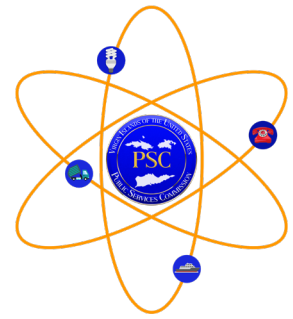




**Government of the United States Virgin Islands
Public Services Commission**

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January 22, 2024

Hon. Sen. Marvin A. Blyden
Chair
Committee on Housing, Transportation & Telecommunications
Capitol Building
P.O. Box 1690
St. Thomas, VI 00804
mblyden@legvi.org

Re: Public Services Commission Testimony for
January 24, 2024, at 10:00 a.m.

Good afternoon Honorable Members of the Committee on Government Operations, Veterans Affairs and Consumer Protection: **Chair** Marvin A. Blyden, **Vice-Chair** Javan E. James, Sr., and Senator Carla J. Joseph, Senator Samuel Carrion, Senator Dwayne M. DeGraff, Senator Ray Fonseca, and Senator Angel L. Bolques, Jr.. The Public Services Commission wants to thank you for the opportunity to testify today.

Present with me today are Tisean Hendricks, Assistant Executive Director, and Alicia Gumbs, IT and HR Manager; available this morning is Boyd Sprehn, General Counsel.

Today we will address four major areas:

- Customer Service Issues with Cellular Service;
- Broadband VI's Infrastructure Project;
- Viya's Infrastructure and Future Regulation; and
- Number Portability.

Cellular Service:

The Public Services Commission is now authorized to accept customer

service complaints regarding cellular service, although limited in our capacity to mandate a resolution of those complaints. The Commission has been including this topic on its meeting agendas to get this information out to the public. In addition, because the process is relatively new at the Commission, we have been monitoring news and social media to follow the discussions and public complaints.

The most obvious and frequently discussed issue concerning quality of service is the Liberty cellular service (formerly AT&T). Because of the level of complaints, the Commission staff met with Liberty last week. We prepared an agenda of issues and concerns; a copy of that agenda is attached. Liberty brought significant resources to a nearly two-hour meeting. We could take up much of this hearing simply reporting on that meeting. The shortest possible report is:

- Status of present infrastructure projects and plans for future development, with the focus on planning and utilization of federal broadband funding;
- Liberty addressed its current quality of services issues and the implementation of the migration process in addition to system upgrades. Since Liberty acquired AT&T's infrastructure, a migration and upgrade process is required to update their operating systems.
- Wireless complaints from customers regarding incoming/outgoing calls and text messages, delayed text messages, issues with group texting, dropped calls, poor coverage in certain areas, number portability issues, customer billing issues, and the quality of customer service issues.

Broadband VI's Infrastructure Project:

Broadband VI, which is now a subsidiary of Liberty Latin America, in 2020 won the reverse auction for FCC support through the Connect USVI Stage 2 funding. That funding provides \$84.5 million over ten years; however, BBVI must build out a new higher speed broadband network that reaches every home or business in the Territory within five years (now 2027) with substantially higher speeds. It is important to note that the cost of the new network is not \$84.5M – that is only the federal subsidy being contributed to the project; BBVI and Liberty are responsible for securing and providing the additional capital funding to complete this project.

The Commission is responsible for testing the network and certifying compliance with the funding requirements. We have engaged consultants with the capacity to conduct the technical testing, and will begin that process very shortly. The Commission must recertify BBVI's progress in completing this program, which will bring high speed internet access and phone service to the entire Virgin Islands, each September.

More concerning, BBVI must obtain permits from DPNR and Public Works in order to bury lines and build the network. BBVI has expressed concern that the issuance of permits is taking an extended period, and BBVI may not be able to perform the funding schedule as set out. The Commission has met with DPW and Liberty to assist in this process. As both are here today, we can allow them to speak on this subject directly.

As most of this system will be undergrounded, to a lesser extent, BBVI may need to access WAPA's poles; to the extent that BBVI has difficulty obtaining such an agreement, that is within the Commission's jurisdiction as to the joint use of facilities.¹ We must note that because there has been no "Dig Once" requirement, there are now underground lines from viNGN, Viya, AT&T's FirstNet (now Liberty) and WAPA. In addition, WAPA has plans to substantially underground much of its transmission and distribution network.

