

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

*In the Matter of* )  
 )  
Application of viNGN, INC. d/b/a Virgin Islands )  
Next Generation Networks, Inc. for a License to )  
Construct, Land and Operate an Undersea Cable ) File No. SCL-LIC-2012  
System Linking the Islands of St. Thomas and St. Croix )  
in the United States Virgin Islands, United States )  
St. Thomas-St. Croix Submarine Cable System )  
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**APPLICATION FOR DOMESTIC SUBMARINE CABLE LANDING LICENSE  
AND REQUEST FOR STREAMLINED TREATMENT**

viNGN, INC. d/b/a Virgin Islands Next Generation Networks, Inc. (“viNGN”) (the “Applicant”), pursuant to the Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (the “Cable Landing License Act”), Executive Order 10,530, and Section 1.767 of the Commission’s rules, 47 C.F.R. § 1.767, hereby applies for a license to construct, land, and operate a fiber-optic submarine cable system, to be known as the St. Thomas-St. Croix Submarine Cable System (“St. Thomas-St. Croix System”), directly linking the islands of St. Thomas and St. Croix, both of which are located within the United States Virgin Islands (“USVI”) and therefore in the United States.

**I. DESCRIPTION OF THE CABLE SYSTEM**

The St. Thomas-St. Croix System will be a high capacity digital fiber-optic cable system that will provide increased capacity between the islands of St.

Thomas and St. Croix, both of which are located within the USVI. Specifically, the St. Thomas-St. Croix System will have landing stations in Christiansted, St. Croix, Frederiksted, St. Croix, Brewers Bay, St. Thomas, Great Bay, St. Thomas, Flamingo Bay (Water Island), St. Thomas and Banana Bay (Water Island), St. Thomas and Vila Olga, St. Thomas in the USVI.

The St. Thomas-St. Croix System is comprised of redundant, geographically separated, 12 fiber strand based cables. Initially, the cables will be deployed with a single 10 Gigabits/sec wavelength on the first fiber in each cable. Each cable has twelve (12) strands of fibers, each of which can support up to 64 wavelengths at speeds of 10 Gigabits/sec. 40 Gigabit and 100 Gigabit technology can also be utilized on these cables in the future. The St. Thomas-St. Croix System is based on nonrepeated technology using long range 10 Gigabit optical transceivers on each end that power the entire span.

Construction of the new St. Thomas-St. Croix System, which will extend more than 183 kilometers, began on June 11, 2012; the studies to determine the route were finished on December 20, 2011, and the manufacture of the cable and the equipment is ongoing. The completion target date is July 2013. The life expectancy of the St. Thomas-St. Croix System will be 25 years.

The St. Thomas-St. Croix System will be owned by viNGN, a wholly-owned subsidiary of the Virgin Islands Public Finance Authority (“VIPFA”).<sup>1</sup> viNGN will be responsible for operating the landing terminal equipment for the

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<sup>1</sup> VIPFA was created in 1988 by the USVI Legislature. VIPFA is a public corporation and autonomous government instrumentality created for the purposes of aiding the USVI Government in the performance of its fiscal duties and in effectively carrying out its governmental responsibility of raising capital for essential public projects.

St. Thomas-St. Croix System. viNGN, as the landing party for the cable at each location, will seek all required government approvals, permits, and licenses for operation of the St. Thomas-St. Croix System from the relevant regulatory authorities. As described below, viNGN is a public (not publicly-held) corporation and will be subject to the regulatory requirements applicable to similarly situated private corporations in the USVI.

## **II. PUBLIC INTEREST STATEMENT**

Grant of this application will serve the public interest, convenience and necessity because it will provide increased capacity within the USVI to help meet the dramatic growth in IP, data and voice traffic. The St. Thomas-St. Croix System will also increase competition for bandwidth, enhance service quality, and increase the resilience and redundancy of communications.

