Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
The Uniendo a Puerto Rico Fund and the Connect USVI Fund	)	WC Docket No. 18-143
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
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To: The Commission

REPLY COMMENTS OF VIRGIN ISLANDS TELEPHONE CORP. D/B/A VIYA AND ITS UNITED STATES VIRGIN ISLANDS WIRELESS AFFILIATES

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I. INTRODUCTION AND SUMMARY

Virgin Islands Telephone Corp. d/b/a Viya ("Viya") and its affiliated companies providing wireless services in the United States Virgin Islands ("USVI" or "Territory")[1] submit this reply to the comments submitted to the Federal Communications Commission ("FCC" or

[1] Viya (formerly known as Innovative), Vitelcom Cellular, Inc. ("Vitelcom"), and Choice Communications, LLC ("Choice") (Vitelcom and Choice collectively, "Viya Wireless") are commonly owned and controlled by ATN International, Inc. (formerly known as Atlantic Tele-Network, Inc.) ("ATN"). ATN acquired Viya and Vitelcom in July 2016, and Choice has been a USVI subsidiary of ATN since 1999. *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 (WCB 2016). ATN is a publicly traded Delaware corporation that, through its subsidiaries, provides international and domestic wireless and wireline voice and data services to retail residential and enterprise customers and other carriers, including mobile wireless solutions, local exchange services, broadband Internet access services, and wholesale connectivity, in the United States and in other Caribbean-region countries.

"Commission") in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[2]

As discussed in more detail below, the record shows that allocating the Connect USVI Fund Stage 2 fixed-network support to Viya as the USVI's sole carrier of last resort will best serve the Commission's goals of rebuilding, improving, and expanding voice and broadband fixed networks and hardening them against future natural disasters.[3] No other provider is positioned to offer high-quality fixed voice and broadband service throughout the USVI as quickly or as effectively. In contrast, commenters favoring a competitive process for awarding support all seek an outcome that would violate the Commission's longstanding principle rejecting the use of universal service support for the deployment of duplicative networks. In addition, any attempt to carve up support between multiple entities through a competitive allocation process is likely to leave the most rural parts of the USVI unserved, particularly over the long term.

The record also supports ensuring that adequate mobile support is provided in the USVI. Consistent with comments from AT&T Services, Inc. ("AT&T") and Viya, the Commission should allocate Stage 2 mobile funding between the USVI and Puerto Rico ("Territories") based on their respective populations. This will ensure that mobile funding in the USVI more accurately reflects the relative scope of USVI mobile networks compared to Puerto Rican mobile

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[2] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order and Notice of Proposed Rulemaking, FCC 18-57 (rel. May 29, 2018) ("*Order*" and/or "*NPRM*" as applicable). The comment deadlines were extended. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order, DA 18-670 (WCB rel. June 27, 2018).

[3] As set forth in Viya's initial comments in this proceeding, given the significant differences between the USVI and Puerto Rico markets, the appropriate approach to allocation of Stage 2 fixed-network support in the two Territories may be different. *See* Viya Comments at 14-18. (Unless otherwise noted, all references herein to parties' "Comments" refer to their initial comments in this proceeding filed on or about July 26, 2018.)

networks, as suggested in the *NPRM*. This approach also is consistent with the Commission's 2011 rejection of the identical support rule, which determined current legacy mobile support flows.

Notwithstanding the assertions of Tri-County Telephone Association, Inc. ("Tri-County") assertions to the contrary, the use of universal service funding to ensure the availability and affordability of supported services in insular areas is entirely consistent with Section 254 of the Communications Act, as amended,[4] as well as Commission precedent. Finally, the record is devoid of any argument why special disaster response obligations, including Disaster Information Reporting System ("DIRS") reporting requirements, network resiliency standards, and backup power obligations, should be applied solely to Connect USVI Fund and Uniendo a Puerto Rico Fund recipients. These issues are equally important in all areas of the country where natural disasters occur and therefore should be considered by all stakeholders in rulemakings of general applicability.

