

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High Cost Universal Service Support)	WC Docket No. 05-337

COMMENTS

Of the

PUBLIC SERVICES COMMISSION OF THE U.S. VIRGIN ISLANDS

The Virgin Islands Public Service Commission
Barbel Plaza
No. 8 Estate Ross, Charlotte Amalie
P.O. Box 40
St. Thomas, USVI 00804

Contents

Summary of Comments.....	1
The Virgin Islands Faces Unique Challenges.....	3
The FCC Transition Plan Will Undermine Infrastructure Development in the USVI.....	6
Economic Models Are Unlikely to Provide Reasonable Results in the USVI.....	8
Reverse Auctions Will Not Provide Universal Access to Broadband Services	9
The FCC Should Establish a New Funding Plan For Small Insular Areas	10
Conclusion	11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High Cost Universal Service Support)	WC Docket No. 05-337

**COMMENTS OF THE
PUBLIC SERVICES COMMISSION OF THE U.S. VIRGIN ISLANDS**

The Public Services Commission of the U.S. Virgin Islands (VI PSC) respectfully submits its comments in the above referenced proceedings. Specifically, we are responding to certain issues raised in the Notice of Inquiry and Notice of Proposed Rulemaking released April 21, 2010.

Summary of Comments

The Virgin Islands Public Services Commission (“VI PSC”) supports the objective of the Federal Communications Commission (“Commission” or “FCC”) to bring affordable broadband services to all residents of the United States, including insular territories. The U.S. Virgin Islands is an economically challenged area lacking in broadband development and we believe strongly that ubiquitous broadband deployment in the Territory will lead to greater economic development. However, as we explain in this document, we are greatly concerned that the approach that the FCC has chosen will undermine efforts by the VI PSC and the carriers in the Territory to bring about greater access to infrastructure capable of both broadband and voice grade service and we

will explain why this is important to the Virgin Islands. The existing caps imposed by the FCC on USF funding have already hurt the Virgin Islands because of delayed applications for ETC status made by our telecommunications carriers. Decreasing the available funding even further will make matters worse if the proposed transition away from high-cost support is implemented. Further, we are not convinced that economic modeling or reverse auctions will provide enough support for the significant infrastructure needed here. As the Commission has said on numerous occasions, small rural and insular areas pose unique challenges. We urge the FCC to keep that thought in mind as plans for comprehensive USF reform develop.

Our experience has been that “one size fits all” approaches have almost always worked to our disadvantage. The Virgin Islands is very different from other jurisdictions on the U.S. Mainland, including most rural areas. We are geographically remote, have a very difficult terrain that results in very high costs, and suffer from a weak economy heavily dependent on tourism. Further, our existing infrastructure is in poor condition as the result of inadequate investment in the past by our only ILEC. We need a complete replacement of the wireline network and significantly improved and expanded wireless networks. In short, we need support for all types of access: broadband and voice grade, wireline and wireless, whether provided by the incumbent local exchange carrier (“ILEC”) or a competitor. Rather than improve the situation here, the Commission’s proposals could be inadvertently counterproductive for us.

The Virgin Islands Faces Unique Challenges

Physical Environment

The physical environment of the Virgin Islands presents unique challenges to service providers. Much of the Territory is mountainous with deep valleys. Radio transmission to these valleys is limited except where there are towers nearby. With a tropical climate, corrosion of telecommunications infrastructure is particularly problematic. Further, our telecommunications infrastructure is subject to damage by hurricanes or tropical storms. Major hurricanes are increasing in frequency, causing significant damage 2-3 times each decade. Although less severe, dozens of damaging tropical storms per season pass over or near the U.S.V.I. While some of these conditions may exist in some other parts of the country, they disproportionately affect the costs of provisioning voice grade and broadband services here. Any plan by the FCC to provide universal service support must take these factors into account.

Competitive Landscape

VITELCO, the ILEC, is the sole wireline service provider in the Territory. The wireless segment is served by several carriers but only two are designated as “eligible telecommunications carriers” (“ETC”), and those two designations are recent.

Centennial USVI Operations (now part of AT&T), a wireless carrier, had petitioned the FCC for ETC designation in 2005. In December, 2007, the Governor of the Virgin Islands signed an amendment into law that gave the VI PSC the authority to grant ETC designations. Centennial then filed another application for designation with the VI PSC, which was approved shortly

thereafter. Centennial provided detailed plans for infrastructure improvements to be built with USF support. Many of these improvements support both voice grade and broadband applications.

