benefitted the USVI, which then suffered from a dearth of broadband and video providers. The latest iteration of Viya's productive use of the 2.5 GHz band is the 4G LTE mobile broadband network that it launched in December 2017. The network covers almost all of the geographic area and the vast majority of the residents and businesses of the USVI's three main islands: St. Croix, St. Thomas, and St. John, as well as smaller islands in the Territory. Despite the presence

of other mobile providers in the USVI, Viya's 4G LTE network is the only mobile network that can compete from a technology perspective with AT&T's LTE network in the Territory.

Viya Current Access to 2.5 GHz Spectrum. Today, Viya is the licensee of commercial EBS station WQCY880, which is authorized to operate on the A group of channels on St. Thomas and St. John. WQCY880 is a commercial EBS license and is not subject to the programming requirements contained in Section 27.1203 of the Commission's rules.³ Viya also has entered into long-term leases with EBS licensee Shekinah Network ("Shekinah") for the excess capacity of EBS stations WND210 and WNC892, which are authorized to operate on the B and G group channels, respectively.⁴ Finally, Viya holds STAs to operate on the unassigned EBS B Group channels on St. Thomas and St. John, and the G Group channels on St. Croix (WQXS462); an STA to operate on the unassigned EBS A Group channels on St. Croix (WQXS464); and an STA to operate on the unassigned C1-C4 and D1-D4 channels on all three islands (WQUT992).

Viya's Historic, Productive Use of 2.5 GHz Spectrum. Viya has been productively utilizing the 2.5 GHz band in the USVI for more than twenty years. Choice commenced use of the spectrum in the 1990s, when it deployed a fixed wireless network over which it offered

³ See 47 C.F.R. § 27.1203.

⁴ Pursuant to Section 27.55(a)(4) of the Commission's Rules, although the licenses for WQCY880, WND210 and WNC892 identify 35-mile radius circular geographic service areas that do not fully overlap the USVI, Choice deployed facilities throughout the USVI utilizing those channels because there are no other licensees of the A, B, and G group channels operating within the USVI Basic Trading Area. See *Gateway Telecom LLC, dba StratusWave Communications*, Memorandum Opinion and Order and Order on Reconsideration, 27 FCC Rcd 6302, 6306-07 ¶ 8 (WTB 2012) (confirming that Section 27.55(a)(4) authorizes a 2.5 GHz licensee to deploy facilities outside of its incumbent geographic service area "where there is no affected licensee").

MVPD, fixed wireless Internet access, and other related services.⁵ The demand for Viya's fixed wireless broadband service in the USVI grew rapidly throughout the early 2000s because of the lack of adequate wireline broadband alternatives available in the Territory at the time, as well as the ability of Viya's fixed wireless network to reach areas that were difficult for the USVI's incumbent local exchange carrier ("ILEC") to serve with wireline facilities. Choice quickly found that it did not have adequate spectrum resources to keep pace with this growth. As a result, and with the increased availability of Direct Broadcast Satellite video service in the Territory, Choice phased out its MVPD offering by mid-2009 to free its 2.5 GHz band spectrum exclusively for the provision of fixed wireless data services. This enabled Choice to expand the capacity and coverage of its broadband offering.⁶ Choice also constructed a fixed LTE network in 2010 that covered much of the Territory and that primarily utilized 2.5 GHz spectrum.

In July 2016, ATN acquired the Viya group of USVI companies, including Vitelcom and its wireline and cable affiliates. One of these affiliates, Virgin Islands Telephone Corp.

⁵ Choice was one of the few companies successfully providing an MVPD service in 2004 when the new 2.5 GHz band plan was adopted in WT Docket No. 03-66. Consistent with the procedures adopted in that proceeding, on April 30, 2007 Choice filed a request for waiver to allow it to opt-out of transitioning to the new band plan. *See Wireless Telecommunications Bureau Seeks Comment on Request by Choice Communications, LLC, For Waiver of the Requirement to Transition to the New BRS/EBS Band Plan*, 22 FCC Rcd 9357 (WTB 2007). Choice's plan at the time was to continue to use the 2.5 GHz band to deliver both its MVPD service and the fixed wireless data service that it had begun to offer in the USVI utilizing first generation technology from NextNet Wireless ("NextNet") and then subsequently using WiMAX technology. However, as consumers dramatically increased their use of bandwidth to access the Internet, Choice found itself spectrum constrained and ceased providing MVPD services.