II. ALLOCATING STAGE 2 FIXED-NETWORK FUNDING IN THE USVI TO VIYA BEST ACHIEVES THE COMMISSION'S GOALS FOR THE CONNECT USVI FUND

The Commission's goals for Stage 2 fixed-network funding are to "rebuild, improve and expand voice and broadband networks"[5] and "harden them against future natural disasters"[6]

[4] 47 U.S.C. § 254.

[5] *Order* ¶ 2. *See also id.* ¶ 13 (goals of Stage 2 are "to rebuild, improve, and expand voice and broadband networks on the islands in the longer term"); *id.* ¶ 28 (Stage 2 funding is proposed because "a longer-term solution is needed to rebuild, improve and expand service"); *id.* ¶ 30 (Stage 2 funding should "ensure that carriers have sufficient funds to rebuild and improve the voice and broadband-capable networks, both where the hurricanes destroyed existing infrastructure and in rural areas that have not yet been served") (citation omitted).

[6] *Id.* ¶ 5. *See also id.* ¶ 34 ("The long-term rebuilding, improvement, and hardening of fixed voice and broadband service is critical….").

because "[r]estoring communications networks is a critical element of recovery."[7] The Commission therefore seeks comment on "how to best promote our aim of providing support quickly and efficiently to speed the rebuilding, improvement, and expansion of service."[8] Viya's proposal to use the Stage 2 fixed-network support to fund the restoration of its Territory-wide voice and broadband network, which is nearly complete, and its expansion and hardening will best serve these goals.[9] By contrast, none of the other proposals set forth in the *NPRM* or asserted by commenters will adequately accomplish the Commission's objectives.

Indeed, Viya is best positioned to rapidly restore resilient fixed voice and broadband service in the USVI. Prior to the storms, Viya operated a fiber-based voice and broadband network that reached at least 97 percent of the locations in the Territory. Viya's network consists primarily of fiber, including its entire 900-mile middle-mile network, most of which is buried.[10] Further, although Viya's residential last-mile connections primarily are coaxial cable,[11] these connections are capable of providing Gigabit download broadband speeds.[12] Viya's current

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[7] *Id.* ¶ 2. *See also id.* ¶ 38 ("How can we ensure that people living in the territories have access to reasonably comparable, affordable fixed voice services and broadband-capable networks?").

[8] *Id.* ¶ 38.

[9] *See* Viya Comments at 18-24.

[10] *See id.* at 3. By contrast, viNGN's network is composed of 244 miles of fiber, approximately 40 percent of which is buried and 60 percent aerial. *See* Letter from Kenneth E. Mapp, USVI Governor, to Ajit Pai, Chairman, FCC, WC Docket No. 18-143, at 3, submitted as United States Virgin Islands (filed July 11, 2018) ("viNGN Letter"); *see also* USVI, *Hurricane Recovery and Resiliency Task Force Report*, at 95 (2018) ("Task Force Report") ("Although 40 percent of viNGN's entire network is buried, 60 percent (a total of 115 miles)—and 90 percent of customer connections—relies on aerial cables."). Inconsistent with the viNGN Letter, the Task Force Report effectively characterizes viNGN's middle-mile network as being composed of 191 miles of fiber. *Id*.

[11] Viya offers fiber-to-the-premises last-mile connections to business locations and currently serves over 150 business locations with fiber.

