

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
The Uniendo a Puerto Rico Fund and the Connect) WC Docket No. 18-143
USVI Fund)
)
Connect America Fund) WC Docket No. 10-90

ORDER ON RECONSIDERATION AND ORDER

Adopted: August 6, 2020

Released: August 6, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In September 2017, Hurricanes Irma and Maria caused widespread devastation to Puerto Rico and the U.S. Virgin Islands (together the Territories), damaging or destroying communications networks and leaving thousands without an essential means of communications during and after these treacherous storms. The Commission responded aggressively, creating the Uniendo a Puerto Rico Fund and the Connect USVI Fund to promote the deployment of advanced, hardened networks in the Territories.1 In Stage 2 of the Uniendo a Puerto Rico Fund and Connect USVI Fund, fixed providers will compete to receive up to \$691.2 million to provide fixed voice and broadband service throughout the Territories.2

2. In this order, the Wireline Competition Bureau considers issues raised by parties related to Stage 2. Specifically, we first resolve a petition from Virgin Islands Telephone Corp. dba Viya3 challenging the Public Notice4 released by the Bureau regarding the number of locations winning service providers must serve in the U.S. Virgin Islands. Second, we deny requests to modify the location adjustment process for Stage 2 fixed support as not properly before the Bureau. Third, with regard to a waiver petition brought by the PR-USVI Fund Coalition (Coalition),5 we waive in part the letter of credit value rules for high-cost support recipients of the Stage 2 competitive process and direct support recipients to comply with the letter of credit value rules adopted by the Commission in the Rural Digital

1 The Uniendo a Puerto Rico and the Connect USVI Fund, et al., Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5405, 5406, para. 2 (2018) (PR-USVI Order and FNPRM).

2 The Uniendo a Puerto Rico and the Connect USVI Fund, et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9116-18, paras. 13-16 (2019) (PR-USVI Stage 2 Order).

3 Petition for Reconsideration by Virgin Islands Telephone Corporation dba Viya, WC Docket Nos. 18-143 et al. (filed Jan. 21, 2020), https://ecfsapi.fcc.gov/file/10122260921402/Viya%20USVI%20Locations%20PN%20PFR-c3.pdf (Reconsideration Petition).

4 Wireline Competition Bureau Releases List of Reserve Prices and Location Counts for the Uniendo a Puerto Rico Fund and Connect USVI Stage 2 Fixed Support Competitive Proposal Process, Public Notice, 34 FCC Rcd 10360 (WCB 2019) (Reserve Prices Public Notice).

5 Emergency Request for Waiver of PR-USVI Fund Coalition, WC Docket No. 18-143 (filed Apr. 7, 2020) (Coalition Waiver Request).

Opportunity Fund Order,⁶ and deny in part the Coalition’s waiver request as to the letter of credit commitment letter and Weiss bank safety rating requirements. By resolving these issues, we move closer to the Stage 2 competitive process for fixed support and bringing advanced telecommunication services to all residents in the Territories.

II. BACKGROUND

3. To promote efficient deployment of advanced, reliable services to all locations in the Territories, in the Uniendo a Puerto Rico Fund and the Connect USVI Fund, the Commission adopted a single-round competitive proposal process for Stage 2 fixed voice and broadband services over a ten-year support term. The Commission directed the Bureau to consider all applications submitted from qualified fixed providers simultaneously and select winning applicants based on the lowest score for a series of weighted objective criteria for each of the 78 designated geographic areas of Puerto Rico and two areas of the U.S. Virgin Islands.⁷

4. *Deployment Obligation for the Territories.* For the Uniendo a Puerto Rico Fund and the Connect USVI Fund, the Commission will require each Stage 2 fixed winning participant to deploy to all locations within the municipio(s)/island(s) for which it is the winning applicant, thus ensuring the goal of resilient deployment to all locations.⁸ In establishing the specific deployment obligations for each geographic area, the Commission directed the Bureau to use the latest Census Bureau data to determine the actual deployment obligation and also directed the Bureau “to publish . . . its determination of the number of locations per geographic area, based on the most recent publicly available Census Bureau data for the Territories.”⁹

5. On December 19, 2019, the Bureau released a public notice announcing the reserve prices and corresponding location data for the 78 geographic areas of Puerto Rico and 2 geographic areas of the U.S. Virgin Islands.¹⁰ The Bureau calculated the location data using Commission staff estimates of the number of housing units, households, and people available on the FCC website, which are determined using public data from the U.S. Census Bureau and other government and commercial data sources.¹¹ To calculate the location data for Puerto Rico, the Bureau used the Commission staff estimates for calendar year 2017, which was the most recent data available at the time and based on the 2017 Census Bureau mid-year housing units data and 2012 Economic Business Survey.¹² For the U.S. Virgin Islands, the Commission staff used 2010 Census Bureau data because it was the most current U.S. Census Bureau data available since the Census Bureau does not provide an annual estimate for the U.S. Virgin Islands, as well as government and commercial data, to calculate annual housing units estimates.¹³ Utilizing the

⁶ *Rural Digital Opportunity Fund and Connect America Fund*, Report and Order, 35 FCC Rcd 686 (Feb. 7, 2020) (*Rural Digital Opportunity Fund Order*).

⁷ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9114-15, paras. 10, 11.

⁸ *Id.* at 9143, para. 59.

⁹ *Id.* at 9143, para. 61.

¹⁰ *Reserve Prices Public Notice*, 34 FCC Rcd 10360 (2019).

¹¹ FCC Wireline Competition Bureau, Staff Block Estimates Methodology, *available at* <https://www.fcc.gov/reports-research/data/staff-block-estimates> (last visited July 16, 2020) (*Commission Staff Methodology*).

¹² In general, the Commission staff estimates use block-level counts for housing units from the 2010 U.S. Census and then take county-level estimates from the U.S. Census Bureau for mid-year data to provide block-level estimates. *Commission Staff Methodology* at 2.

¹³ Commission Staff housing estimates for the U.S. Virgin Islands may also be found at the FCC website.

Commission staff estimates, the Bureau announced in the *Reserve Prices Public Notice* a total of 61,183 locations for the two geographic areas of the U.S. Virgin Islands.¹⁴

6. On January 21, 2020, Viya filed a petition for reconsideration with the Bureau of the *Reserve Prices Public Notice* as to the U.S. Virgin Islands.¹⁵ Viya argued that the Bureau failed to follow the Commission's direction in the *PR-USVI Stage 2 Order* to calculate the location counts because the use of Commission staff estimates "represent an analysis of commercial and other data sources compiled by the Commission staff[.]"¹⁶ According to Viya, the Commission did not provide the Bureau "with discretion to update the data using other sources" and the Bureau should calculate the location data for Stage 2 fixed support solely using 2010 or 2020 Census data. In addition, Viya seeks reconsideration of the location data for the U.S. Virgin Islands released in the *Reserve Prices Public Notice*, asserting that the use of other data sources resulted in inaccurate location counts and erroneously double-counted 2,414 business locations.¹⁷

7. Puerto Rico Telephone Company (PRTC), Broadband VI, and AeroNet Wireless Broadband (AeroNet) each submitted comments indicating that they were likewise concerned with the location data published for Puerto Rico.¹⁸ In particular, PRTC contests the Bureau's use of 2017 housing unit data "when more recent 2018 data are available, particularly given the Commission's instructions to the Bureau to determine the number of locations 'based on the most recently publicly available Census Bureau data for the Territories'"¹⁹ In addition, PRTC, Broadband VI, and AeroNet advocated for the modification of the location data process adopted for the Uniendo a Puerto Rico Fund and the Connect USVI Fund to be nearly identical with the *Rural Digital Opportunity Fund Order*.²⁰

8. *Location Adjustment Process.* In the *PR-USVI Stage 2 Order*, the Commission established a location adjustment process to resolve discrepancies between expected and actual locations to which the winning applicant must deploy qualifying broadband.²¹ The Commission adopted the

¹⁴ *Reserve Prices Public Notice*, 34 FCC Rcd at 10361, Attach.