⁶ On January 8, 2009, Choice withdrew its request for an MVPD opt-out waiver. *See Request of Choice Communications, LLC to Withdraw Petition for Permanent Waiver*, DA 07-2168 (filed Jan 8, 2009). On April 21, 2009, Choice and Shekinah, the two 2.5 GHz band licensees operating in the USVI BTA, advised the Commission that they would be self-transitioning to the new 2.5 GHz band plan. *See Letter from Donald J. Evans, Counsel to Choice and Shekinah Networks, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-136* (filed Apr. 21, 2009).

(“Vitelco”), had deployed a hybrid fiber-coaxial (“HFC”) wireline broadband network throughout the USVI by 2015. Upon acquiring Vitelco and its HFC network, ATN migrated Choice’s fixed wireless broadband customers to the HFC network, which offered higher speeds and greater capacity than the fixed wireless network that was being operated by Choice at the time. Viya thereafter utilized the 2.5 GHz spectrum to deploy its 4G LTE mobile wireless network.⁷

Viya’s 2.5 GHz 4G LTE Network. Viya launched its new 2.5 GHz 4G LTE network on St. Croix, St. John, and St. Thomas in December 2017. Although Viya had not planned to light the network until some point in 2018, Viya significantly accelerated these plans because of Hurricanes Irma and Maria, which struck the USVI in September 2017.⁸ Following the hurricanes, Viya determined that its then mostly complete, although largely untested, 4G LTE network presented an opportunity to increase coverage and capacity for USVI mobile users suffering from the after effects of the storms. Further, due to the 2.5 GHz spectrum, Viya also

⁷ Vitelcom, the cellular arm of the USVI’s ILEC, deployed a 2G GSM mobile network in the USVI in 2010 using Cellular and PCS spectrum. Shortly after ATN purchased Vitelcom, causing Choice and Vitelcom to become sister companies, Choice became a subsidiary of Vitelcom, and ATN effectively merged the two companies’ operations into a single USVI wireless provider under the Viya brand. *See International Authorizations Granted*, 33 FCC Rcd 1794, 1798 (IB 2018); *see also Innovative and Choice Wireless Enter A New Era As Viya*, News Release (Apr. 24, 2017) <https://viyavi.com/innovative-and-choice-wireless-enter-a-new-era-as-viya/>. As part of this plan, ATN decided to replace the separate CDMA and GSM networks of Choice and Vitelcom, respectively, with a Territory-wide 4G LTE/UMTS network utilizing, among other bands, the 2.5 GHz spectrum.

⁸ On September 6, 2017, Hurricane Irma, a Category 5 storm, struck the USVI, causing catastrophic damage and destruction on the islands of St. Thomas and St. John as well as some damage on the island of St. Croix, which is situated approximately 40 miles south of St. Thomas. Just two weeks later the USVI was hit by a second Category 5 storm, Hurricane Maria, resulting in additional devastation, particularly on St. Croix. In combination, these two back-to-back storms severely damaged the separate Choice CDMA and Vitelcom GSM networks, as well as the 4G LTE/UMTS network that Viya was then constructing.

was able to offer fixed wireless broadband services over the network as a substitute for the Territory's wireline network, which was largely destroyed by the storms and would take many months to repair. Consequently, Viya lit its 4G LTE network as soon as feasible after the storms,⁹ and much earlier than planned, to increase broadband data and voice capacity and coverage for residents, businesses, and the government of the USVI, including the first responders who were crucial to the Territory's post-hurricane recovery.¹⁰

III. INCUMBENT PROVIDERS SUCH AS VIYA ARE BEST POSITIONED TO MOST RAPIDLY, EFFECTIVELY, AND EFFICIENTLY UTILIZE EBS SPECTRUM

The Commission's objective of ensuring that EBS spectrum is productively and efficiently used, including to provide mobile broadband services and thereby help close the digital divide, is best accomplished by incumbent 2.5 GHz providers. Rather than opening a window for new educational entities to acquire this spectrum, the Commission should instead focus first on giving current users of EBS spectrum the authority that they need to normalize their license holdings and expand their 2.5 GHz networks. This will enable them to continue to put the spectrum to its highest and best use as rapidly and cost-effectively as possible. Viya has

⁹ To restore basic connectivity as rapidly as possible, Viya initially restored its CDMA and GSM networks. This prevented Viya's customers from being stranded, and it also aided, through roaming arrangements, other mobile carriers operating in the USVI whose networks had been badly damaged.