[12] Viya's network currently utilizes the DOCSIS 3.0 standard, which can provide broadband speeds up to 1 Gbps download and 245 Mbps upload.

residential offerings include service packages up to 100 Mbps download and 10 Mbps upload. Far from "technologically less-advanced,"[13] Viya's network is state-of-the-art and scalable, such that, as market demand for additional bandwidth inevitably increases, additional broadband speed can be provided with a software upgrade that will enable Viya's network to offer download speeds of up to 10 Gbps using the same last-mile coaxial connections on which Viya today relies.[14] Moreover, Viya's offerings are priced so that they are affordable even in the economically challenged USVI, despite the extraordinarily high costs of proving service to this market.[15]

Although the storms inflicted considerable damage to Viya's network, substantial aspects of Viya's underground backbone infrastructure survived, and Viya has worked tirelessly since the storms passed to restore and harden its network. These efforts were complicated, particularly initially, by the difficulty of getting materials, equipment, and skilled labor to the USVI, and these obstacles prevented Viya from completing the restoration project as quickly as it originally planned.[16] Viya projects that it will substantially complete restoration by the end of third quarter

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[13] viNGN Letter at 6.

[14] Viya's network can be converted to DOCSIS 3.1, which can provide broadband speeds up to 10 Gbps download and 2 Gbps upload.

[15] *See* Viya, Internet Package Rates, https://viyavi.com/internet/rate-plans/ (last visited Aug. 8, 2018). For example, Viya offers entry-level broadband packages for as little as $49.99 per month and a 25/5 Mbps package for $79.95 per month. Viya's rate for its 100/10 Mbps package is $149.99 per month. *Id.* Viya also offers a self-funded discount broadband package at $15 per month for Lifeline customers.

[16] Given the scope of the damage and the logistical difficulties inherent in the restoration process, there is no basis to competitors' self-serving assertions that Viya's restoration has not been timely. *See, e.g.*, Broadband VI Comments at 8; *see also* viNGN Letter at 6. For example, by July 2018, viNGN had restored only 12 of its 33 public computing centers. Dr. H. Mark McGibbon, President & CEO, viNGN, Testimony to the Committee on Government Affairs, Veterans, Energy and Environmental Protection, on S. 32-0204, 32nd Leg. (V.I. 2018), at 2 (12 centers restored) ("McGibbon Testimony"); viNGN Letter at 4 ("BTOP grants also funded the establishment of 33 Public Computer Centers ….").

2018. Thus, Viya is well positioned to serve the Commission's goals of rebuilding and restoring voice and broadband services quickly and effectively in the USVI.

No other provider is in a position to provide high-quality voice and broadband services throughout the Territory as quickly or effectively. Commission data on broadband deployment show that no other provider serves more than a handful of census blocks in the USVI,[17] so awarding support to another provider would delay service to customers, likely for years, while the other provider deployed a network. In particular, efforts to build a duplicative fiber network would take years,[18] undermining the Commission's goal of rapid restoration of service. Allocating Stage 2 fixed-network support for this purpose would be an imprudent use of universal service funds given the presence of Viya's ubiquitous, universal service-funded fiber-based network.[19] Moreover, competitors using unlicensed spectrum lack the capacity to scale their service to provide Commission-defined broadband speeds and usage allowances to all residents and businesses in the Territory.[20]

Viya's ability to complete the restoration of its network, maintain the network over time, fulfill its carrier-of-last-resort obligations, and offer affordable rates depends, in a high-cost insular area like the USVI, on universal service support. As Viya noted in its comments, the total proposed amount of Stage 2 fixed-network support is only $2.35 million per year above Viya's

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[17] *See* FCC, Fixed Broadband Deployment Data from FCC Form 477, State-Level Datasets, VI Data (Dec. 31, 2016), https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477. For example, Broadband VI serves only 83 of 4,835 census blocks in the USVI (1.7%), while Viya serves 4,429 (91.6%). *Id.*

[18] *See, e.g.*, Broadband VI Comments at 1 ("Broadband VI is also expanding its 'last mile' capability by deploying additional underground fiber-to-the premise ('FTTP') to customers' homes and businesses"). *See also* viNGN Letter at 3(government-owned network currently provides only middle-mile service).

[19] *See infra* Section III.