The St. Thomas-St. Croix System will form an important part of a new broadband network within the USVI. While other parts of the network are being funded primarily by a Broadband Technologies Opportunities Program (“BTOP”) grant<sup>2</sup> from the United States Department of Commerce through the National Telecommunications Information Administration (“NTIA”), the St. Thomas-St. Croix System is not being funded with BTOP grant monies. Nonetheless, as part of the new broadband network, the St. Thomas-St. Croix System shares the BTOP charter to provide wholesale broadband middle mile service to providers and to promote local economic growth, innovation and

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<sup>2</sup> The BTOP funding is authorized by the American Recovery and Reinvestment Act.

global competitiveness.<sup>3</sup> The viNGN broadband network, including the St. Thomas-St. Croix System, will benefit all Virgin Islands residents by introducing fast, reliable Internet service through the installation of new, high capacity broadband infrastructure.

The St. Thomas-St. Croix System will also provide reliable high speed connectivity between domestic markets within the USVI and increase reliability of communications among broadband services users. This is a project of high public interest, benefiting governments, educational and health care institutions, business enterprises and domestic communications in general. The proposed St. Thomas-St. Croix System will provide capacity necessary to meet the increasing demand for telecommunications traffic driven by the growing number of home, institutional and business broadband users and, in particular, to provide increased telecommunications bandwidth for the growing demand for convergent telecommunications services.

Through the St. Thomas-St. Croix System, viNGN will provide wholesale, reliable high speed Internet connections to retail providers, institutions and public infrastructure stewards who will, in turn, provide service to residents, businesses, and the Government of the Virgin Islands. The System's end-user consumers will benefit from enhanced capacity for and reliability of broadband services such as telecommuting, HDTV broadcasting, Internet services, video conferencing, advanced multimedia, VoIP and mobile video applications.

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<sup>3</sup> Supported by federal grants and local funding, viNGN will work with local businesses to install broadband technology that will create new opportunities by enabling a more efficient exchange of information. The BTOP-funded portions of the network will also use required local matching dollars applicable to four major program areas: State broadband data development; Comprehensive Community Infrastructure; Public Computer Centers; and Sustainable Broadband Adoption.

Similarly, carriers and service providers will benefit from increased physical route diversity, low-latency express path routing and expanded throughput capability.

### **III. INFORMATION REQUIRED BY 47 C.F.R. § 1.767**

The information requested by 47 C.F.R. § 1.767(a)(1)-(3) and (8)-(9) of the Commission's rules for the Applicant can be found in the attached Appendix A. The information required by 47 C.F.R. § 1.767(a)(4)-(7) is provided below.

#### **Information Required by 47 C.F.R. § 1.767(a)(4) - (7)**

##### **(4) Description of the Cable**

See Section I above.

##### **(5) Landing Points**

Information about the landing points of the St. Thomas-St. Croix System is included as Appendix B. Each of the landing points associated with the St. Thomas-St. Croix System consist exclusively of beach manholes and will not involve the construction or use of buildings.

##### **(6) Common Carrier or Non-Common Carrier Status**

The St. Thomas-St. Croix System will be operated on a non-common carrier basis. The flexibility afforded by that regulatory status is important to viNGN's business model which relies on viNGN's exercise of reasonable discretion to make individualized decisions with regard to offering bulk capacity to qualified classes of customers, including the terms of such offers, and to tailor its capacity offerings to the special requirements of individual customers. Non-common carrier status of the proposed system is consistent with established

Commission policy and will advance the public interest. The Commission has authorized non-common carrier cables where: (1) there is no legal compulsion to serve the public indifferently; and (2) there are no reasons implicit in the nature of the operations to expect that the Applicants would make capacity available to the public indifferently and indiscriminately.<sup>4</sup>

In applying the first prong of this test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis.<sup>5</sup> The Commission has focused its public interest analysis on whether an applicant will be able to exercise market power because of the lack of alternative facilities.<sup>6</sup> In this case, there are a variety of alternative facilities on existing cable, microwave and satellite systems between the United State Virgin Islands of St. Thomas and St. Croix.

Specifically, AT&T has direct submarine fiber optic cable connectivity (AT&T C-1) between St. Croix and St. Thomas.<sup>7</sup> Additionally, St. Croix and St.