¹⁰ At the time, AT&T only was able to offer voice service, and Sprint was largely unable to provide service except by routing traffic over Choice's CDMA network. Without the availability of 2.5 GHz spectrum, which enabled Viya to offload capacity to its 4G LTE network, the Choice and Vitelcom legacy networks would have collapsed. Viya completed the migration of its prior CDMA and GSM customers to its 4G LTE network, and the carriers that utilized the legacy networks on a roaming basis also migrated their customers from those networks. As a result, the legacy GSM network has been shut down, and the CDMA network is scheduled to discontinue operations in the near future. Viya will then operate only its 4G LTE network in the 2.5 GHz spectrum.

clearly done so to the benefit of residents and businesses of the Territory, and it would welcome the opportunity to further expand its 2.5 GHz use to provide even greater coverage and capacity throughout the USVI on a long-term basis under conventional 2.5 GHz licenses.

Educational entities have had substantial time to build out and deploy services in the 2.5 GHz band, but most have not—in part because they may lack access to the capital and resources to deploy and manage their own networks. Most institutional EBS licensees lease their spectrum to commercial carriers for the provision of commercial fixed and mobile broadband services.¹¹ Although this spectrum is being productively utilized, this fact underscores that the best and highest use of the spectrum may be better achieved through commercial deployments. The Commission’s current eligibility and service rules serve to limit, and create uncertainty around, that best and highest use.

As the Commissioners articulate, reforming the Commission’s regulations governing the 2.5 GHz band and resolving its balkanized structure is an important component of closing the digital divide.¹² Chairman Pai observes that 2.5 GHz licenses need to be placed “into the hands of those who will provide service, including 5G, to Americans across the country, particularly in

¹¹ For example, by leasing its 2.5 GHz spectrum to Viya, Shekinah enables Viya to provide increased coverage and capacity in the USVI to the benefit of the public, including educational institutions in the Territory.

¹² *See, e.g., Notice*, Statement of Commissioner Michael O’Rielly (“Today, the Commission initiates another proceeding to ensure that the nation’s spectrum is put to its most efficient use.”); *id.*, Statement of Commissioner Brendan Carr (“[T]his band represents a potentially large, contiguous block of spectrum below 3 GHz that could be used for next generation mobile operations, including 5G.”); *id.*, Statement of Commissioner Jessica Rosenworcel (“Today we begin a rulemaking to release additional 2.5 GHz spectrum to the public, and in doing so, seek comment on how we can make more efficient and effective use of the airwaves reserved for the Educational Broadband Service. This is long overdue—and has my support.”).

rural areas where the spectrum is currently mostly unused.”¹³ Chairman Pai also recently asserted that “we need small broadband operators to help close the digital divide and offer consumers more competitive choice,” and that to close the digital divide, the FCC must “set[] rules that maximize incentives for private network investment.”¹⁴ The positive outcomes of such policies are clearly demonstrated by the history of full, productive, and efficient utilization of 2.5 GHz spectrum in the USVI, which has directly benefitted the residents of the Territory and improved their access to voice and broadband services.

A. The Commission Should Issue Full Licenses to Incumbent 2.5 GHz Providers Currently Operating Under STAs

As discussed above, incumbent operators such as Viya are best positioned to provide rapid, cost-effective broadband to their surrounding areas. However, these incumbents have had to access the 2.5 GHz spectrum under leases and/or STAs. They have not had an opportunity to become full licensees in the band due to the longstanding freeze on applications and restrictions related to commercial operators holding EBS licenses.¹⁵ To rectify this, the Commission should issue full licenses to incumbent 2.5 GHz providers currently utilizing 2.5 GHz spectrum, including under STAs. This policy would meaningfully benefit the communities where such providers operate; while the overall impact on the band rationalization process and the ultimate availability of white space in the band would be *de minimis*.

¹³ *Id.*, Statement of Chairman Ajit Pai.

¹⁴ Ajit Pai, Chairman, FCC, Remarks At The American Cable Association Annual Summit, Washington, DC, at 2, 3 (Mar. 21, 2018) <https://docs.fcc.gov/public/attachments/DOC-349825A1.pdf>.