[20] *See, e.g.*, Broadband VI Comments at 1 ("The company relies primarily on unlicensed spectrum….").

pre-hurricane Connect America Fund frozen support level.[21] Yet Viya has already spent over $70 million on network restoration and expects to spend a total of $80 million on restoration and hardening.[22] Viya has repeatedly demonstrated to the Commission and the USVI Public Services Commission ("PSC") that it depends on its existing universal service funding to support its carrier-of-last-resort obligations, including in the most rural and uneconomic areas of the Territory, and to maintain the affordable rate levels that the PSC has set for it.[23] Viya has reasonably relied on both the continuation of those support flows and the Commission's willingness to respond to the need for additional funding. By allocating the Stage 2 fixed-network support to Viya, the Commission can continue to serve its core universal service goals and the goals it has set for the Connect USVI Fund.

Viya's proposal is also consistent with the Commission's allocation of set support amounts to price-cap ILECs in 2015.[24] The Commission based that decision on factors that are equally present here, including the lack of other providers of wireline service in the relevant areas, likely lower costs from the ILECs' existing network, and the ILECs' ongoing carrier-of-last-resort obligations.[25] As with that decision, using the Stage 2 fixed-network support to fund the restoration and hardening of Viya's network "best serves consumers in these areas."[26]

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[21] Viya Comments at 19. The increment is only $1.65 million annually if Viya's meritorious application for review is granted. *See id.*

[22] *Id.* at 12.

[23] *Id.* at 9-10.

[24] *See id.* at 19-21.

[25] *Id.*

[26] *Id.* at 21, quoting *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17731 ¶ 175 (2011) ("*Transformation Order*"), *aff'd sub nom. Direct Communs. Cedar Valley, LLC v. FCC (In re FCC 11-161),* 753 F.3d 1015 (10th Cir. 2014)

III. ADOPTING A COMPETITITVE PROCESS FOR ALLOCATING STAGE 2 FIXED-NETWORK SUPPORT IN THE USVI WOULD UNDERMINE THE COMMISSION'S GOALS FOR THE CONNECT USVI FUND

The record does not support the notion that a competitive process could be developed that would achieve the Commission's "aim of providing support quickly and efficiently to speed the rebuilding, improvement, and expansion of service" in the USVI.[27] Instead, any competitive process would undermine rapid restoration of service, lead to the wasteful subsidization of duplicative networks, and undermine the ability of *any* provider to ensure sustainable service to the most rural and remote parts of the USVI, particularly over the long term.

Undermining Rapid Restoration and Hardening. As an initial matter, a competitive process would be unnecessarily complex given the size of the USVI market. As a result, it would fail to meet the Commission's goal of rapid restoration and hardening. Viya agrees with AT&T that, "[w]hile the Commission put forth a number of ideas for a competitive process for the Stage 2 Fixed Fund, there is no cohesive proposal and it is difficult to imagine an efficient and fair competitive process being developed in the timeframe envisioned."[28]

Funding Duplicative Networks. Moreover, as Viya discussed in detail in its comments, the USVI is a challenging market to serve under the best of circumstances.[29] It has only approximately 107,000 residents spread over three principal islands, difficult and mountainous terrain, a tropical climate, and challenging economic conditions. The Commission has generally chosen "not to subsidize competition through universal service in areas that are challenging for

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[27] *Order* ¶ 38.

[28] AT&T Comments at 13 (citation omitted).

[29] *See* Viya Comments at 2, 18-19.

even one provider to serve."[30] The USVI is a paradigmatic example of a market where it makes sense to subsidize a single network.

Indeed, the Commission's universal service funds have historically supported Viya's carrier-of-last-resort network. The availability of universal service funding provided the stable foundation that stimulated private investment in the USVI's ILEC network, leading to the replacement of the aging copper plant with the current fiber-based network under immediately prior ownership, as well as the expansion and reconstruction of that network by the current owner, ATN.[31] Like the small ILECs that serve challenging rural areas on the U.S. mainland, Viya is an example of universal service as a public-private partnership that unleashes private capital and the skill of private enterprise to achieve the public good of voice and broadband service where an independent business case for such service is lacking.