Choice Communications, LLC applied for ETC designation in January, 2010. Although it currently has no switched service customers, it is building the needed infrastructure to provide voice grade and some broadband services. The company stated that when USF is received, it will be used to build facilities in unserved and under-served areas where construction would not otherwise be commercially reasonable.

Although there are several other wireless carriers in the U.S.V.I., they have not come forward with an application for ETC designation. Under the federal Telecommunications Act of 1996, only ETCs may receive USF support.

Wireline Infrastructure

The existing wireline infrastructure in the Virgin Islands is marginal at best. VITELCO's parent companies have been in involuntary bankruptcy for several years and we expect a new owner to be in place in 2010. During hearings on the proposed transfer of control, as well as the 2008 rate investigation, evidence was presented to the VI PSC that little to no maintenance had been performed for several years under the prior management, and virtually no new investment made. Cable and wire facilities were dilapidated, almost to the point of collapse. Most outside plant was incapable of providing broadband services. Switching equipment was obsolete and was no longer supported by the vendor. The Trustee in Bankruptcy stabilized the company temporarily

pending sale but it was clear that significant improvement would have to wait until the new owner was in place. In the meantime, a study conducted by the Trustee determined that a complete replacement of the network was needed. A buyer for the company has been identified and approved by the VI PSC in a Transfer of Control proceeding, but the matter remains subject to a pending appeal of the Commission's transfer approval. A similar application for transfer of control was approved by the FCC¹ and approval of the final sale is now pending before the Bankruptcy Court. The buyer has committed to building a new integrated fiber based network capable of providing both voice grade and broadband services over the next 3-5 years. While much of the funding required will be provided by the new owner in the form of loans, the plan relies on continued support from the high cost USF program to keep rates reasonable.

Wireless Infrastructure

Wireless service is fair to good in the more heavily populated areas but marginal in the rest of the Territory. The two wireless ETCs, Choice and Centennial (now part of AT&T) have filed five-year plans for building infrastructure in unserved and under-served areas. However, Centennial serves only about 5,157 subscribers², approximately 6% of the wireless market, while Choice has no customers at this time. Both carriers have stated in their applications for ETC status that they are going to use USF to build facilities which would not otherwise be built without USF support. Initially, these facilities may be voice grade only but broadband capabilities will be added as funds are made available. The fact that the other, non-ETC, wireless carriers have not built facilities in those areas substantiates the need for USF support. It should be noted that

¹ *In the Matter of Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and its Subsidiaries, Transferees and Assignees, Applications for Consent to Assign and Transfer Control*, Order, WC Docket No. 09-82, Released December 7, 2009

² USAC *High Cost Loop Support Projections by State, by Study Area, 2Q2010*, Table HC05

broadband wireless is not widely available outside the more populated areas. Where it is offered, the subscriber must have line-of-sight from the roof mounted antenna to the nearest wireless tower or servicing location. Because so much of the Territory is mountainous, there are many areas where the service is not available.

Economic Considerations

The U.S.V.I. has a weak economy relying heavily on tourism which is significantly affected by economic conditions on the Mainland and other global origination points. Given the current global weak economic conditions we are significantly negatively impacted. Approximately 23.8% of our families³ are below the federal poverty line, compared with 9.6% for the country as a whole.⁴ Our median household income is \$34,983⁵ compared to \$52,175 for the United States⁶ yet our cost of living is estimated to be up to 33% higher than on the Mainland.⁷ As a result, many of our families find it difficult to pay for regular voice grade telephone service, let alone broadband services. Support is needed for both types of service. In our situation it is unreasonable to take funds away from voice grade when that system needs to be rebuilt from the ground up and our economy is in such fragile condition. Additional funds should be provided to support broadband.

The FCC Transition Plan Will Undermine Infrastructure Development in the USVI

In 2008, the Commission capped USF support of competitive eligible telecommunications carriers (“CETCs”). This was intended to be a temporary freeze pending more comprehensive

³ Virgin Islands Community Survey, Eastern Caribbean Center, University of the Virgin Islands estimate for 2007

⁴ U.S Census Bureau, 2006-8, American Community Survey, 3-Year Estimates, Table S1702

⁵ 2007 Virgin Islands Community Survey, Eastern Caribbean Center, University of the Virgin Islands.