¹⁵ *See Notice ¶¶ 1, 6.*

As described above, Viya has been utilizing the 2.5 GHz spectrum band for decades to provide a variety of fixed and mobile data services in the USVI, including today's high-speed mobile 4G LTE broadband service.¹⁶ Consistent with the Commission's goals, Viya has invested millions of dollars in capital over the years to deploy these 2.5 GHz broadband facilities to provide additional capacity, increased internet speeds, and improved geographic coverage. Consequently, there is no feasible means of better promoting the rapid, effective, and cost-effective use of this spectrum in the USVI than granting Viya permanent licenses for the EBS spectrum that it currently utilizes pursuant to STAs.¹⁷

Viya undertook its investment and business development in the USVI at its own risk with a full understanding of the temporary nature of STAs.¹⁸ But it also recognizes and values the needs of the Territory's residents for additional advanced mobile services in more locations. The Territory has benefitted greatly from Viya's investment in, and full and efficient use of, the 2.5 GHz band—spectrum that likely would have remained largely fallow were it not for Viya's investments and the availability of EBS STAs. The Commission should permit Viya now to

¹⁶ At the time the FCC granted a waiver permitting Choice to apply for vacant EBS channels, Choice was using all of the spectrum available to it to provide services to the USVI. *See Application of Choice Communications LLC For a New Educational Broadband Service Station on the A Group Channels at St. Thomas, Virgin Islands*, Memorandum Opinion and Order, 20 FCC Rcd 10906 (WTB 2005).

¹⁷ Viya also supports the FCC's proposal to provide open eligibility such that existing commercial users could purchase leased EBS spectrum licenses. This would be particularly beneficial in the USVI where the spectrum blocks are subdivided among the islands, further balkanizing the spectrum and resulting in Viya providing service on St. Croix by way of a lease from an EBS licensee but utilizing an STA for the same spectrum on St. Thomas.

¹⁸ Viya, as a for-profit entity has been required to either lease or obtain STAs to use 2.5 GHz spectrum, which otherwise could have largely remained fallow throughout the USVI. Viya continues to have no assurance that it will be able to maintain access to the 2.5 GHz spectrum on which its network operates. This proceeding will resolve that uncertainty.

license the spectrum that it currently utilizes pursuant to longstanding STAs in recognition of Viya's calculated operational and financial risk stemming from its lack of full 2.5 GHz licenses. As explained by Commissioner Carr, the Commission "should recognize the significant investments that have already been made in the band while looking to remove regulatory barriers to expanding deployments."¹⁹ Accordingly, promptly following the adoption by the Commission of appropriate rules, incumbent 2.5 GHz providers operating under STAs²⁰ should be permitted to apply for, and should be granted, 2.5 GHz licenses that are consistent in scope with their current STAs. This process should take place in tandem with the process for rationalizing existing licenses to county boundaries to enable the new licensees to participate in the rationalization process on equal footing and to ensure that their new licenses are consistent with the rationalized EBS framework.²¹

Viya has demonstrated through meaningful financial outlays its willingness and commitment to serve the residents of the USVI using the 2.5 GHz band. In addition, no other entity could possibly bring the 2.5 GHz band into service in the USVI as quickly as Viya, which currently is using the spectrum throughout the Territory. Further, by granting such licenses, the

¹⁹ *Notice*, Statement of Commissioner Brendan Carr.

²⁰ In addition to Choice, according to the Commission's Universal Licensing System, there appear to be only three incumbent providers operate using EBS spectrum pursuant to STAs: Louisa County Public Schools (FRN 0024131427); The Havasupai Tribe (FRN 0026881680); and Green Bay Area Public Schools (FRN 0027368042). Any relief identified to EBS STA holders thus is limited.

²¹ The Commission requests comment on whether incumbent 2.5 GHz providers operating pursuant to STAs should be permitted to participate in the existing licensee priority filing window proposed by the Commission. *See Notice* at ¶ 32 n.55. By instead permitting the few 2.5 GHz incumbent providers operating under STAs to obtain licenses promptly upon appropriate Commission rule changes, the Commission can allow these STA holders to participate in the Commission's geographic area rationalization process that the Commission has proposed to precede the priority filing windows.

Commission can help mitigate the risk to Viya that some portion of its 2.5 GHz network infrastructure will be stranded. In turn, this certainty will enable Viya to more rapidly complete and improve its 4G LTE network, which will allow Viya to better compete with the market's dominant wireless provider, and the only other operator of a 4G LTE network in the Territory, AT&T.

In addition, issuing full spectrum licenses is particularly important because Viya's 4G LTE network plays a crucial role in disaster recovery efforts. Viya's ability to offer fixed wireless services to federal and local first responders during and following disasters would be very limited without the capacity resulting from its access to the 2.5 GHz band. This capacity was crucial for first responders in the wake of the 2017 hurricanes,²² and it is imperative for this access to Viya's network to be available to first responders in the future.