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<sup>4</sup> See *Cable & Wireless Order*, 12 FCC Rcd 8516, 8520 (¶¶ 11-17)(1997); see also *Optel Communications, Inc., Application for a license to land and operate in the United States a submarine cable extending between Canada and the United States*, File No. SCL-92-004, Conditional Cable Landing License, 8 FCC Rcd 2267 (1993); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d. 630, 642 (D.C. Cir.) (*NARUC I*), cert. denied, 425 U.S. 992 (1976).

<sup>5</sup> See, e.g., *Cable & Wireless Order*, 12 FCC Rcd at 8522 (¶¶ 14-15).

<sup>6</sup> *Id.*

<sup>7</sup> See File SCL-94-006. In granting AT&T a submarine cable landing license on a non-common carrier basis in 1998, the Commission noted the existence of sufficient existing and proposed alternatives to the AT&T submarine cable. See *AT&T Submarine Systems, Inc., Memorandum Opinion and Order*, FCC File No. SCL-94-006 at para. 11, released October 9, 1998. There, the Commission also identified a proposed Pan American cable, with landing stations in St. Thomas and St. Croix, as a future common carrier alternative. *Ibid.* The Pan American cable was constructed in 1998-1999 and significantly upgraded by multiples of 10 Gbps wavelengths in 2009. See FCC File No. SCL-LIC-1997-0421-00002 and <http://www.nec.com.au/media/docs/090324%20-%20NEC%20to%20Upgrade%20Pan-American%20Cable-b5bdecee-dbbc-4341-8333-3c7222948a2d-0.pdf>. As discussed above, in the 14 years

Thomas are connected via remote turn around sites: (a) through Puerto Rico using AT&T's Taino-Carib submarine cable and either AT&T's Americas II or Global Caribbean Network's submarine cable; (b) through Miami using either AT&T's Americas I or Columbus-II submarine cable and either AT&T's Americas II or Level 3's (f.k.a. Global Crossing) MAC 2 submarine cable; and (c) through New York and Miami using Level 3's MAC 3, Level 3's MAC 1 and either AT&T's Americas I or Columbus 2 submarine cable.

In addition, three entities -- Choice Communications, Broadband VI and the V.I. Government's Bureau of Information Technology -- currently provide connectivity between St. Croix and St. Thomas via microwave. Moreover, this region receives satellite services from Hughes Net through its network of Value Added Resellers and Virtual Network Operators.<sup>8</sup>

All of these routing options will continue to be available when the Applicants' proposed St. Thomas-St. Croix System is placed in operation.<sup>9</sup> Given, the availability of multiple competitive alternatives to the proposed St. Thomas-St. Croix System, the Applicant will not be able to fashion unreasonable

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since that FCC conclusion, even more alternatives have been established.

<sup>8</sup> See <http://business.hughesnet.com/contact/partners/var-vno> and <http://google.hughesnet.com/become-a-partner/var-vno>.

<sup>9</sup> In its 2010 opposition to the grant of BTOP (Comprehensive Community Infrastructure Projects) funding for an advanced broadband infrastructure in the USVI, Virgin Islands Telephone Company, d/b/a Innovative Telephone ("Innovative"), the incumbent local exchange carrier ("ILEC") in the USVI, explained that it was committed to investing \$75 million in its own broadband infrastructure in the USVI and that a BTOP-funded broadband network would not be able to compete with the "more robust" broadband network that it would be constructing. See <http://www2.ntia.doc.gov/files/InnovativeTelephone.pdf>. While viNGN certainly does not agree with Innovative with respect to the ability of the viNGN network, which includes the St. Thomas-St. Croix System (which is not BTOP-funded) to compete with Innovative's network, the importance of Innovative's statement for present purposes is that Innovative has characterized the competition to viNGN's network as "robust."

terms and conditions, restrict output or raise prices without losing customers. Therefore, the Commission need not require the Applicant to serve the public indiscriminately.