Under these circumstances, it would be contrary to the Commission's concept of good stewardship of the universal service fund to now direct universal service support to fund a new network or networks that duplicate Viya's existing, universal service-funded, ubiquitous network. Chairman Pai has observed that the "Commission has repeatedly declined to provide duplicative support, i.e., support to two or more carriers to build out the same area," and he has described subsidizing "duplicative build out" as "a serious mistake."[32]

Yet this is precisely the stated goal of all of the proponents of a competitive process in the USVI. For example, one commenter proposed that the Commission should allocate Connect

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[30] *Transformation Order*, 26 FCC Rcd at 17780 ¶ 319 (citation omitted).

[31] *See supra* note 1.

[32] *Connect America Fund—Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10208 & n.4 (2016) (Dissenting Statement of Commissioner Ajit Pai). Commissioner O'Rielly described his vote for the item as "a significant compromise on my part." *Id.* at 10212 (Statement of Commissioner Michael O'Rielly).

USVI Fund fixed-network support so as to "foster robust competition which does not exist at present" in last-mile facilities.[33] To this end, the commenter proposed for Connect USVI Fund support to be allocated exclusively to companies that commit to use this universal service funding to deploy last-mile connectivity to the Virgin Islands Next Generation Network ("viNGN").[34] viNGN is a USVI government-owned middle-mile Broadband Technology Opportunities Program ("BTOP") project.[35] Although the comment in support of viNGN urges the Commission to avoid funding networks that duplicate viNGN's middle-mile network,[36] the comment fails to note that viNGN itself used BTOP funding to overbuild Viya's fiber backbone network, which was deployed with private capital and universal service funding. Similarly, Broadband VI, LLC ("Broadband VI") proposes a competitive process to secure funding for the build-out of a fiber-to-the-premises network that would replicate Viya's network.[37] Likewise, AT&T's proposal to allocate Stage 2 fixed-network support based on pre-hurricane Form 477 subscriber counts[38] would result in support for duplicative networks in the same areas.

[33] viNGN Letter at 3.

[34] viNGN Letter at 6 ("[T]he Commission should condition the use of the Stage 2 funds to avoid duplication of (and to connect to and use) the federally-funded viNGN open access middle-mile backbone and to require the use of the funding to build out the crucial 'last mile' connections from the federally-funded backbone infrastructure which are essential to the fulfillment of the mission of the BTOP grants.").

[35] viNGN is a public corporation and a wholly-owned subsidiary of the Virgin Islands Public Finance Authority ("VIPFA"). USVI Governor Kenneth E. Mapp is the Chairman of viNGN's Board of Directors. viNGN, Board of Directors, https://vingn.com/bod/ (last visited Aug. 8, 2018).

[36] viNGN Letter at 3, 6.

[37] Broadband VI Comments at 3.

[38] *See* AT&T Comments at 12-13.

Although stopgap services including satellite and fixed wireless "provided critical communications restoration services in the aftermath" of Hurricanes Irma and Maria,[39] there is no indication that universal service support is needed to ensure that these services will be available again if another catastrophe challenges terrestrial facilities in the Territory. There is thus no reason to provide funding to them to duplicate Viya's ubiquitous wireline network.

Promoting Poor Stewardship of Universal Service Funding. Proponents of using a competitive process to allocate support invite the Commission to deploy precious universal service funding in ways that may lead to imprudent expenditures. For example, viNGN proposes that support be used to benefit its network by only funding viNGN customers or requiring funding recipients to connect to viNGN.[40] This should raise concerns given that viNGN continues to operate at a taxpayer-funded loss[41]—even though the deployment of its network was funded through nearly $68 million of BTOP grants in 2010-2011, as well as an additional $29 million of USVI government money raised through public bond offerings, for a total of nearly $100 million in government funding.[42] Moreover, a requirement that "[a]ny additional

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[39] SES Americom Comments at 2. *See also* Broadband VI Comments at 2.