¹⁵ Reconsideration Petition at 1. Viya explicitly stated that its petition did not seek reconsideration of the location data for geographic areas of Puerto Rico. *Id.* at 1, n.4.

¹⁶ Reconsideration Petition at 4.

¹⁷ *Id.* at 4-5. Viya alternatively argues that, to the extent the Bureau concludes that the use of alternative sources is appropriate, the Bureau "must make additional efforts to correct the inaccurate, inflated locations counts . . . and, at a minimum, correct the mathematical error." Reconsideration Petition at 7. *See also* Viya Feb. 4, 2020 *Ex Parte* Letter at 2 (providing that, in the alternative and at a minimum, the location data "could be improved significantly" if the Commission corrects the imprecise Economic Census data and uses an alternative commercial source for "population growth change" for the U.S. Virgin Islands).

¹⁸ Comments on Viya's Petition for Reconsideration of Puerto Rico Telephone Company, Inc. WC Docket Nos. 18-143 et al. (filed Mar. 4, 2020) (PRTC Mar. 4, 2020 Comments); Comments on Petition for Reconsideration of Broadband VI, LLC, WC Docket Nos. 18-143 et al. (filed Mar. 4, 2020) (Broadband VI Mar. 4, 2020 Comments); Letter from Stephen E. Coran, Counsel for AeroNet Wireless Broadband LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, at 2 (filed Mar. 16, 2020) (AeroNet Mar. 16, 2020 *Ex Parte* Letter) (recommending adjustment of location counts published in the *Reserve Price Public Notice*). *See also* Letter from Edgar Class, Counsel for PRTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 et al. (filed Feb. 19, 2020) (PRTC Feb. 19, 2020 *Ex Parte* Letter).

¹⁹ PRTC Mar. 4, 2020 Comments at 3-4.

²⁰ Letter from L. Charles Keller, Counsel for Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Feb. 4, 2020) (Viya Feb. 4, 2020 *Ex Parte* Letter) (suggesting waiver of the pro-rata reduction associated with the location adjustment process); PRTC Mar. 4, 2020 Comments at 4-10; Broadband VI Mar. 4, 2020 Comments at 3-4; AeroNet Mar. 16, 2020 *Ex Parte* Letter at 2-3; *see also* PRTC Feb. 19, 2020 *Ex Parte* Letter at 1-5.

²¹ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, para. 60.

location adjustment process given the uncertainty of the accuracy of location data following the hurricanes and due to the compelling need to adequately verify the number of locations for deployment to all locations in both Puerto Rico and the U.S. Virgin Islands.²² The Commission adopted a mandatory one-year location adjustment process and a voluntary fifth-year reassessment to mitigate any remaining issues with location accuracy and make adjustments to final deployment obligations.²³ The Commission believed the location adjustment process would encourage participation in the Stage 2 fixed competitive process by providing applicants who may be reluctant to apply because of possible location count discrepancies with an outlet to resolve these discrepancies.²⁴

9. Under the location adjustment process, the Commission will reduce the deployment obligation of a support recipient if the recipient demonstrates that it is unable to identify enough locations to which it can deploy voice and broadband services.²⁵ The Commission further provided that a winning applicant's support will be reduced on a *pro rata* basis if there is a reduction in the support recipient's total location obligation, reasoning that an applicant's proposal should reflect informed business determinations of the costs and support amount required to satisfy its commitments, and that the Fund should "not be accountable for the incorrect assumptions in a carrier's proposal."²⁶ The Commission also noted that it did "not wish to provide support for non-existent locations" and declined to adopt PRTC's proposal to apply a *pro rata* reduction only when the final number of locations is less than 90% of the total locations.²⁷ The Commission delegated to the Bureau the implementation of the Stage 2 location adjustment process.²⁸

10. On January 30, 2020, the Commission adopted the *Rural Digital Opportunity Fund Order* to bring high-speed fixed broadband service to unserved rural homes and small businesses on the mainland. The Commission adopted a location adjustment process to account for possible disparities between the location counts and the actual number of locations in a winning bidder's service territory for the Rural Digital Opportunity Fund, but with differences from the Uniendo a Puerto Rico Fund and the Connect USVI Fund.²⁹ Specifically, the Commission directed the Bureau to conduct a location adjustment process to revise the location counts no later than the end of service milestone year six.³⁰ The Commission also provided that it would not reduce support if the updated location counts indicate fewer actual locations in the awarded areas in most circumstances.³¹ At the same time, the Commission also required support recipients to deploy to additional new locations in geographic areas where the location

²² *Id.* at 9145, para. 63.

²³ *Id.*

²⁴ *Id.* at 9144-45, para. 64.

²⁵ *Id.* at 9135-36, paras. 64-65 (requiring support recipients to "sufficiently demonstrate" by a preponderance of evidence the discrepancies between the number of locations announced by the Bureau and actual locations on the ground in its winning area to reduce the total number of identifiable locations).

²⁶ *Id.* at 9135-36, para. 65. The Commission declined to adopt in the *Order* a proposal to apply a *pro rata* reduction only where the final number of locations is less than 90% of the total locations determined by the Bureau because applicants must conduct due diligence of its commitments and the Fund should not be accountable for incorrect assumptions in an applicant's proposal. *Id.*

²⁷ *Id.*

²⁸ *Id.* at 9135-37, paras. 64-66.

²⁹ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55.

³⁰ *Id.* at 709, para. 45.

³¹ *Id.* at 710, para. 46. The Commission provided that support would be reduced if a location count adjustment results in a reduction of more than 35% to the support recipient's deployment obligation. *Id.* at 711, para. 51.

adjustment process identified an increased number of locations, but the Commission gave support recipients an additional two years to deploy service to these new locations.³²

11. In its Reconsideration Petition of the location data for geographic areas in the U.S. Virgin Islands, Viya noted the “inconsistent” treatment between the location adjustment processes adopted for the Uniendo a Puerto Rico Fund and the Connect USVI Fund, and the different location adjustment approach proposed in the publicly available draft order for the Rural Digital Opportunity Fund.³³ Although Viya did not seek reconsideration of the Commission’s location adjustment procedures, Viya did argue for a prospective waiver of the *pro rata* support reduction requirement in the Uniendo a Puerto Rico Fund and the Connect USVI Fund to align with the Rural Digital Opportunity Fund.³⁴ PRTC and Broadband VI submitted comments in support of Viya’s Reconsideration Petition and requested reconsideration or a review of the location adjustment process, including the *pro rata* support reduction, for the Uniendo a Puerto Rico Fund.³⁵

12. *Letter of Credit Requirements.* In the *PR-USVI Stage 2 Order*, the Commission required winners to obtain an irrevocable letter of credit from an acceptable financial institution in order to receive support as an effective means of securing the Commission’s financial commitment to provide high-cost support.³⁶ The Commission also explained that letters of credit protect the integrity of scarce universal service funds that have been disbursed and permit it to reclaim that support in the event a recipient is not using the funds in accordance with the Commission’s rules.³⁷

13. Under the letter of credit requirements, the Commission required a winning applicant to secure a letter of credit with value at least “equal to the first year of authorized support.”³⁸ Before receiving support for the following year, a support recipient “must modify, renew, or obtain a new letter of credit to ensure that it is valued at the total amount that has already been disbursed plus the amount of money that is going to be provided the following year.”³⁹ The Commission also provided for the reduction of the amount of the letter of credit once the support recipient meets the 60% and 80% service milestones.⁴⁰ The letter of credit must remain open until the recipient has certified it has deployed broadband and voice service to 100% of all locations in the geographic area and USAC has verified that the recipient has fully deployed.⁴¹

14. For the Rural Digital Opportunity Fund, the Commission also adopted letter of credit

³² *Id.* at 710, para. 49.

