

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

Adopted: June 8, 2021

Released: June 8, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The Wireline Competition Bureau (Bureau) denies as untimely a Petition for Reconsideration filed by Virgin Islands Telephone Corp. d/b/a Viya (Viya) requesting that the Bureau vacate and reissue its public notice announcing Broadband VI, LLC (Broadband VI) as the winning applicant of the Stage 2 competitive process for the Connect USVI Fund (Fund).1 Because the Bureau is now taking final action in this proceeding by concurrently releasing a public notice authorizing support to Broadband VI, Viya is free to file a new petition for reconsideration that re-raises the issues that were premature at the time of the original filing.2

II. BACKGROUND

2. In the PR-USVI Stage 2 Order, the Commission allocated federal universal service support to promote the deployment of advanced, hardened networks in both Puerto Rico and the U.S. Virgin Islands (collectively, the Territories).3 As part of Stage 2, the Commission allocated approximately \$180 million over ten years to facilitate the improvement and expansion of existing fixed networks in the U.S. Virgin Islands and to provide for the deployment of new voice and broadband networks following the devastation of the 2017 hurricanes, so that those living in the U.S. Virgin Islands will have access to and benefit from high-speed broadband services comparable to those that residents of the mainland United States enjoy. The Commission adopted a competitive proposal process to award this high-cost support,

1 Petition for Reconsideration by Virgin Islands Telephone Corp. (Viya), WC Dockets No. 18-143 et al. (filed Dec. 16, 2020) (Reconsideration Petition); Wireline Competition Bureau Announces Winning Applicants for the Connect USVI Fund Stage 2 Competitive Process, Public Notice, 35 FCC Rcd 12921 (WCB 2020) (USVI Winner Public Notice). Viya contemporaneously filed a petition to stay the authorization of support for Broadband VI pending the resolution of the Viya Reconsideration Petition. Petition for Stay by Viya, WC Dockets No. 18-143 et al. (filed Dec. 16, 2020). In determining whether to grant a stay, the Bureau considers, among other things, whether the petitioner will likely succeed on the merits. See generally Iowa Utilities Bd. v. FCC, 109 F.3d 418 (8th Cir. 1996). In light of our denial of Viya’s Reconsideration Petition, we dismiss Viya’s Petition for Stay as moot.

2 Connect USVI Fund Stage 2 Support Authorized for Broadband VI, Public Notice, WC Docket Nos. 18-143, 10-90 (WCB rel. June 8, 2021).

3 The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109 (2019) (PR-USVI Stage 2 Order).

with one winner to be selected per geographic area.⁴ For the U.S. Virgin Islands, the Commission established St. Croix Island as one geographic area, and St. John and St. Thomas Islands as a second geographic area.⁵ Under the competitive process, each proposal for a geographic area would receive a score based on a 270-point scale based on (1) price; (2) network performance, including speed, latency, and usage allowance; and (3) resilience and redundancy.⁶ The Commission directed the Bureau to evaluate applications and select the proposal with the lowest overall score per geographic area consistent with the methodology adopted in the *PR-USVI Stage 2 Order* using the 270-point scale.⁷ The Commission also directed the Bureau to collect and review from each applicant financial and technical information to ensure that the applicant possesses the qualifications to successfully complete its proposed network.⁸

3. The Bureau received proposals from Viya and Broadband VI for each of the two geographic areas within the U.S. Virgin Islands.⁹ On November 16, 2020, the Bureau released the *USVI Winner Public Notice* closing the Stage 2 competitive process and announcing the results based on proposals from these applicants.¹⁰ The *USVI Winner Public Notice* announced Broadband VI as the winning applicant for both geographic areas.¹¹ Consistent with the process adopted by the Commission, the Bureau also instructed Broadband VI to complete additional filing requirements by submitting a letter of credit from an eligible bank, a bankruptcy opinion letter from counsel, and certification of its eligible telecommunications carrier designation covering the geographic areas for its winning proposals.¹²