[40] viNGN Letter at 3-4.

[41] The legislation authorizing viNGN was approved in 2010 based on projections that by 2016 it would produce $18 million in annual revenue and a net cash flow (before interest payments and depreciation) of $12.3 million. *See* Memorandum from Jose L. George, Post Auditor, Legislature of the Virgin Islands, to Carlton L. Dowe, Chairman of the Finance Committee, regarding Bill No. 29-0038, at 10 (Mar. 30, 2011) (attached as Exhibit C). Instead, according to the audited financial statements of the VIPFA, viNGN had $1.8 million in negative cash flow and a net operating loss of $5.4MM in the most recent years for which results are available. Ernst & Young LLP, Virgin Islands Finance Authority Audited Financial Statement FY 2016, at 10, 11 (June 16, 2017), http://www.usvipfa.com/PDF/PFA%20Sept.%2030,%202016%20Audited%20-Financial%20Statements.pdf (relevant pages attached as Exhibit D). (viNGN does not separately publicly disclose its financial statements.)

[42] *See* U.S. Department of Commerce, NTIA, Grants Awarded, U.S. Virgin Islands, https://-www2.ntia.doc.gov/u.s.-virgin-islands; *see also* Virgin Islands Public Finance Authority, The Office of Economic Opportunity, Awards, Broadband, http://oeo.usvipfa.com/Home/awards/18.

(e.g., Stage 2) federal dollars should be used to complement and fortify [the viNGN BTOP project] in order to fulfill its mission"[43] is simply bad policy. Universal service is not intended to support a government-funded network that overbuilt private investment,[44] particularly in the face of calls for greater oversight of the governmental entity that runs the network.[45]

Similarly, although Broadband VI observes that "there is too much risk in funding new entrants that do not have the experience and understanding of how to build and operate a successful network in the Virgin Islands,"[46] Broadband VI itself effectively would be a new entrant in most locations as it has only begun constructing FTTP facilities and currently operates a WISP using unlicensed spectrum over most of its footprint.[47]

Undermining Sustainable Universal Service Throughout the USVI. Providers advocating for a competitive process fail to explain how their proposals would ensure high-quality, sustainable voice and broadband service throughout the USVI over the long term. The distribution of the population across a few towns and numerous rural areas makes the Territory particularly susceptible to cream-skimming.[48] A competitive process to award support increases the likelihood that no provider will be able to capture the very limited economies of scale that are possible in the Territory, which would undermine the financial foundation for service to the most

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[43] viNGN Letter at 3.

[44] In fact, viNGN's President and CEO has suggested that viNGN is not financially viable unless it is provided exclusive access to telecommunications conduit about to be undergrounded in trenches in the USVI using FEMA funding. *See* McGibbon Testimony, at 4 (stating that "Dig Once" legislation introduced in the USVI legislature "would put viNGN OUT OF BUSINESS" by facilitating other entities to provide middle-mile service in the USVI) (emphasis in original).

[45] *See, e.g.*, Jack Crowe, *Congress Shouldn't Reward the U.S. Virgin Islands' Fiscal Profligacy*, NATIONAL REVIEW (Aug. 6, 2018), https://www.nationalreview.com/2018/08/virgin-islands-fiscal-profligacy-shouldnt-reward/.

[46] *See* Broadband VI Comments at 5.

[47] *Id.* at 3, 8.

[48] Viya Comments at 19.

rural areas of the USVI. The Commission could of course address this problem by providing additional support to eliminate the need to cross-subsidize rural areas with urban revenues, but this would exceed the Commission's stated budget for Connect USVI Fund support.