³³ Reconsideration Petition at 2-3. We note that Viya’s comparison of the location adjustment process was based on the public draft of the Rural Digital Opportunity Fund Order, which the Commission subsequently adopted on February 7, 2020.

³⁴ Viya Feb. 4, 2020 *Ex Parte* Letter at 2. Although Viya discussed the waiver of the *pro rata* support reduction, it did not file a waiver request of the *pro rata* support reduction or location adjustment process in this proceeding.

³⁵ PRTC Mar. 4, 2020 Comments at 9; BBVI Mar. 4, 2020 Comments at 3. Rather than submitting comments, AeroNet submitted an *ex parte* letter requesting the Bureau be directed “to establish a location adjustment process similar to the one [the Commission] recently adopted for the Rural Digital Opportunity Fund Phase I recipients”). AeroNet Mar. 16, 2020 *Ex Parte* Letter at 2. *See also* PRTC Feb. 19, 2020 *Ex Parte* Letter at 5.

³⁶ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9151, para. 76; 47 CFR § 54.1508(c) (providing criteria for acceptable banks that may issue a letter of credit).

³⁷ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9151, para. 76; 47 CFR § 54.1508.

³⁸ *Id.* at 9152, para. 79; 47 CFR § 54.1508(b).

³⁹ *Id.*

⁴⁰ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9152, para. 80, 47 CFR § 54.1508(b)(1), (2).

⁴¹ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9152, para. 80, 47 CFR § 54.1508(a).

requirements for auction winners, except it modified certain requirements so they differ from the letter of credit requirements in the *PR-USVI Stage 2 Order*.⁴² Under these modified rules, the Commission permits a support recipient to reduce the amount of its letter of credit as it meets service milestones and USAC verifies each milestone's completion.⁴³ In adopting these modified requirements for the letter of credit, the Commission carefully balanced the interest of potential support recipients in minimizing their financial cost over the course of the deployment term with the Commission's interest to protect universal service fund support.⁴⁴

15. The Coalition, which is comprised of certain carriers that state they are eligible to participate in the Stage 2 fixed competitive process,⁴⁵ petitions for a waiver of certain letter of credit requirements, citing challenging financial conditions in the Territories, the impact of the COVID-19 pandemic, and the Commission's willingness to adopt different letter of credit requirements for the Rural Digital Opportunity Fund.⁴⁶ In its petition, the Coalition notes the disparity between the letter of credit rules for Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund and the rules adopted for the Rural Digital Opportunity Fund, which permit recipients to reduce their letter of credit burden sooner in their buildout terms. The Coalition argues that modifying Stage 2 support recipients' letter of credit obligations to more closely mirror the Rural Digital Opportunity Fund letter of credit rules would ensure their ability to participate in the Stage 2 competitive process,⁴⁷ and would direct more support to deployment and not bank fees.⁴⁸ The Coalition requests waiver of the letter of credit commitment letter requirement,⁴⁹ rules pertaining to the value of a letter of credit,⁵⁰ and the requirement that banks issuing a letter of credit have a Weiss bank safety rating of B- or better.⁵¹

16. Several commenters have expressed support for the Coalition's waiver request of the letter of credit requirements.⁵² Viya, PRTC, and others filed comments opposing the Coalition's waiver request

⁴² 47 CFR § 54.804(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-35, paras. 96-113.

⁴³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-31, paras. 98-104.

⁴⁴ *Id.* at 729, 732-33, paras. 97, 105, 110.

⁴⁵ The Coalition members are AeroNet Wireless Broadband LLC, Broadband VI, LLC, Critical Hub Networks, Inc., and VPNet Inc. Coalition Waiver Request at Attach. 1.

⁴⁶ See Coalition Waiver Request.

⁴⁷ Coalition Waiver Request at 2; Letter from Stephen E. Coran and Gerard Lavery Lederer, Counsel for PR-USVI Fund Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, at 1 (filed June 19, 2020) (providing that "strict application of the existing financial requirements would serve to undermine the Commission's objectives by effectively disqualifying successful eligible providers") (Coalition June 19, 2020 *Ex Parte* Letter).

⁴⁸ Coalition June 19, 2020 *Ex Parte* Letter at 1. Certain members of the Coalition recently reiterated their waiver request to the Commission; however, these members also proposed an alternative relief. Letter from Gerard Lavery Lederer, Counsel to Critical Hubs, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed July 22, 2020); Letter from Stephen E. Coran, Counsel for AeroNet, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed July 23, 2020).

⁴⁹ Coalition Waiver Request at 12-15.

⁵⁰ *Id.* at 10-11.

⁵¹ *Id.* at 11-12.

⁵² Comments of Worldnet Telecommunications, Inc., WC Docket No. 18-143 (Apr. 23, 2020) (Worldnet Apr. 23, 2020 Comments); Comments in Support of PR-USVI Fund Coalition Emergency Request for Waiver of Cancio, Nadal & Rivera, L.L.C., WC Docket No. 18-143 (filed Apr. 29, 2020) (CNR Comments); Comments in Support of PR-USVI Fund Coalition Emergency Request for Waiver of CORE Telecom Systems, WC Docket No. 18-143 (filed Apr. 16, 2020) (CORE Telecom Comments); Comments of Vicente Aguirre, WC Docket 18-143 (filed Apr. 27, 2020) (Aguirre Comments); Comments in Support of PR-USVI Fund Coalition Emergency Request for Waiver of Francisco J. Rivero, WC Docket No. 18-143 (filed Apr. 25, 2020) (Rivero Comments); Comments in Support of

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because, among other reasons, it would undermine the policy objectives of the letter of credit requirements, which were designed to ensure the integrity and protection of universal service funds.⁵³

III. DISCUSSION

A. The Bureau's Method of Determining the Deployment Obligation for the Territories is Consistent with the Commission's Direction