B. The Commission Should Provide Full Eligibility and Operational Flexibility for 2.5 GHz Licensees

As the Commission explains in the *Notice*, the current licensing regime applicable to EBS licenses is not consistent with the highest and best use of the spectrum.²³ It is past time for the Commission to open the 2.5 GHz band to commercial eligibility and operational flexibility. Although well intentioned, the current outdated EBS regulatory regime has caused much of the spectrum to remain fallow and has resulted in most of the utilized spectrum to be used primarily

²² In fact, Viya distributed 4G LTE devices to federal and local first responders and government representatives, and they were among the first users of the new LTE network. Additionally, Viya distributed 9,000 free MiFi broadband devices to residents and established dozens of open, public Wi-Fi access points throughout the Territory to enable access to broadband service during the ongoing restoration work. *See* Viya Emergency Petition, WC Docket No. 10-90 at 9 fn. 18 (filed Dec. 6, 2017); Comments of Viya, PS Docket No. 17-344 at 10-11 (filed Jan. 22, 2018).

²³ *See Notice* ¶ 23.

on a leased and encumbered basis. The Commission should now, consistent with its proposal in the *Notice*, adopt new and much more flexible rules that permit the highest and best use of the spectrum. As the Commission acknowledges, “[t]here is little reason to think that, at this point in time, the Commission is better positioned than licensees themselves to determine how to maximize the use of 2.5 GHz spectrum for licensees and their communities.”²⁴

Specifically, Viya supports the following Commission proposals:

- Eliminate the current requirement that only educational entities may hold EBS licenses and make clear that these licenses may be freely held by, and freely assigned to, for-profit commercial entities.²⁵
- Eliminate the current educational-use requirements and permit licensees to determine the best and highest use of the EBS spectrum.²⁶
- Eliminate restrictions on the terms of EBS leases because these restrictions will no longer serve any useful purpose once prior licensee eligibility requirements are lifted.²⁷
- Provide commercial lessees of EBS spectrum the opportunity to acquire the spectrum from educational-use lessors if the lessors choose to assign the spectrum.²⁸

²⁴ See *id.* ¶ 20.

²⁵ See *id.* ¶ 20; 47 C.F.R. § 27.1201.

²⁶ See *Notice* ¶ 22. The Commission should not attempt to replace the existing educational-use requirements with a more permissive version. Doing so only will result in new encumbrances on 2.5 GHz licenses that will continue to prevent the spectrum from being put to its highest and best use.

²⁷ See *id.* ¶ 23.

²⁸ See *id.* ¶ 20.

- Eliminate special restrictions on licenses that were granted via waiver since the EBS filing freeze, including any leasing prohibitions.²⁹

In combination, these Commission actions will enable the market, including, in particular, the secondary spectrum market, to ensure that 2.5 GHz spectrum is licensed to entities that are most capable of using the spectrum for its highest and best purpose—to provide the wireless services that are most desired by consumers. These Commission actions also will create certainty for such licensees.

C. The Commission Should Issue to Incumbents, Including 2.5 GHz STA Holders, Licenses That Already Are Rationalized to County Borders

As discussed above, incumbent 2.5 GHz providers, including STA holders, are best positioned to effectively, efficiently, and rapidly utilize EBS spectrum to provide the services most desired by the American public. Accordingly, the Commission should adopt a geographic rationalization process that reduces to the maximum extent feasible encumbrances on the use of this spectrum by incumbent providers. Viya supports the rationalization of the geographic area of EBS licenses because the current Geographic Service Areas (“GSAs”) are not aligned with geographic jurisdictional boundaries, which makes the GSA borders difficult to identify and implement in a real-world setting. Specifically, incumbent 2.5 GHz licensees should be permitted to apply through an opt-in process to expand their GSAs to the boundary of any county for which the current GSA covers at least 10 percent of the geographic area of that county.³⁰ This would have the practical and productive effect of permitting Viya to serve all islands in the Territory.

²⁹ See *id.* ¶ 21.

³⁰ See *id.* ¶ 17.

Similarly, incumbent 2.5 GHz providers currently operating under STAs, should, as part of the licensing process for such STA holders, be permitted to initially apply for licenses consistent with their current STA holdings. The STA holders should then be able to participate in the rationalization opt-in process with incumbent licensees described above.³¹ Given the very limited universe of EBS STA holders, the Commission should not adopt a two-step process pursuant to which the Commission initially issues a license to a 2.5 GHz STA holder and then subsequently requires the new licensee to participate in a local priority filing window to expand its 2.5 GHz license to county borders. Instead, the Commission should collapse the process into a single licensing event in which the new license assigned to the prior STA holder already is rationalized to county borders when it is issued. This approach will minimize administrative burdens for the prior STA holder and the Commission.