Indeed, AT&T's proposal would promote cream-skimming by awarding long-term support uniformly to all providers that served customers with fixed networks prior to the storms.[49] A provider that, prior to the storms, served a small number of customers in urban areas would receive support for serving these customers without any demonstration that such support is needed, and the amount of support would be the same per customer as received by a carrier serving rural and remote areas.

The impact of the balkanization of a small, hard-to-serve market like the USVI via a competitive allocation of support would be felt during any necessary transition period but most strongly over the long term, as service in rural parts of the USVI became increasingly unsustainable. Thus, a competitive approach to allocating support would undermine the provision of universal service in both the near and long term. No commenter has suggested how Connect USVI Fund support could be awarded through a competitive process without creating these harms.

IV. THE COMMISSION SHOULD ALLOCATE STAGE 2 MOBILE SUPPORT IN A MANNER THAT HELPS CORRECT THE HISTORICAL UNDERFUNDING OF MOBILE SERVICES IN THE USVI

As the Commission is well aware, wireless service in the USVI has historically received virtually no universal service support.[50] This historical underfunding is a direct artifact of the

[49] AT&T Comments at 13.

[50] Prior to the hurricanes, wireless support in the USVI totaled only $67,000 per year and flowed only to a single carrier. *See Order* ¶ 11.

"identical support rule" which the Commission disavowed in 2011.[51] The Commission found that the "support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile service in a particular geography."[52] Recognizing this, the *NPRM* proposes that new Stage 2 mobile funding (i.e., $21 million) be allocated on an "80/20" basis between Puerto Rico and the USVI.[53] The *NPRM*'s proposal, however, would continue to allocate the majority of funding based on historical identical support rule allocations.

Viya's and AT&T's comments both argue that the Commission should take more affirmative steps to correct this historical imbalance, and the Commission should adopt these proposals. Specifically, both Viya and AT&T argue that the Commission should allocate Stage 2 mobile funding entirely based on the respective populations of the USVI and Puerto Rico.[54] Distributing all Stage 2 mobile support between the Territories based on their most recent populations would more fairly support USVI's wireless carriers. Under the *NPRM*'s proposal, AT&T calculated that "wireless providers operating in the U.S. Virgin Islands would be eligible to receive just 1.7 percent of [the] Stage 2 Mobile Fund," despite the fact that U.S. Virgin Islands' 107,000 inhabitants amount to over 3 percent of Puerto Rico's population.[55] By allocating mobile support based on population, the USVI's total support would increase from $4.4 million to approximately $8 million of the overall $259 million in Stage 2 mobile funding.[56]

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[51] *Transformation Order*, 26 FCC Rcd at 17827 ¶ 502.

[52] *Id.* at 17828 ¶ 504.

[53] *NPRM* ¶ 82.

[54] AT&T comments at 5; Viya Comments at 41-43.

[55] AT&T Comments at 5.

[56] With the USVI's population of approximately 107,000 and Puerto Rico's population of approximately 3,351,00, the USVI represents approximately 3.1 percent of the Territories' combined population of approximately 3,458,000. Multiplying 3.1 percent by $259 million yields $8,012,254 in support for the USVI.

Viya and AT&T thus agree that the Territories' population figures represent a more objective allocation mechanism that will mitigate, rather than calcify, the historical underfunding of USVI mobile carriers.

V. PROVIDING UNIVERSAL SERVICE FUNDING FOR THE RESTORATION AND HARDENING OF STORM-DAMAGED NETWORKS IS CONSISTENT WITH SECTION 254

Section 254 directs the Commission to ensure that insular areas such as the USVI have access to communications services that are reasonably comparable to those in urban areas and available at affordable rates.[57] Following the unique devastation resulting from two back-to-back Category 5 hurricanes, neither of these goals can be accomplished absent an increase in the amount of universal support flowing to the Territories. Consequently, the use of Stage 2 funding to restore and harden networks is entirely consistent with the policy objectives underlying Section 254.