17. The Bureau grants in part and denies in part the Reconsideration Petition challenging the location count adopted in the *Reserve Prices Public Notice*. First, we conclude that the Bureau did not use improper data sources in determining the location count for the U.S. Virgin Islands. We are not persuaded by Viya's argument that the Bureau is required to use solely either the 2010 Census data or the 2020 Census data.⁵⁴ Although the Commission initially proposed to use the Connect America Cost Model (CAM)⁵⁵ to identify the number of locations, it later modified this approach and directed the Bureau to determine the most accurate locations by using the latest Census Bureau data to help guard against inaccuracies resulting from major population changes following Hurricanes Maria and Irma.⁵⁶ To achieve the Commission's goal of providing accurate location data for the Territories, it granted the Bureau discretionary authority to consider more recent data sources to supplement the 2010 Census Bureau data.⁵⁷ In this regard, the Bureau's use of the Commission staff estimate, which incorporates data from the Central Intelligence Agency Factbook and Economic Census data, is appropriate for determining the location data for the U.S. Virgin Islands.⁵⁸ Viya implicitly recognized in its petition that the Bureau could consider other sources when determining locations, such as when Viya failed to object to the

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PR-USVI Fund Coalition Emergency Request for Waiver of Ramon Santiago, WC Docket No. 18-143 (filed Apr. 25, 2020) (Santiago Comments); Comments in Support of PR-USVI Fund Coalition Emergency Request for Waiver of Oriental Bank, WC Docket No. 18-143 (filed Apr. 27, 2020) (Oriental Bank Comments); Comment on Petition for Waiver of Alexandra Fernandez-Navarro, Associate Member, Puerto Rico Public Service Regulatory Board, WC Docket 18-143 (filed Apr. 26, 2020) (Fernandez-Navarro Apr. 26, 2020 Comments); Comments of the Wireless Internet Service Providers Association, WC Docket No. 18-143 (filed Apr. 28, 2020) (WISPA Comments). *See also* Reply Comments of the Telecommunications Regulatory Bureau of Puerto Rico, WC Docket No. 18-143 (filed May 11, 2020); Letter from Gerard Lavery Lederer, Counsel for Critical Hub Networks, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (filed Feb. 24, 2020) (Critical Hub Networks Feb. 24, 2020 Ex Parte Letter); Letter from Gerard Lavery Lederer, Counsel for Critical Hub Networks, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (filed Mar. 4, 2020); Letter from Hon. Stacey E. Plaskett, Member of Congress, U.S. Virgin Islands, United States of America House of Representatives, to Ajit V. Pai, Chairman, Federal Communications Commission, WC Docket No. 18-143 (May 18, 2020).

⁵³ Comments of Virgin Islands Telephone Corporation dba Viya, WC Docket 18-143 (Apr. 29, 2020) (Viya Apr. 29, 2020 LOC Comments); Comments on PR-USVI Fund Coalition Emergency Request for Waiver of Puerto Rico Telephone Corporation, Inc. (PRTC Apr. 29, 2020 LOC Comments); Letter from Ted Koerner, Executive Vice President, CoBank, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Jun. 8, 2020) (CoBank Jun. 8, 2020 *Ex Parte* Letter); Letter from the Hon. Albert Bryan Jr., Governor, U.S. Virgin Islands, to Ajit Pai, Chairman, Federal Communications Commission, WC Docket No. 18-143 (June 29, 2020) (Gov. Bryan June 29, 2020 *Ex Parte* Letter).

⁵⁴ Reconsideration Petition at 7.

⁵⁵ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, paras. 61; *PR-USVI Order and NPRM*, 33 FCC Rcd at 5416, para. 49.

⁵⁶ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, paras. 60-61 (providing that the Bureau will determine the location data based on the most recent publicly available Census Bureau data).

⁵⁷ *See id.* at para. 61.

⁵⁸ *See id.*

Bureau's use of the 2012 Economic Census.⁵⁹ Viya's argument to solely use the 2010 Census Bureau data runs counter to the Commission's directive to balance the goal of buildout to all existing locations while accounting for the possibility of population shifts post-hurricanes.⁶⁰ We thus conclude that the Bureau's methodology for determining the location data is consistent with the Commission's direction in the *PR-USVI Stage 2 Order* to use the latest U.S. Census Bureau data contrary to Viya's argument.

18. In addition, we agree with commenters that Viya's argument for the use of only 2020 Census Data⁶¹ would materially delay the implementation of Stage 2 because such data will likely be unavailable until approximately the spring of 2021, thus unnecessarily postponing the authorization of high-cost fixed support and broadband deployment to all areas of the Territories.⁶² Therefore, we deny in part the Reconsideration Petition's argument that the Bureau failed to follow the *PR-USVI Stage 2 Order* when it used Commission staff estimates to determine the location count for the U.S. Virgin Islands.

19. Although concluding that the Bureau's methodology did not contradict the *PR-USVI Stage 2 Order*, we agree with Viya and commenters that the data for the U.S. Virgin Islands provided in the *Reserve Price Public Notice* included too many locations.⁶³ Upon further review, we confirm that the original 2017 Commission staff estimates used to determine the deployment obligation incorrectly counted the number of business locations in the U.S. Virgin Islands twice, resulting in 2,414 more locations.⁶⁴ By removing the 2,414 duplicative business locations from the location data published in the *Reserve Prices Public Notice*, the total number of locations for both geographic areas of the U.S. Virgin Islands will be reduced to 58,769 locations.

20. Based on our reconsideration of the location data above, as urged by PRTC and others,⁶⁵ we find that it is appropriate for the Bureau to update the deployment obligation and annual reserve prices for all geographic areas previously announced in the *Reserve Prices Public Notice*.⁶⁶ Following the release of the *Reserve Prices Public Notice* on December 19, 2019, Commission staff published more recent location data for the U.S. Virgin Islands and Puerto Rico.⁶⁷ Therefore, consistent with the Commission's direction to use the most recent U.S. Census Bureau data,⁶⁸ we will use the more recent 2018 Commission staff estimates, which relies upon more current U.S. Census data, to revise the

⁵⁹ Reconsideration Petition at 5 (recognizing the Bureau's use of the 2012 Economic Census to determine location data but disagreeing with the imprecise number of business establishments).

⁶⁰ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, para. 60.

⁶¹ Reconsideration Petition at 7.

⁶² See Broadband VI Mar. 4, 2020 Comments at 3; AeroNet Mar. 16, 2020 *Ex Parte* Letter at 2 (opposing reliance on the use of the 2020 Census data due to delay of its public release).

⁶³ Reconsideration Petition at 4-5; PRTC Mar. 4, 2020 Comments at 2-3; Broadband VI Mar. 4, 2020 Comments at 2.

⁶⁴ Viya Jan. 31, 2020 *Ex Parte* Letter at Attach. B.

⁶⁵ PRTC Mar. 4, 2020 Comments at 3-4 (urging the Bureau to update the deployment obligations based on 2018 housing units available at the Commission staff estimates webpage); PRTC Feb. 19, 2020 *Ex Parte* Letter at 5-6 (same); AeroNet Mar. 16, 2020 *Ex Parte* Letter (suggesting adjustment of location counts prior to Stage 2 competitive process).

⁶⁶ 47 CFR § 1.429(b)(1). See PRTC Feb. 19, 2020 *Ex Parte* Letter at 5.

⁶⁷ See <https://www.fcc.gov/reports-research/data/staff-block-estimates>.

⁶⁸ For the same reasons discussed above, the updated location data based on 2018 Commission staff estimates for Stage 2 fixed support is consistent with the Commission's direction for the Bureau to use the most recent publicly available data for the Territories.

deployment obligation and annual reserve prices for all geographic areas of the Territories.⁶⁹ The 2018 location data for the Territories reflect a decrease in location counts in comparison to the *Reserve Prices Public Notice* for every geographic area of the Territories.⁷⁰ For the Stage 2 competitive process, the Bureau will concurrently release with this *Order* a public notice providing updated deployment obligations and reserve prices for Puerto Rico and the U.S. Virgin Islands.