4. On December 16, 2020, Viya filed a petition for reconsideration seeking review of the *USVI Winner Public Notice* and requested that the Bureau vacate the Public Notice, reconsider its selection of Broadband VI, and “issue a new notice announcing the winning applicant that provides adequate transparency into the reasons and justifications underlying the Bureau’s selection.”¹³ In the petition, Viya acknowledges the competitive process adopted by the Commission and the Bureau’s evaluation of proposals based on factors of price, redundancy and resiliency, and network performance.¹⁴ However, Viya argues that the *USVI Winner Public Notice* and its announcement of Broadband VI as the winning applicant are “clearly erroneous” and must be reconsidered because the Public Notice does not “articulate

⁴ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9114-15, para. 11.

⁵ *Id.* at 9141, para. 53.

⁶ *Id.* at 9116-17, paras. 13-14; *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, WC Docket Nos. 18-143, 10-90, 35 FCC Rcd 218, 220, 252-55, paras. 2, 124-34 (2020) (*Procedures Public Notice*).

⁷ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9114, 9117, 9135, paras. 10, 14, 41; *see also Procedures Public Notice*, 35 FCC Rcd at 252-55, paras. 124-134.

⁸ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9134, para. 39.

⁹ *Wireline Competition Bureau Announces Applications Submitted to Participate in Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 Fixed Competitive Proposal Process*, 35 FCC Rcd 10341, 10342 (WCB 2020).

¹⁰ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9135, para. 42 (directing the Bureau to release a public notice announcing the winning applicant).

¹¹ *USVI Winner Public Notice*, 35 FCC Rcd at 12921, para. 1.

¹² *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9133-34, para. 39; *USVI Winner Public Notice*, 35 FCC Rcd at 12921-24, paras. 3, 5-12.

¹³ Reconsideration Petition at 1-2.

¹⁴ *Id.* at 2.

a satisfactory explanation” for the selection of Broadband VI as the winning applicant for each eligible area.¹⁵

III. DISCUSSION

5. We deny Viya’s Reconsideration Petition as untimely for two reasons. First, we deny it as premature to the extent that it seeks to challenge an award of support to Broadband VI. As we discuss below, the Bureau’s announcement of Broadband VI as the winning applicant was an interlocutory decision not subject to appeal.¹⁶ Second, we deny the Reconsideration Petition as untimely to the extent Viya seeks reconsideration of the procedures established for the Stage 2 competitive process by the *Procedures Public Notice*.¹⁷

6. *Untimely Interlocutory Appeal*. First, we deny Viya’s petition as premature because at the time it filed its petition, we had not yet taken the final action to authorize Broadband VI to receive support.¹⁸ As Viya acknowledges in its petition, section 1.106(a)(1) of the Commission’s rules specifically provides for petitions for reconsideration of final actions and states that “[p]etitions for reconsideration of . . . interlocutory actions will not be entertained.”¹⁹ An agency action is final, rather than interlocutory, if it is the “consummation” of an agency’s decision making process and the rights or obligations have been determined and not be merely of a tentative or interlocutory nature, and the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.²⁰

7. As Broadband VI correctly observes, the *USVI Winner Public Notice* was an intermediate step taken by the Bureau announcing that Broadband VI is the winner of the application process and explaining the additional steps it must take to be authorized to receive high-cost support.²¹ The *USVI Winner Public Notice* specifically provided that Broadband VI must complete the application process by meeting additional legal, financial and technical requirements adopted in the *PR-USVI Stage 2 Order* prior to the Bureau authorizing support.²² Had Broadband VI failed to meet any of those additional requirements, the Commission authorized the Bureau to take additional action to award support to an alternative eligible carrier, explicitly noting that “[a]n applicant’s selection as a winning applicant does not guarantee that the applicant will also be deemed qualified to receive Stage 2 support.”²³ The Commission further provided that the phase-down of frozen support in the U.S. Virgin Islands would not begin until after the authorization of support to a winning applicant.²⁴ Thus, Viya is incorrect to claim

¹⁵ *Id.* at 3 (arguing that the Public Notice does not explain whether Broadband VI’s proposed price is sufficient to meet the Commission’s goals; whether the Commission’s criteria and goals for the Connect USVI Fund are met; and whether Broadband VI is qualified to meet its obligations based on Viya’s allegations that Broadband VI has disregarded its obligations as an Eligible Telecommunications Carrier).