⁶ U.S Census Bureau, 2006-8, American Community Survey, 3-Year Estimates, Table S1901

⁷ Estimate by USVI Legislature

universal service reform. Now the Commission proposes to cap support to ILECs at 2010 levels to the extent not already capped while it decides how funds can be distributed to those areas of the country “where no firm can operate profitably without government support.”⁸ Thereafter, overall support for ILECs would remain frozen⁹ and support for CETCs would be phased out over a five year period.

Ostensibly, the intent of this proposal is to eliminate the indirect funding of broadband capable networks through legacy high-cost programs.¹⁰ We believe this goal is misplaced. The Virgin Islands needs robust telephone networks capable of both voice grade and broadband service. All modern telecommunications carriers are trying to move in that direction. It makes little sense to us to try to separate them, particularly when efficiency considerations would drive a service provider toward a completely integrated network design. If ILEC funding is geared toward stand-alone voice grade service and broadband funding is provided only in isolated areas where broadband is uneconomic on a stand-alone basis, integrated network design will be undermined. In the long run, this will produce greater costs which, in turn, could cause higher rates for services.

The fundamental principle of universally available and affordable basic service for all remains valid. If broadband is added to the list of supported services, the principle should still hold. A consumer should be able to choose whether to get service from the ILEC or a CETC and the same federal benefit should be provided to either carrier to keep rates affordable. Therefore, the FCC should provide a single funding mechanism that supports both voice grade and broadband services.

⁸ *In the Matter of: Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, WC Docket No. 10-90 & 05-337, GN Docket No. 09-51, Released April 21, 2010, FCC 10-58, para. 51.

⁹ The NPRM does not say if the ILEC support would be frozen at the state level.

¹⁰ *Ibid.*, para.53.

We are also troubled by the suggestion that USF should be provided only “where no firm can operate profitably without government support.” As noted earlier, modern and efficient service providers are moving toward completely integrated networks which cover areas that could include some pockets that are unprofitable. Depending on how narrowly this restriction is interpreted, support could be very limited in scope and scale. We fear that the plans developed by the ILEC and CETCs would have to be changed drastically because of reduced funding levels, to the disadvantage of the Virgin Islands consumer. We note that the approval of ETC designations was made by the VIPSC in anticipation that the five-year plan construction programs would be implemented. These plans were predicated on a certain level of federal support being available.

Economic Models Are Unlikely to Provide Reasonable Results in the USVI

Shortly after the federal Telecommunications Act of 1996 was passed, the FCC issued a comprehensive rulemaking on Universal Service.¹¹ In the *First USF Order*, the Commission decided to continue USF support of rural carriers based on their embedded cost rather than based on an economic model. The FCC said:

Although it recommended using forward-looking economic cost calculated by using a cost model to determine high cost support for all eligible telecommunications carriers, the Joint Board found that the proposed models could not at this time precisely model small, rural carriers' cost. The Joint Board expressed concern that, if the proposed models were applied to small, rural carriers, the models' imprecision could significantly change the support that such carriers receive, providing carriers with funds at levels insufficient to continue operations or, at the other extreme, a financial windfall. The Joint Board noted that, compared to the large ILECs, small, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit from economies of scale and scope as much as non-rural carriers. Rural carriers often also cannot respond to changing operating circumstances as quickly as large carriers. We agree with the Joint Board and adopt its recommendation that rural carriers not use a cost model or other means of determining forward-looking economic

¹¹ *In the Matter of: Federal-State Joint Board on Universal Service*, Report And Order, CC Docket No. 96-45, Released: May 8, 1997, FCC 97-157

cost immediately to calculate their support for serving rural high cost areas, but we do support an eventual shift from the existing system.¹² (Underline added, footnotes omitted.)

The Commission later gained much experience with economic models. It engaged in more than four years of development and dialogue with economists, state regulators and industry experts. Yet, by 2001, it decided to retain the use of embedded costs to determine support for rural carriers because the basic flaws it identified in 1997 were still present.

The conclusions of the FCC in 1997 and 2001 are still appropriate today with respect to the Virgin Islands. Much of the needed data is not available. The Broadband Model apparently lacks data for the insular areas. It covers only the conterminous states and Alaska and Hawaii. Insular areas still have fewer customers and still do not enjoy the economies of scope and scale assumed in the model. Also, we believe the assumptions about incremental costs may not be appropriate given the massive rebuilding effort needed here. We do not have an adequate baseline of existing broadband services. For these reasons, we are skeptical that the results of the Broadband Model will be useful for us.