B. The Petitions to Reconsider the Location Adjustment Process Are Untimely

21. Pursuant to section 1.429 of the Commission's rules,⁷¹ Viya and the commenters have not properly submitted a timely petition to reconsider the location adjustment process for the Uniendo a Puerto Rico Fund and the Connect USVI Fund established by the Commission. We therefore do not consider any untimely efforts to urge reconsideration of the Commission's location adjustment process and *pro rata* reduction of support in the *PR-USVI Stage 2 Order*.⁷² Even if the reconsideration requests were timely submitted, we find the Bureau does not have the authority to reconsider the Commission's decision adopting location adjustment process in the *PR-USVI Stage 2 Order*. Additionally, assuming that this effort to reconsider is appropriately before the Bureau, we are not persuaded that it is in the public interest to modify the location adjustment process in this proceeding to follow the process subsequently adopted separately for the Rural Digital Opportunity Fund.⁷³

22. The Commission adopted the location adjustment process in the *PR-USVI Stage 2 Order*, and any parties were required to file a petition for reconsideration within 30 days of the publication of the *Order* in the Federal Register, which was December 9, 2019.⁷⁴ Since that date has long passed, rather than seeking timely reconsideration of the *Order*, PRTC, BBVI, and AeroNet improperly attempt to have the Bureau reconsider the Commission's location adjustment process and *pro rata* support determinations in comments and an *ex parte* letter submitted in response to Reconsideration Petition of the *Reserve Prices Public Notice* that announced the location counts for the geographic areas established for the Territories. Because the parties instead seek reconsideration of the location adjustment process and *pro rata* reduction of support, we dismiss this reconsideration as untimely.

23. With regard to its Reconsideration Petition, Viya sought review of the Bureau's determination of the location data announced in the *Reserve Prices Public Notice* and not reconsideration of the location adjustment process.⁷⁵ As discussed above, we have fully resolved the issues specifically

⁶⁹ We likewise find that the Bureau's reconsideration of the deployment obligation for Puerto Rico and the U.S. Virgin Islands is in the public interest pursuant to section 1.429(b)(3) of the Commission's rules. *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, para. 59.

⁷⁰ *Id.* See also PRTC Mar. 4, 2020 Comments at 3-4; PRTC Feb. 19, 2020 *Ex Parte* Letter at 5-6.

⁷¹ 47 CFR § 1.429(b)(3).

⁷² 47 CFR § 1.429(l).

⁷³ See also Viya Feb. 4, 2020 *Ex Parte* Letter at 2 (proposing the waiver of the *pro rata* reduction of high-cost fixed support); PRTC Feb. 19, 2020 *Ex Parte* Letter at 5 (supporting waiver of *pro rata* reduction of support rule).

⁷⁴ 47 CFR § 1.429(d). The *Order* was published in the Federal Register on November 7, 2019. Federal Communications Commission, The Uniendo a Puerto Rico Fund and the Connect America [sic] USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, 84 Fed. Reg. 59937 (Nov. 7, 2019).

⁷⁵ In its petition, Viya specifically stated in reference to the *Rural Digital Opportunity Fund Order*,

Facing a similar (but less severe) data problem on the mainland, the Commission proposed to take a substantially different approach. In the Rural Digital Opportunity Fund ("RDOF"), the Commission intends to vote at its January meeting on an order that would determine the number of locations in each geographic area based on better data developed in the near future, after the support amounts are determined, and---critically---not to require any *pro rata* reductions in support if the number of locations proves to be lower than those used in developing bidders support proposals (up to a generous threshold).

(continued....)

raised by Viya's petition, concluding that the Bureau's methodology to determine the location counts is consistent with the Commission's direction to use the most recent Census data and provided that an updated public notice announcing revised locations counts based on 2018 data will be released.⁷⁶ We find that Viya did not seek reconsideration of the location adjustment process in this proceeding based on a short reference to the draft *Rural Digital Opportunity Fund Order*.⁷⁷

24. Notwithstanding the untimely nature of the reconsideration requests, we deny the requests to modify the location adjustment process on other grounds. Under the Commission's rules, a party seeking reconsideration of the *PR-USVI Stage 2 Order* must rely on facts or arguments not previously presented to the Commission that (1) relate to events which have occurred or where circumstances have changed since last presented; (2) were unknown to petitioner until after the petitioner's last opportunity to present them to the Commission and where the petitioner could not have learned of the facts or arguments previously; or (3) consideration of the facts or arguments is in the public interest.⁷⁸ As a preliminary matter, we observe that, under Commission rules, if a petition for reconsideration simply repeats arguments that were previously considered and rejected in the proceeding, it will not likely warrant reconsideration.⁷⁹

25. With this standard in mind, the Commission previously considered comments and arguments reiterated by the parties related to the location adjustment process and pro rata support reduction adopted in the *PR-USVI Stage 2 Order*.⁸⁰ We are unpersuaded by the commenters' claim that support recipients of the Stage 2 fixed competitive process will be treated unfairly in comparison to recipients of the Rural Digital Opportunity Fund.⁸¹ Based on the record, and following Hurricanes Maria and Irma, the Commission crafted the mandatory one-year and voluntary fifth-year location adjustment process to safeguard against inaccurate data and to ensure that all areas are eligible for support for deployment.⁸² In adopting the support reduction provision as part of the location adjustment process, the Commission reasonably considered the need for the efficient use of support in light of lowering the high-cost threshold to ensure eligibility of all areas in the Territories for support, including areas where service is available from unsubsidized competitors. In adopting the deployment obligations and areas eligible for support, the Commission reasonably considered that it did not wish to provide support for non-existent locations.⁸³ For these reasons, the Commission adopted a one-year location adjustment process that included the *pro rata* reduction of support specifically based on the record of this proceeding and on the unique circumstances and characteristics of Territories. Thus, the public interest is not served by

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Given the inconsistent and less accurate approach taken in the Connect USVI Fund, it is incumbent upon the Bureau to ensure that the [*Reserve Prices Public Notice*] includes the most accurate data regarding the location counts in the USVI.

Reconsideration Petition at 2-3.

⁷⁶ Section III.A.

⁷⁷ See Reconsideration Petition at 2-3.

⁷⁸ 47 CFR § 1.429(b)(1)-(3).

⁷⁹ 47 CFR § 1.429.

⁸⁰ See PRTC Mar. 4, 2020 Comments at 5-6 (noting that the Commission declined to adopt PRTC's proposals for a "reasonable request" standard and not apply a support reduction mechanism related to the location adjustment process).

⁸¹ See PRTC Mar. 4, 2020 Comments at 9-10 (arguing that the support reduction is unfair to recipients); Broadband VI Mar. 4, 2020 Comments at 3 (arguing that there are greater administrative burdens).

⁸² *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, paras. 59-60.

⁸³ *Id.* at 9144-45, paras. 63-65.

modifying the location adjustment process adopted in the *PR-USVI Stage 2 Order*.