For this reason, Tri-County is incorrect that providing universal service support to restore the communications networks severely damaged by Hurricanes Irma and Maria is inconsistent with Section 254 and "unprecedented."[58] Tri-County asserts that other funding, such as FEMA support and carriers' insurance proceeds, should be used for restoration and hardening.[59] However, FEMA support is not available to private for-profit companies, such as those that provide voice and broadband services in the Territories (and throughout the rest of the United States). In addition, it is not possible in many storm-prone regions, such as the Territories, to purchase sufficient insurance coverage to cover catastrophic losses caused by hurricanes, especially two back-to-back Category 5 hurricanes.

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[57] 47 U.S.C. § 254(b)(1), (3).

[58] Tri-County Comments at 1.

[59] *Id.* at 2-3.

Contrary to Tri-County's assertion, the use of universal service support for disaster recovery and network hardening activities is not unprecedented. Tri-County notes that the Commission did not provide significant additional high-cost support to carriers affected by Hurricane Katrina.[60] Yet the Commission's proposal to provide $231 million in additional universal service support to aid the recovery from Hurricanes Irma and Maria is actually less when adjusted for inflation than the $211 million (in 2005 dollars) in additional support it provided for the recovery from Katrina.[61] And Hurricanes Irma and Maria likely caused approximately the same dollar value of damage as Hurricane Katrina—although, unlike Katrina, Irma's and Maria's impact were much more focused on two small, insular Territories that were already facing significant challenges.[62] The fact that the Commission chose in this case to provide primarily high-cost support rather than Lifeline, E-rate, and Rural Health Care support, as it did in response to Hurricane Katrina, is certainly within the Commission's discretion.

Thus, Tri-County's challenge to the Commission's decision to take appropriate steps to use universal service support to ensure that the U.S. citizens of insular Territories retain access to universal service supported services is entirely lacking in statutory basis.

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[60] *Id.* at 2.

[61] *Federal-State Joint Board on Universal Service, et al.*, Order, 20 FCC Rcd 16883 (2005).

[62] *See, e.g.*, U.S. Department of Commerce, National Hurricane Center, *Costliest U.S. tropical cyclones tables updated*, at Table 3b (Jan. 26, 2018), https://www.nhc.noaa.gov/news/-UpdatedCostliest.pdf (in inflation-adjusted dollars, Katrina caused $160 billion in damage to three large states, Florida, Louisiana, and Mississippi, while Maria alone caused $90 billion in damage to the USVI and Puerto Rico).

VI. DISASTER RESPONSE MEASURES SHOULD BE CONSIDERED IN A RULEMAKING OF GENERAL APPLICABILITY

Consistent with the comments of both AT&T[63] and Viya,[64] the Commission should refrain from imposing special DIRS reporting requirements, network resiliency standards, or backup power obligations solely on recipients of Stage 2 funding in the USVI or Puerto Rico. Viya agrees with commenters noting that network resiliency measures are important for providers seeking to serve disaster-prone areas, like the USVI. For precisely this reason, the Commission should develop standards with input from all stakeholders that serve or reside in such areas, which include many other parts of the United States. No commenter offered any reason why these disaster response obligations should not be developed and applied in a nationwide fashion.[65]

As a result, any requirements should instead be addressed in a generally applicable manner through separate proceedings, and any obligations that the Commission ultimately determines to apply should be equally applicable to all universal support recipients nationwide. DIRS reporting requirements, network resiliency standards, and backup power obligations are simply too important to the nation as a whole to be imposed without full stakeholder

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[63] AT&T Comments at 17-19.

[64] Viya Comments at 45-49.

[65] *See, e.g.*, Telecommunications Regulatory Board of Puerto Rico Comments at 20 (stating without explanation that DIRS participation should not be voluntary for support recipients).

participation, assessment of the benefits of regulatory intervention, and appropriate consideration of the compliance burden on providers.

Respectfully submitted,

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