¹⁶ See 47 CFR § 1.106(a)(1).

¹⁷ See 47 CFR § 1.106(f).

¹⁸ Reconsideration Petition at 1, n.1.

¹⁹ 47 CFR § 1.106(a)(1).

²⁰ *Jet Fuel Broadcasting et al.*, Memorandum Opinion and Order, 29 FCC Rcd 2471, 2471-72, para. 2 (2014) (*Jet Fuel Broadcasting*) (citing *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997)).

²¹ Opposition to Petition for Reconsideration by Broadband VI, LLC, WC Docket Nos. 18-143 et al. at 4-5 (filed Dec. 30, 2020).

²² See *USVI Winner Public Notice*, 35 FCC Rcd at 12921-24, paras. 3, 5-12; see generally *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9135, para. 42; *Procedures Public Notice*, 35 FCC Rcd at 257, para. 143 (providing that winning applicant must complete necessary actions announced by public notice).

²³ *Procedures Public Notice*, 35 FCC Rcd at 228, para. 10.

²⁴ *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9156, para. 87.

that the rights and obligations of the applicants had been determined for Stage 2 support or that the phase down of existing, frozen support has commenced based on the announcement of Broadband VI as the winning applicant.²⁵ We therefore find that the Bureau's announcement of Broadband VI as the winning applicant was not a final action subject to reconsideration.²⁶ Because we are concurrently releasing a public notice authorizing support to Broadband VI, Viya is able to file a new petition raising the issues that were premature in the prior filing.

8. *Time-Barred Reconsideration of Procedures Public Notice.* Second, to the extent that Viya's petition asks us to disclose confidential application information as a part of reconsidering our selection, we deny the petition as an untimely petition for reconsideration of the Bureau's *Procedures Public Notice*.²⁷ Pursuant to the *PR-USVI Stage 2 Order*, the Bureau released the *Procedures Public Notice* over a year ago on February 5, 2020, for the Stage 2 competitive process.²⁸ In the notice, the Bureau provided that it would withhold from the public and other applicants competitively sensitive and certain other application information until at least after it authorizes the winning applicants to receive support.²⁹ The Bureau further barred applicants from "communicating in any manner," whether explicit or indirect, application information or strategies.³⁰ To the extent Viya seeks to alter these procedures by making application information public that the Bureau already decided would be confidential, Viya was required to file a petition for reconsideration of the procedures adopted by the Bureau within 30 days of the publication of the *Procedures Public Notice*, which was March 6, 2020.³¹ Viya, however, did not seek reconsideration of the *Procedures Public Notice* prior to the instant Reconsideration Petition filed on December 16, 2020, approximately eight months beyond the time to challenge the confidentiality rules and prohibited communications rules. We reiterate that after we authorize support to the winning applicant, we will make the "final overall application scores for all applicants available for public viewing."³²

IV. ORDERING CLAUSES

9. 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 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Virgin Islands Telephone Corp. on December 16, 2020 is DENIED.

11. IT IS FURTHER ORDERED that the Petition for Stay filed by Virgin Islands Telephone Corp. on December 16, 2020 is DISMISSED AS MOOT.

²⁵ Reconsideration Petition at 1, n.1.

²⁶ Cf. *Jet Fuel Broadcasting*, 29 FCC Rcd at 2472, para. 3 (affirming Media Bureau's dismissal of reconsideration petition because its grant of a preference under Section 307(b) was not a final decision).

²⁷ 47 CFR § 1.106(f).

²⁸ See generally *Procedures Public Notice*, 35 FCC Rcd 218.

²⁹ *Procedures Public Notice*, 35 FCC Rcd at 242, para. 83.

³⁰ *Id.* at 243, para. 88.

³¹ 47 CFR § 1.106(f).

³² *Procedures Public Notice*, 35 FCC Rcd at 257, para. 143.

12. 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