26. We acknowledge that the Commission adopted in the *Rural Digital Opportunity Fund Order* a modified location adjustment process. However, we are not persuaded by Viya, PRTC, Broadband VI, and AeroNet that the Commission's adoption of a modified location adjustment process in a separate proceeding is a changed circumstance on which a party may seek reconsideration due to an unsupported argument that applicants of the Uniendo a Puerto Rico Fund and Connect USVI Fund will be treated unfairly.⁸⁴ As a general rule, not all standards or requirements adopted by the Commission may universally apply to all high-cost programs, and based on the record in this proceeding, the Commission tailored the Stage 2 fixed competitive process, as well as the location adjustment process, for the unique characteristics and operating conditions of the Territories. Unlike the Rural Digital Opportunity Fund, the Commission determined the need for the mandatory one-year location adjustment process to be compelling and adopted the one-year adjustment process in order to determine the exact number of locations in the Territories—as the degree of the location problem is unknown—due to the high-level of destruction and population shifts resulting from Hurricanes Maria and Irma.⁸⁵ The Commission reasonably concluded that delaying the location adjustment process until the sixth year of support, as adopted in the Rural Digital Opportunity Fund, is insufficient to mitigate the issues with location accuracy following the hurricanes.⁸⁶

27. We are similarly unconvinced by the parties' request to review the adoption of the *pro rata* support reduction mechanism as part of the one-year location adjustment process of the Uniendo a Puerto Rico Fund and the Connect USVI Fund. As we noted above, the Commission previously considered and declined to adopt a proposal to apply a *pro rata* reduction of support only where the final number of locations is less than 90% of the total locations.⁸⁷ Moreover, although the Commission adopted a modified support reduction mechanism for the Rural Digital Opportunity Fund,⁸⁸ the Commission reasonably considered, on balance, the need for *pro rata* support reduction for the Territories in light of the high-level of uncertainty regarding the location data post-hurricanes for the Territories and concluded that the public interest will be best served to ensure that universal service support is wisely and efficiently spent.⁸⁹ Therefore, we deny the petition to reconsider the location adjust process, including the *pro rata* support reduction mechanism.

C. Waiver of Certain Letter of Credit Requirements Will Further Broadband Network Deployment

28. Under section 1.3 of the Commission's rules, a rule may be waived for good cause shown.⁹⁰ Waiver of the Commission's rules is appropriate if both: (1) special circumstances warrant a

⁸⁴ See PRTC Mar. 4, 2020 Comments at 6-10; Broadband VI Mar. 4, 2020 Comments at 3-4; AeroNet Mar. 16, 2020 *Ex Parte* Letter at 2-4

⁸⁵ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143, 9144, paras.60, 63 (“We think this approach allows for the best balance to ensuring buildout to all existing locations.”).

⁸⁶ *Id.*

⁸⁷ *Id.* at 9145, para. 65.

⁸⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 711, para. 51. We note that the Commission weighed in its adoption of the modified support reduction mechanism for the Rural Digital Opportunity Fund the additional deployment obligations of support recipients where there are more locations than the number identified by the CAM. *Id.* at 710-11, paras. 49, 51.

⁸⁹ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9143-44, paras. 63-65.

⁹⁰ 47 CFR § 1.3.

deviation from the general rule, and (2) such deviation will serve the public interest.⁹¹

29. *Letter of Credit Value Requirement.* We find good cause pursuant to section 1.3 of the Commission's rules to waive part of the letter of credit value requirements for the Uniendo a Puerto Rico and the Connect USVI Fund.⁹² Therefore, we waive section 54.1508(c) of the Commission's rules for Coalition members and direct them to instead comply with section 54.804(c) of the Commission's rules with regard to their letter of credit value obligations.⁹³ Additionally, on our own motion, we extend this relief not only to Coalition members, but to all Stage 2 fixed support recipients of the Uniendo a Puerto Rico Fund and the Connect USVI Fund that wish to reduce their letter of credit value burdens.

30. First, we find that special circumstances warrant deviation from the letter of credit rules adopted for Stage 2 fixed support. In addition to the existing economic challenges in the Territories, the COVID-19 pandemic and recent earthquakes in Puerto Rico have made more difficult the ability for carriers to obtain letters of credit.⁹⁴ The Coalition and commenters argue that reducing the letter of credit value requirements will also blunt the negative impact on the financial markets from the pandemic and earthquakes, and will foster greater competition by permitting more participants in Stage 2, increasing the chance of bringing broadband to all locations in the Territories.⁹⁵

31. It is inarguable that the public health crisis brought on by the COVID-19 pandemic has increased consumer demand for robust broadband services. At the same time, however, it has greatly hampered if not impeded the ability of companies to conduct their business, negatively impacting their financials and affecting their long-term creditworthiness. Exacerbating the existing economic downturn in the Territories, the Coalition argues that the pandemic will tighten the underwriting policies for new financial instruments.⁹⁶ We agree with the Coalition and WISPA that reducing the letter of credit value obligations is appropriate given the current financial market conditions resulting from the pandemic.⁹⁷ The pandemic's impact on the financial markets will impede access to credit and increase the already difficult financial challenges companies currently face in the Territories;⁹⁸ thus, we determine that special circumstances exist to waive the Commission's letter of credit rules by applying the Rural Digital Opportunity Fund letter of credit value rules to the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

32. Second, we find that it serves the public interest to grant the Coalition's waiver petition in part and extend this same relief to all Stage 2 fixed support recipients. Shortly after the adoption of the *PR-USVI Stage 2 Order*, the Commission acknowledged in the *Rural Digital Opportunity Fund Order* the

⁹¹ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

⁹² 47 CFR § 1.3; see *Northeast Cellular*, 897 F.2d at 1166.

⁹³ 47 CFR § 54.804(c).

⁹⁴ Coalition Waiver Request at 7; WISPA Apr. 28, 2020 Comments at 5.

⁹⁵ Emergency Request for Waiver Reply Comments from PR-USVI Fund Coalition, WC Docket No. 18-143, at 2 (filed May 12, 2020) ("Commenting parties further observed that the dire economic conditions in the Territories, exacerbated by the ongoing COVID-19 pandemic, necessitate emergency relief to enable the competitive process envisioned by the Commission to go forward.") (Coalition Reply Comments); Fernandez-Navarro Apr. 26, 2020 Comments at 1-2 (arguing that the waiver of rules would help provide effective competition from a diverse group of providers). See also Coalition June 19, 2020 Ex Parte Letter at 1 (arguing greater competition resulting from a waiver of the letter of credit requirements).

⁹⁶ Coalition Waiver Request at 7.

⁹⁷ *Id.* at 11.

⁹⁸ See, e.g., Critical Hub Networks Feb. 24, 2020 Ex Parte Letter at 1.

large fees required to maintain letters of credit during the term of support.⁹⁹ As the Commission explained, letter of credit value rules “impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment.”¹⁰⁰ We agree with the Coalition that reducing the letter of credit value requirements would enable Stage 2 winning applicants to allocate more funding to broadband network deployment.¹⁰¹ We believe the size of the geographic areas for Stage 2 fixed support, coupled with the unique operating conditions and struggling local economies,¹⁰² would result in less high-cost support going directly to broadband deployment.¹⁰³ Thus, we find it is in the public interest to extend relief to Stage 2 winning applicants by maintaining reduced letter of credits values.