Reverse Auctions Will Not Provide Universal Access to Broadband Services

In the First USF Order, released in 1997, the Commission concluded:

As several commenters note, it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future. Given the limited utility of a competitive bidding process in the near term, it is important that we not rush to adopt competitive bidding procedures before we complete a thorough and complete examination of the complex and unique issues involved with developing bidding mechanisms for awarding of universal service support.¹³ (Footnotes omitted)

¹² *Ibid.*, para. 291

¹³ *Ibid.*, para 324

Not much has changed in the Virgin Islands since the Commission reached this conclusion. We have no CLECs and of the two wireless CETCs, one serves very few customers and the other is just starting to get into the market.¹⁴ Only ETCs can receive universal service support and neither CETC has the capabilities of building the extensive infrastructure we need at low cost. Since there is so little competition, and so few CETCs, it is unlikely a reverse auction would be workable here.

The FCC Should Establish a New Funding Plan for Small Insular Areas

The FCC imposed an interim cap on CETCs at the level in effect in each state in March, 2008, annualized. Since there was only one CETC in the Territory at that time, and since that carrier served only a small percentage of all subscribers, the amount of CETC funding available to the USVI is proportionately far lower than in almost all jurisdictions. Using USAC projections for 2010, we found that overall in the USA, CETCs receive 56% as much USF as the ILECs. In the USVI, CETCs receive only 8% as much as the ILEC.¹⁵ The end result of this disparity is that consumers in the U.S.V.I. do not receive their fair share of federal USF support to CETCs. This is an accident of history that should be rectified by the Commission.

We urge the FCC to develop a special plan for insular jurisdictions where there are few CETCs or where ETCs have only recently been designated. These jurisdictions should be exempted

¹⁴ Aside from these two ETCs, only three other wireless voice carriers serve the Virgin Islands – AT&T (formerly Cingular; it has recently acquired Centennial), Sprint and VITELCOM. VITELCOM has only about 1,000 customers.

¹⁵ Source: Calculated from data in USAC *High Cost Loop Support Projections by State, by Study Area, 2Q2010*, Table HC05

from the interim cap.¹⁶ We suggest continuing the same support per line for voice grade service as would be available without the cap and an additional amount for broadband deployment. We believe a fair amount for broadband would be the average amount per line that will be provided nationwide for broadband support. If the Commission must set a cap on the total amount of support to CETCs, we propose that it be set at 56% of the amount received by the ILEC. This support could be conditioned on certification by the regulatory agency in each insular area that the funds will be used for appropriate broadband projects, similar to the way states now provide certifications to the Commission and USAC for the existing programs. While we recognize the necessity to control cost, a separate fund for insular areas is unlikely to have a large impact on the overall size of the USF programs but would make a significant difference to us.

We suggest that this special fund be in operation for at least five years in order to allow sufficient time to rebuild the USVI telecommunications networks. Further, we suggest that the specific projects to be funded through USF should be selected and approved by the local regulatory agency, in our case the VI PSC.

Conclusion

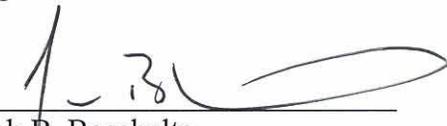
We agree with the goal of encouraging universal availability of broadband services but are concerned that approaches which may have merit for the U.S. Mainland will place our residents

¹⁶ The Commission has a long history of providing different rules for small rural and insular areas. Most recently, the Commission would have exempted Alaska, Hawaii and U.S. Territories and possessions from earlier proposals for USF reform. See, for example the appendices to the *Intercarrier Compensation and USF Reform Order On Remand And Report And Order And Further Notice Of Proposed Rulemaking*, Released: November 5, 2008, FCC 08-262, para. 13 of Appendices A, B and C: "The requirements that we adopt for disbursement of high-cost universal service support do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions. We find that these areas have very different attributes and related cost issues than do the continental states. For this reason, we are exempting providers in Alaska, Hawaii and U.S. Territories or possessions from the high-cost support requirements and rules adopted herein, and we will address them in a subsequent proceeding."

at a disadvantage. We need support to build robust networks capable of providing both voice grade and broadband services. This support should come in the form of a special fund for rural insular areas. Proposals to provide broadband at the expense of customers of voice grade service should be rejected for insular areas. For the foreseeable future, support in insular areas should be provided based on actual cost, not based on an economic model.

Respectfully submitted,

The Virgin Islands Public Services Commission

By; 

Joseph B. Boschulte

Chairman