Once the rationalization process is complete for incumbent users, and new entrants are permitted in the band, the Commission should ensure that existing users receive appropriate interference protection from new entrants.³² For example, the Commission should consider the impact of new TDD services provided by new entrants on the existing operations of incumbent users that have deployed FDD LTE services. This combination of adjacent technology protocols may be challenging to implement. Viya looks forward to working with the Commission and other stakeholders to ensure current users are adequately protected as the band progresses toward more intensive use.

³¹ To the extent the Commission declines to take this approach, such entities should have a priority right such as the ability to file in Priority Filing Window 1. *Id.* ¶ 32.

³² *See Notice* ¶ 36.

D. The Commission Should Not Impose Special Encumbrances on New 2.5 GHz Licenses Issued to Current 2.5 GHz STA Holders

Viya agrees with the Commission that it should provide “additional flexibility to EBS licensees in order to promote more intensive and efficient spectrum use.”³³ Providing additional flexibility and standardizing the 2.5 GHz service rules will better promote the efficient use of this valuable spectrum by both existing and new licensees, as well as incumbents and new entrants. Although the Commission’s legacy educational -use restrictions were well intentioned, ultimately these artificial constraints contributed to the current underuse of the band and prevented the spectrum from uniformly being utilized for its highest and best use. Accordingly, the Commission should not now impose new special requirements on EBS licensees, including incumbent 2.5 GHz providers that previously operated under STAs, that mirror the very encumbrances that the Commission is proposing in this proceeding to repeal. This includes minimum holding periods, special population coverage requirements, and minimum capacity reservations.³⁴

Incumbent 2.5 GHz providers operating under STAs already are utilizing their EBS spectrum and therefore no special holding period is required. Viya, in fact, has been productively using 2.5 GHz spectrum in the USVI for more than two decades. Had the Commission previously opened a filing window to enable STA holders such as Viya to obtain a full license, they already would have been licensed many years ago and already would have satisfied any applicable holding-period requirement. The Commission should not now penalize incumbent 2.5 GHz providers currently operating under STAs by imposing a special license holding period on

³³ See *id.* ¶ 19.

³⁴ See *id.* ¶¶ 47-48, 54.

them when the Commission has not provided them an opportunity for more than 20 years to directly license their use of the band.

Similarly, the Commission also should not impose special population coverage requirements or minimum capacity reservations on prior STA holders. Prior STA holders should be subject to the same requirements as other licensed incumbent 2.5 GHz providers.³⁵ With respect to minimum capacity reservations for educational uses, it makes little sense to require new EBS licensees to satisfy such obligations while concurrently releasing all other EBS licensees from those same commitments.³⁶ In addition, because prior STA holders have been productively utilizing 2.5 GHz spectrum to provide services just like incumbent 2.5 GHz licensees, the prior STA holders' new licenses should be subject to the same population coverage requirements as incumbent EBS licensees.

Ultimately, the Commission can reasonably ensure that all 2.5 GHz licensees, including former STA holders, make adequate use of their spectrum resources consistent with the public interest by applying to 2.5 GHz licensees the general Wireless Radio Services commercial service obligations and renewal standards, which already are applicable to Broadband Radio Service licenses.³⁷ Viya supports the application of this unified regulatory framework in the 2.5 GHz band.

³⁵ As Viya explains above, all incumbent 2.5 GHz providers, including those operating under STAs, should be permitted to expand their license coverage to county borders without the use of priority filing windows. Consequently, there is no reason to establish special classes of EBS licensees subject to different requirements.

³⁶ *See id.* ¶ 22.

³⁷ *See id.* ¶¶ 53-55.

IV. CONCLUSION

For the reasons set forth herein, the Commission should issue full 2.5 GHz licenses to incumbent 2.5 GHz providers that currently provide service under STAs. As part of this licensing process, the Commission should permit the prior STA holders to rationalize their new licenses to county boundaries. The Commission also should generally remove existing encumbrances on 2.5 GHz licenses by expanding eligibility for 2.5 GHz licenses to commercial operators and removing burdensome encumbrances, including use requirements, on current and future EBS licenses. Similarly, the Commission should refrain from imposing special encumbrances on prior STA holders and instead should treat them equally to incumbent providers who previously were issued licenses.

Respectfully submitted,

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