The second prong of the Commission's test considers whether there is any reason implicit in the nature of the Applicant's operations that would make capacity available to the public indifferently. Here, the Applicant will operate on a wholesale, private contract basis which will allow retail service providers and institutions to purchase available capacity on the St. Thomas-St. Croix System and, as in the case of many other similar submarine cable systems, such capacity will be made available on terms tailored to the particular needs of the Applicant's customers. As such, the St. Thomas-St. Croix System will not be operated on a common carrier basis, and therefore customers will not have any expectation that the St. Thomas-St. Croix System is a common carrier cable system.

**(7) List of Proposed Owners**

viNGN is the only proposed owner of the St. Thomas-St. Croix System. The proposed landing locations for the St. Thomas-St. Croix System are either owned by the USVI government or the subject of negotiations for easements that will fully afford viNGN all necessary access to the landing locations.<sup>10</sup> No portion of the St. Thomas-St. Croix System will be located in international waters or otherwise outside of U.S. jurisdictional waters.

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<sup>10</sup> See 47 C.F.R. § 1.767(h) (defining who must be an applicant/licensee on a cable landing license). The Applicant notes that viNGN either owns the physical landing stations, or will have control of the stations via easements negotiated with the land owners.



**IV. REQUEST FOR STREAMLINED PROCESSING**

This application is eligible for streamlined processing under Section 1.767(k) of the Commission's rules. 47 C.F.R. § 1.767(k). viNGN's demonstration that it meets the eligibility requirements for streamlining is included in Appendix A, Section II.

**V. CERTIFICATION OF FEE EXEMPTION**

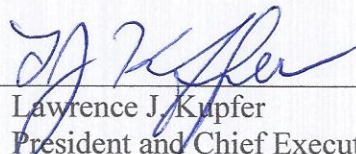
Applicant qualifies as a "governmental entity" pursuant to Section 1.1114 of the Commission's rules. A certification demonstrating that Applicant qualifies as a governmental entity is attached hereto as Appendix C.

**VI. CONCLUSION**

As demonstrated above, the public interest, convenience and necessity will be served by a grant of this application to construct, land, and operate a fiber-optic submarine cable system. The Applicant respectfully requests that the Commission grant this application.

Respectfully submitted,

viNGN, INC. d/b/a Virgin Islands Next Generation Networks, Inc.

By:   
Lawrence J. Kupfer  
President and Chief Executive Officer  
viNGN, INC. d/b/a Virgin Islands Next Generation Networks, Inc.

Date: 12/20/12

## APPENDIX A

### **I. INFORMATION REQUIRED BY 47 C.F.R. § 1.767(a)(1)-(3) and (8)-(9)**

#### **(1) Name, Address and Telephone Number of the Applicant**

viNGN, INC. d/b/a Virgin Islands Next Generation Networks, Inc.  
9015 Havensight Shopping Center  
Suite 7  
St. Thomas, V.I. 00802-2601  
(340) 715-8581

#### **(2) Place of Formation**

viNGN is a corporation organized under the laws of the Territory of the U.S. Virgin Islands.

#### **(3) Correspondence concerning the application should be sent to the following:**

##### Company Contact:

Lawrence J. Kupfer  
President and Chief Executive Officer  
Virgin Islands Next Generation Network (viNGN)  
9015 Havensight Shopping Center  
Suite 7  
St. Thomas, V.I. 00802-2601  
Tel: (340) 715-8581  
Fax: (340) 715-8582  
Email: [lkupfer@vingn.com](mailto:lkupfer@vingn.com)

##### Legal Counsel

Richard Rubin  
Winston & Strawn LLP  
1700 K Street NW  
Washington, D.C. 20006  
Tel: (202) 282-5652  
Fax: (202) 282-5100  
Email: [rrubin@winston.com](mailto:rrubin@winston.com)

**(8) Certification and Ownership Information Requested by Sections 63.18(h)-(k) and (o) of the Commission’s Rules**

**Information requested by Section 63.18(h):**

**Ownership:**

The name, address, citizenship, and principal business of each of viNGN’s ten percent or greater interest holders are:

Virgin Islands Public Finance Authority (“VIPFA”)  
32 & 33 Kongens Gade, Government Hill  
St. Thomas, US Virgin Islands 00802  
Citizenship: United States  
Principal Business: Raising Capital for Public Projects  
Ownership Interest: 100% direct interest in viNGN

VIPFA was created in 1988 by the USVI Legislature. VIPFA is a public corporation and autonomous government instrumentality created for the purposes of aiding the USVI Government in the performance of its fiscal duties and in effectively carrying out its governmental responsibility of raising capital for essential public projects.

**Interlocking Directorates:**

None of the members of viNGN’s board of directors or that of its parent, VIPFA, are also members of the board of directors of any foreign carriers.

**Information requested by Section 63.18(i):**

viNGN is not a foreign carrier, as that term is defined by Section 63.09 of the Commission’s rules.

**Information requested by Section 63.18(j):**

There are no foreign destination countries and therefore no affiliation with foreign carriers in such countries.

**Information requested by Section (k):**

There are no foreign destination countries.

**Information requested by Section 63.18(o):**

viNGN certifies pursuant to sections 1.2001 through 1.2003 of the Commission's Rules that it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

**(9) Routine Conditions Specified in Section 1.767(g) of the Commission's Rules, 47 C.F.R. § 1.767(g).**

viNGN certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission's Rules, 47 C.F.R. § 1.767(g).

**II. ELIGIBILITY FOR STREAMLINED PROCESSING — 47 C.F.R. § 1.767(k)**

viNGN certifies that the proposed St. Thomas-St. Croix System will have no foreign country destination markets and that it has no affiliation with a foreign carrier in any of the St. Thomas-St. Croix System's destination markets.

viNGN also certifies that it has no affiliation with Virgin Islands Telephone Company, d/b/a Innovative Telephone, the ILEC in the USVI.

In addition, pursuant to 47 C.F.R. § 1.767(k)(4), viNGN certifies that the proposed St. Thomas-St. Croix System is subject to the consistency certification requirements of the Coastal Zone Management Act, 16 U.S.C. § 1456, that viNGN's activities proposed in this application will comply with the enforceable policies of the USVI's approved coastal zone management program, and that such activity will be conducted in a manner consistent with the program.

## **APPENDIX B – LANDING POINT INFORMATION**

- **Page 1:** Christiansted, St. Croix, USVI
- **Page 2:** Frederiksted, St. Croix, USVI
- **Page 3:** Brewers Bay, St. Thomas, USVI
- **Page 4:** Great Bay, St. Thomas, USVI
- **Page 5:** Flamingo Bay (Water Island), St. Thomas, USVI
- **Page 6:** Banana Bay (Water Island), St. Thomas, USVI
- **Page 7:** Vila Olga, St. Thomas, USVI

Christiansted, St. Croix  
 Altona Lagoon - Estate Altona Rem 1  
 Property Owner: V.I. Government  
 N17 45.1741 W064 41.6280  
 A beach manhole, six (6) 4 inch conduits and articulated pipe to the sea.



Frederiksted, St. Croix  
 Estate 2 Brothers 97b&e  
 Property Owner: V.I. Government  
 N17 42.3157 W064 53.0467  
 A beach manhole, four (4) 4 inch conduits and articulated pipe to the sea.



Brewers Bay, St. Thomas

Plot #2 Brewers Bay

Property Owner: University of the Virgin Islands (easement being negotiated)

N18 20.6645 W064 58.6400

A beach manhole, four (4) 4 inch conduits and articulated pipe to the sea





Great Bay, St. Thomas  
 Estate Nazareth  
 No. 1 Red Hook Quarter (VIWAPA Easement)  
 Property Owner: Marriott International Hotels, Inc. (easement being negotiated)  
 N18 19.4042 W064 50.5878  
 A beach manhole, four (4) 4 inch conduits and articulated pipe to the sea.