33. Such an approach for the Territories would allow winning applicants to reduce their letter of credit value burdens by demonstrating concrete progress in building their networks earlier than existing milestones, while maintaining the Commission’s policy interests in ensuring that universal service dollars are being used efficiently and protecting against the potential for carriers that may fail to fulfill their broadband deployment obligations.¹⁰⁴ With this decision, we will permit a support recipient to reduce its letter of credit to one year of support upon verification by USAC that the provider had met an optional 20% buildout milestone by the end of its second year of support.¹⁰⁵ Because Stage 2 competition has not commenced and no fixed support has been authorized, allowing prospective support recipients to comply with the more relaxed letter of credit value rules should result in faster broadband deployment. As the current COVID-19 pandemic has demonstrated, robust broadband service plays a vital role in allowing all Americans—but particularly those living in the Territories, and other rural communities—to stay connected. Thus, incentivizing more rapid deployments is especially critical in these times.

34. Moreover, we believe that it is in the public interest to grant this request for additional reasons. As the Coalition noted, providing for reduced letter of credit values will help ensure the Commission’s goal of creating more competition among potential applicants.¹⁰⁶ Specifically, the cumulative nature of the current letter of credit value rules applicable to Stage 2 recipients are more financially burdensome and may impede their ability to participate. We conclude that it will serve the public interest to instead require prospective providers to comply with the Rural Digital Opportunity Fund letter of credit value rules, creating greater competition and potentially resulting in even greater efficiencies for broadband deployment in the Territories.¹⁰⁷ Finally, aligning the letter of credit rules will

⁹⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729, para. 97.

¹⁰⁰ *Id.* at 731, para. 105.

¹⁰¹ Coalition Waiver Request at 5; *see also* PSRB Comments at 1 (expressing support so that “all potential providers can have a reasonable opportunity of accessing the Uniendo a [Puerto Rico] and the Connect USVI Fund while assuring that most resources go towards building resilient, quality networks”).

¹⁰² Coalition Waiver Request at 11 (citing the economic environment for adoption of modified letter of credit value).

¹⁰³ *See, e.g.*, Coalition Reply Comments at 10-11 (noting disproportionate amount of bank fees for letters of credit of Skybeam, LLC).

¹⁰⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 731, para. 105.

¹⁰⁵ 47 CFR § 54.1506. *See also* 47 CFR § 54.804(c)(1)(v); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 99.

¹⁰⁶ Coalition Reply Comments at 8.

¹⁰⁷ *See* Fernandez-Navarro Apr. 26, 2020 Comments at 2 (urging removal of barriers that lessen competition); Coalition Reply Comments at 8.

provide greater administrative ease for the Commission and USAC.¹⁰⁸ Thus, we conclude there is good cause warranting the waiver the letter of credit value rules for all prospective Stage 2 support recipients.

35. We are not persuaded by arguments opposing the Coalition's waiver request based on total budget of the Rural Digital Opportunity Fund.¹⁰⁹ We disagree with Viya's argument that "[t]he primary reason that the Commission modified the letter of credit approach in RDOF was the significant size of the RDOF auction[,]"¹¹⁰ which would lead to larger bank fees, as the basis to distinguish the Rural Digital Opportunity Fund. The Commission modified the letter of credit value requirements in the *Rural Digital Opportunity Fund Order* to reduce barriers to participation that the Commission believed would negatively impact individual applicants.¹¹¹ Thus, while Viya correctly notes that the total Rural Digital Opportunity Fund budget, and thus the cumulative fees for letters of credit, is significantly greater than for the Territories, we conclude that Viya's focus on the total budget rather than reducing the burdens on individual participants is misplaced.

36. We likewise are not persuaded by commenters who argue that the modified letter of credit value requirements are ineffective to secure against default for the Uniendo a Puerto Rico and the Connect USVI Fund.¹¹² For Stage 2, the Commission explained its rationale for adopting the same letter of credit value rules as CAF Phase II auction: to protect the Fund and provide an effective means of securing the Commission's financial support.¹¹³ We acknowledge that, although support recipients of the Uniendo a Puerto Rico Fund and the Connect USVI Fund may have greater deployment costs, the modified letter of credit requirements we adopt today were designed to easily recover disbursed funding and "fulfill [the Commission's responsibility] to protect program funds while also reducing costs of participat[ion]."¹¹⁴ These modified letter of credit value requirements are an effective means to safeguard high-cost support disbursed to support recipients in the Territories¹¹⁵ against possible default by requiring applicants to demonstrate verifiable steps towards meeting deployment obligations and by imposing increasing letter of credit values for recipients that fail to meet required milestones.¹¹⁶

37. *Bank Commitment Letter and Weiss Safety Rating.* In addition to waiving the letter of credit value rules, the Coalition seeks a waiver of the Commission's requirements for the requisite letter of credit commitment letter and Weiss safety rating of at least B- for banks issuing a letter of credit.¹¹⁷ For the single-round Stage 2 competitive process, the Commission required prospective applicants to submit a letter of credit commitment letter from an eligible bank with the requisite Weiss safety rating as

¹⁰⁸ Coalition Waiver Request at 10 (noting the financial certainty to be provided by the modified letter of credit value requirements prior to the start of the application process).

¹⁰⁹ Viya Apr. 29, 2020 Comments at 7; Comments on PR-USVI Fund Coalition Emergency Request for Waiver of Puerto Rico Telephone Company, WC Docket No. 18-143, at 4-5 (filed Apr. 29, 2020) (PRTC Apr. 29, 2020 Comments).

¹¹⁰ Viya Apr. 29, 2020 Comments at 7.

¹¹¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729, paras. 96, 97.

¹¹² Viya Apr. 29, 2020 Opposition at 8.

¹¹³ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9151, para. 76.

¹¹⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729, para. 97.

¹¹⁵ See *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9134-35, para. 41, n.157 (explaining that the prior experience of applicants establishes a heightened baseline of pertinent experience to deny imposition of requirements that create added costs and delay in implementing Stage 2 fixed support).

¹¹⁶ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, paras. 100-101.

¹¹⁷ Coalition Waiver Request at 1.

part of its application.¹¹⁸ The Coalition argues that special circumstances exist for the waiver because there is insufficient time to obtain the commitment letter;¹¹⁹ there are no banks in the Territories meeting the Weiss safety rating of at least B-; and it has not found a mainland bank willing to issue a letter of credit to Coalition members.¹²⁰ While we continue to be mindful of the economic challenges in the Territories, we are not persuaded by the Coalition and commenters to also waive the letter of credit commitment letter and Weiss bank safety rating requirements.¹²¹ We do not find good cause to forego these particular letter of credit requirements and thus deny the waiver request as to the letter of credit commitment letter and Weiss bank safety rating.¹²²

38. We are not persuaded by arguments from the Coalition and commenters that the Weiss safety rating of B- acts as a bar to participation because it impossible to meet.¹²³ Contrary to the Coalition's argument that there are no banks with a Weiss safety rating of B- or better currently in the Territories,¹²⁴ the Weiss safety ratings currently list several eligible banks with a presence in the Territories that possess the minimum eligibility rating required by Section 54.1508(c)(1)(ii).¹²⁵ Further, we believe that there is a sufficient pool of eligible banks from which the Coalition members may seek letters of credit, even if the banks are not chartered or have their principal place of business in the Territories.¹²⁶

39. In addition, as stewards of the Universal Service Fund, we agree with commenters that the Weiss safety rating and bank commitment letter serve as important safeguards that help demonstrate an applicant's financial capability and commitment to fulfilling its deployment obligations throughout the Stage 2 funding term.¹²⁷ Just as the Commission found when it declined to permit CAF Phase II auction

¹¹⁸ 47 CFR § 1508(d)(6).