The phone service available through the BBVI infrastructure would be Voice Over Internet Protocol ("VOIP"), and an unknown number of companies may provide the actual phone service. It will present the first significant landline competition to Viya, and will have an obligation to make that service available to all.

Viya's Infrastructure and Future Regulation:

On a related note, the Commission last year took steps to minimize the regulatory burden on Viya's landline telephone service. As a result of federal laws and FCC actions, "telephone" as regulated in Title 30, Section 1 of the Virgin Islands Code is fairly narrowly limited to the existing phone landline service as of 1994 – the Incumbent Local Exchange Carrier (ILEC) which was and is VITELCO, now known as Viya. And within that telephone service, it is the local service (not

¹ Title 30, §2 Joint use of facilities

interstate or long-distance) that is regulated. As a result of its prior monopoly and its franchise, and the “Rural Exemption” in the National Telecommunications Act which protected VITELCO from some forms of competition, VITELCO remained the primary landline service provider. However, that has changed.

In 2003 VITELCO had nearly 100,000 subscriber lines; today it has less than 20,000. Cellular services have become the preferred communication means. In 2003 broadband was primarily carried on telephone lines; now fiber optic, cable, cellular and microwave systems are designed to carry data with voice communications almost an afterthought.

In 2022 and 2023 the Commission performed its statutory obligation and conducted a rate investigation. Viya stated that while it could justify a rate increase because of the amounts invested and devoted to the telephone service, competition would prevent it from being able to raise prices to a higher level; instead, Viya requested that its regulatory burdens be reduced and that no price increase be authorized. Instead, Viya requested that the current rates be made a rate cap – a maximum – and that Viya be given the authority to reduce rates to compete more successfully in the market.

The Commission agreed to the rate cap, and to some of the requested regulatory relief. However, the Commission identified numerous requirements in the Virgin Islands Code and its regulations that we cannot waive. The Commission intends to present recommendations to the Legislature for changes to those statutes.

Additionally, as the franchisee and the Incumbent Local Exchange Carrier, Viya has an obligation to serve all of the Virgin Islands. As a result of the loss of its federal subsidy, and the new network being built by BBVI, Viya has asked to be relieved of the universal service obligation. The Commission has refused that request, and has stated it will reconsider the request when the BBVI network is completed.

Number Portability:

The national decision to deregulate telecommunication services, including telephone, was premised on the idea that if competition was available, then neither customer service nor pricing needed to be regulated. However, it soon become

clear that in order for customers to change services, the telephone numbers must belong to the customer and be portable.

When number portability was adopted, widespread use of cellphones was just taking off; smart phones such as the iPhone were new to the market. The FCC permitted number portability within an area code and with providers within regions – but it limited just how much your telephone number is yours. It is the view of Commission staff that the limitations on number portability are no longer justified, and are in fact an unreasonable burden on customers and a barrier to effective competition.

Today telephone numbers – and particularly cell numbers – are key to an enormous number of activities – logging in to access email, banking, bill paying, insurance, and government services. In many ways, a personal cellphone number is more important than your social security number. Changing a cellphone number is now a significant burden and greatly time consuming.

Regional limitations on number portability are a major barrier. Three examples:

- A Virgin Islander goes to college in the Mainland and acquires a local cellphone. Several years later, on return to the Virgin Islands, that number is already key and is retained. But the Virgin Islander cannot port the off-island number to a new carrier because of regional limitations.
- A mainlander moves to the Virgin Islands right out of school, and over the years builds a business. The phone number they brought with continued to be used, and is key to accessing many of the business tools, as well as being a customer contact point – but that number cannot be ported locally.
- A Virgin Islander moves to the mainland, and wishes to change service providers – but cannot retain the 340 number if porting on the mainland.

These are no longer reasonable limitations, and they effectively eliminate competition and create captive customers.

The Commission staff is bringing this matter forward to the Commission to seek its support, and the support of the National Association of Regulatory Utility Commissioners and the Mid-Atlantic Conference of Regulatory Utility Commissioners in seeking FCC reform of the number portability limitations.

Concluding remarks:

Given the large number of testifiers, we will limit our remarks today. We provided testimony yesterday to the Committee on Government Operations, Veterans Affairs and Consumer Protection and will be happy to make that testimony available to this Committee as well.

We thank your for time and attention, and are ready to respond to your questions.

Sincerely,

/s/

Sandra L. Setorie
Executive Director

Cc: Commissioners