Flamingo Bay (Water Island), St. Thomas  
 Old Rem. Sugar Bird Hotel, Flamingo Bay Portion of Tract B  
 Property Owner: V.I. Government  
 N18 18.7486 W064 57.4348  
 A beach manhole, four (4) 4 inch conduits and articulated pipe to the sea.



Banana Bay (Water Island), St. Thomas

Plot 5 Spratt Bay

Property Owner: Spratt Bay Homeowners Association (easement being negotiated)

N18 19.6795 W064 56.6408

A beach manhole, two (2) 4 inch conduits and articulated pipe to the sea.



Villa Olga, St. Thomas  
 Estate Careening Hole  
 No. 8A Southside Quarter (VIWAPA Easement)  
 Property Owner: Marie Panitz Recoverable Trust (easement being negotiated)  
 N18 20.0941 W064 56.4239  
 A beach manhole, four (4) 4 inch conduits and articulated pipe to the sea.



## **APPENDIX C –STATEMENT OF FEE EXEMPTION ELIGIBILITY**

Applicant qualifies as a “governmental entity” pursuant to Section 1.1116(f) of the Commission’s Rules and is therefore exempt from the application filing fee.

Section 1.1116(f) defines an exempt governmental entity as:

[a]ny state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

As a subsidiary of the U.S. Virgin Islands government that is controlled by public officials, Applicant qualifies as an exempt governmental entity.

Specifically, Applicant, Virgin Islands Next Generation Networks, Inc. (viNGN), is a wholly-owned subsidiary of the U.S. Virgin Islands government, one hundred percent of which is owned by the U.S. Virgin Islands Public Finance Authority (VIPFA). VIPFA was created by the elected officials of the U.S. Virgin Islands legislature in 1988 as a public corporation and autonomous government instrumentality to aid the government in performing its duty to raise capital for essential public projects. VIPFA’s officials are appointed by the legislature and VIPFA has the power to, among other things, borrow money and issue bonds as a government entity, invest funds and encourage economic development, and make, modify, or repeal by-laws, rules or regulations.

Created by VIPFA in 2010, viNGN is a public corporation that is primarily funded by grants from the U.S. Department of Commerce with a charter to provide wholesale broadband middle mile service to providers and to promote local economic growth, innovation and global competitiveness. In furtherance of its charter, viNGN’s proposed domestic submarine cable will

be integrated into a broadband network being constructed by viNGN with BTOP funds.<sup>11</sup>

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<sup>11</sup> Additional information about VIPFA and VINGN can be found on their respective websites, available at: <http://www.usvipfa.com/> and <http://vingn.com/>

APPENDIX D – CERTIFICATION

I hereby depose and state under penalty of perjury, as follows:

I am President and Chief Executive Officer of viNGN, INC.

I am authorized to enter this certification on behalf of viNGN, INC.

All of the factual information contained in this application and Appendices A, B and C are true and correct to the best of my knowledge and belief.

By: 

Lawrence Kupfer  
President and Chief Executive Officer  
Virgin Islands Next Generation Network (viNGN)  
9015 Havensight Shopping Center  
Suite 7  
St. Thomas, V.I. 00802-2601  
Tel: (340) 715 - 8581

For and on behalf of viNGN, INC.

Date: 12/20/12

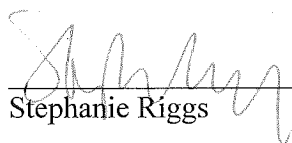
**CERTIFICATE OF SERVICE**

I, Stephanie Riggs, do hereby certify that on December 21, 2012, I served a copy of the Application for a License to Construct, Land and Operate an Undersea Cable System Linking the Islands of St. Thomas and St. Croix in the U.S. Virgin Islands upon the following parties by U.S. first-class mail, postage prepaid:

Ambassador Philip Verveer  
U.S. Coordinator  
EP/CIP  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520-5818

Kathy Smith  
Office of Chief Counsel/NTIA  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20230

Defense Information Systems Agency  
Code RGC  
701 S. Courthouse Road  
Arlington, VA 22204

  
Stephanie Riggs