¹¹⁹ Coalition Waiver Request at 12-15.

¹²⁰ Coalition Waiver Request at 11-12.

¹²¹ Coalition Waiver Request at 11-15; Worldnet Apr. 23, 2020 Comments; CNR Comments; Comments in Support of PR-USVI Fund Coalition Emergency Request for Waiver of Cancio, Nadal & Rivera, L.L.C., WC Docket No. 18-143 (filed Apr. 29, 2020); CORE Telecom Comments; Aguirre Comments; Rivero Comments; Santiago Comments; Oriental Bank Comments; Fernandez-Navarro Apr. 26, 2020 Comments; WISPA Comments.

¹²² Further, we do not find good cause to waive the commitment letter and Weiss safety rating. As a result of the relief provided by the adoption of lower amounts for letters of credit, we expect that Coalition members and prospective Stage 2 applicants will be able to more easily obtain the required letter of credit commitment letter from an eligible bank at a lower cost.

¹²³ Coalition Waiver Request at 11.

¹²⁴ *Id.* at 4, 7, 11 (providing that “[t]here are no banks based in the territories that currently meet the Commission’s Weiss-rated eligibility requirements, and mainland banks are reluctant to provide irrevocable letters of credit for construction” and “[t]here are no banks based in the Territories that meet the Weiss bank safety rating of B- or better”). *See also* Critical Hub Networks Feb. 24, 2020 *Ex Parte* Letter (providing that “[t]here are only three banks in Puerto Rico . . . , none of which has a Weiss B- rating”). It is unclear whether the Coalition’s argument focuses on banks headquartered or chartered in the Territories or, as our rules require, “any United States bank.” 47 CFR 54.1508(c)(1).

¹²⁵ At the time of release of this *Order*, USAC has confirmed the presence of at least four banks with a Weiss safety rating of B- or better in Puerto Rico. *See* Weissratings.com.

¹²⁶ *CAF Phase II Auction Order*, 31 FCC Rcd at 5992-93, paras. 126-27 (expanding number of banks meeting the Commission’s eligibility requirements for issuing letters of credit and noting that there are approximately 3,600 banks eligible to issue letters of credit meeting the Commission’s requirements).

¹²⁷ Viya Apr. 29, 2020 Comments at 10 (quoting *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments, Report and Order and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 5949, 5993, para. 127 (2016)) (“Weiss offers an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes”); PRTC Apr. 29, 2020

(continued....)

bidders to “use any bank that is federally-insured” for issuing letters of credit, we conclude that the Weiss safety rating provides an independent, comprehensive evaluation of the safety and soundness of banks that may issue letters of credit for Stage 2 fixed support recipients.¹²⁸ We likewise conclude that by maintaining the minimum safety rating of B- or better, the Commission helps ensure that the bank offers financial security and has the resources to deal with a variety of adverse economic conditions.¹²⁹ In this regard, the Weiss safety rating provides sufficient assurance that letters of credit issued by banks will be honored.¹³⁰

40. We further find that, on balance, maintaining the Weiss safety rating will serve to protect the Fund considering the greater exposure to risk assumed by granting in part the Coalition’s waiver to reduce the value of a letter of credit as discussed above. We therefore are not persuaded by the Coalition that the Commission should assume greater risk in the event of default by an applicant because an issuing bank is less financially stable.¹³¹ We maintain the Weiss safety rating to guard against a bank’s failure and inability to honor even a reduced letter of credit value in the event of default by a support recipient. A draw on a reduced letter of credit would be impossible if the issuing bank does not have a minimum level of financial security or resources that would protect the Fund. Thus, we agree with CoBank and others¹³² that it is not in the public interest for the Fund to assume additional, significant financial risk by also granting the Coalition’s waiver request of the Weiss safety rating. As the Commission provided previously, “this approach achieves an appropriate balance between encouraging the participation in the [competitive process], particularly of small entities, and protecting the public funds.”¹³³

41. We further find that it is not in the public interest to waive the letter of credit commitment letter. Like the Weiss safety rating, the letter of credit commitment letter serves as a critical safeguard that protects the Fund.¹³⁴ We agree with Viya that “requiring each applicant to submit a commitment letter effectively provides the Commission with an early, independent review of its proposal by an approved bank with an incentive to undertake appropriate scrutiny of the applicant’s financial situation.”¹³⁵ And as CoBank observed, “[t]he financial sector has the resources and knowledge base to underwrite the ability of the support applicants to achieve the goals of universal service programs.”¹³⁶ For the Uniendo a Puerto Rico Fund and the Connect USVI Fund, the Bureau will leverage the underwriting process to assess an applicant’s qualification to facilitate more prompt funding in the single-round

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Comments at 2 (arguing that the rules are intended “to ensure that applicants and recipients have the requisite financial resources needed to meet their obligations”); CoBank June 8, 2020 *Ex Parte* Letter at 1 (noting that the safeguards “serve an important function in reviewing the viability of prospective funding recipients and their deployment proposals”).

¹²⁸ *CAF Phase II Auction Order*, 31 FCC Rcd at 5996, para. 132.

¹²⁹ *Id.* at 5993, para. 127.

¹³⁰ See *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127 (expanding number of eligible banks that may issue letters of credit from 70 banks to approximately 3,600 banks for the CAF Phase II auction). While the precise number of banks eligible to issue the requisite letter of credit may have changed, we believe there are enough eligible banks from which prospective Stage 2 fixed support recipients may seek a letter of credit.

¹³¹ Coalition Waiver Request at 7.

¹³² CoBank Jun. 8, 2020 *Ex Parte* Letter; PRTC Apr. 29, 2020 *Ex Parte* Letter; Viya Apr. 29, 2020 Comments at 10-14.

¹³³ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

¹³⁴ See *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9135, para. 41, n.157.

¹³⁵ Viya Apr. 29, 2020 Comments at 13.

¹³⁶ CoBank June 8, 2020 *Ex Parte* Letter at 1.

competitive proposal process established for Stage 2 fixed support.¹³⁷ Moreover, the letter of credit commitment letter provides the Commission additional indicia that an applicant has sought a letter of credit from an eligible bank to ensure it will meet its application commitments and the program requirements, rather than default prior to the authorization of support. We find that the public interest is best served by ensuring that applicants are financially qualified and capable of fulfilling commitments to provide high-quality voice and broadband services to consumers.¹³⁸

42. For these reasons, we find that it is in the public interest to maintain an appropriate balance between encouraging participation, particularly of small entities, by modifying the letter of credit value requirements, and protecting the public funds by maintaining the letter of credit commitment letter requirement and the Weiss safety rating requirement for the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

IV. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

44. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Virgin Islands Telephone Corp. on January 21, 2020 is GRANTED IN PART AND DENIED IN PART.

45. IT IS FURTHER ORDERED that the Emergency Request for Waiver filed by the PR-USVI Fund Coalition on April 7, 2020 is GRANTED IN PART AND DENIED IN PART.

46. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

¹³⁷ 47 CFR § 1505; *The Uniendo a Puerto Rico Fund and Connect USVI Fund Notice and Filing Requirements and Other Procedures for Stage 2 Fixed Competitive Proposal Process*, Public Notice, 35 FCC Rcd 218, 238, para. 65 (2020); see *Viya* Apr. 29, 2020 Comments at 13.

¹³⁸ See Gov. Bryan June 29, 2020 *Ex Parte* Letter at 1.