



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**WC Docket No. 10-90, WT Docket No. 10-208; FCC 18-124**

**Connect America Fund Universal Service Reform – Mobility Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; extension of filing period; petitions for reconsideration.

**SUMMARY:** This document addresses two applications for review regarding the procedures and parameters of the Mobility Fund II challenge process and grant in part and deny in part a related extension request.

**DATES:** This Order is effective [insert date of publication in the FEDERAL REGISTER]. The window for filing challenges to ineligible areas extended to November 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra Hale-Maddox, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the final actions in the Federal Communications Commission (“Commission”) Order, Notice of Proposed Rulemaking and Memorandum Opinion and Order (Combined Order), FCC 18-124, adopted on August 14, 2018, and released on August 21, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12<sup>th</sup> Street S.W., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission’s website at <http://wireless.fcc.gov>, or by using the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **I. SYNOPSIS**

On August 21, 2018, the Commission released an “Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order” (August 21 Order). The Commission separately published the proposed modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests for the August 21 Order elsewhere in this issue of the Federal Register. In the August 21 Order, the Commission extended the previously announced deadline for the close of the Mobility Fund Phase II (MF-II) challenge window by an additional 90 days. Challengers were given until November 26, 2018, to submit speed test data in support of a challenge. The Commission adopted this extension to ensure that interested parties can initiate and submit speed test data for areas they wish to challenge. In addition, given this extension, the Commission proposed to make modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests. The Commission also addressed two applications for review regarding the procedures and parameters of the MF-II challenge process and granted in part and denied in part a related extension request.

## **II. ORDER EXTENDING THE CHALLENGE WINDOW**

1. In February 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to \$4.53 billion of MF-II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution (LTE) services. The Commission also determined that it would compile a list of areas that were presumptively eligible for MF-II support and provide a limited timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (i.e., “presumptively ineligible” areas). In February 2018, the Rural Broadband Auctions Task Force, in conjunction with the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus), published a map of areas presumptively eligible for MF-II support based on a one-time collection by the Commission of 4G LTE coverage data and subsidy data from the Universal Service Administrative Company (USAC).

2. The MF-II Challenge Process Order, 82 FR 42473, September 8, 2017, established the framework for a robust challenge process that will refine the map of areas presumptively eligible to receive MF-II support. This challenge process is designed to efficiently resolve disputes about areas that are presumptively ineligible through the submission, analysis, and validation of mobile network speed test data. The Commission initially established a 150-day challenge window for interested parties to contest the initial determination of areas deemed presumptively ineligible for MF-II support. The challenge window opened on March 29, 2018, and it was scheduled to close on August 27, 2018.

3. As part of the challenge process framework, the Commission established various parameters for the acceptance of speed test data, including that such data would only be accepted if they were collected within six months of the scheduled close of the challenge window. That six-month period commenced on February 27, 2018. After the close of the challenge window, a respondent (i.e., a “challenged party”) will have the opportunity to respond to challenges by submitting its own speed test data or certain technical information that is probative of the validity of the challenger’s speed tests. Speed test data submitted by respondents is subject to the same standards and requirements applicable to challengers, except that the Commission established in the MF-II Challenge Process Order that it would only accept data submitted by a respondent that was collected within six months of the scheduled close of the response window.

4. After the Commission adopted the timeframe for the challenge window, the Rural Wireless Association (RWA) submitted data regarding estimated burdens of the challenge process, including specific estimates of the amount of time required to conduct speed tests in certain areas.

5. The Commission extended the previously established deadline for challengers to submit data in the challenge process and provide an additional 90 days, until November 26, 2018, for the submission and certification of challenges. The Commission direct USAC to implement this change in the challenge portal.

6. In light of new estimates and again out of an abundance of caution, the Commission concluded that while a 150-day challenge window may still be sufficient for parties to conduct speed tests and submit challenges, providing an additional 90 days for this window will ensure that all interested parties have ample opportunity to conduct speed tests and submit speed test data for the areas they wish to challenge. Providing this additional time, for a total challenge window of 240 days, ultimately should result in a more efficient allocation of support funds, while still advancing the overall auction process to a timely conclusion, directing its limited funds to the unserved areas most in need, and completing the phase down of duplicative support that directs subsidies to areas already served by unsubsidized providers. Accordingly, the Commission makes a procedural change to the challenge process by extending the deadline for filing challenges to November 26, 2018.

### **III. MEMORANDUM OPINION AND ORDER ADDRESSING APPLICATIONS FOR REVIEW FROM RWA AND VERIZON**

7. In the MF-II Challenge Process Procedures Public Notice, 83 FR 13417, March 29, 2018, the Bureaus determined, consistent with the Commission’s decision in the MF-II Challenge Process Order, that speed test measurements submitted to support or respond to a challenge to an area that initially is deemed ineligible for MF-II support must be no more than one-half of one kilometer apart from one another. The Bureaus also decided to assess challenges using a uniform grid with cells of one square kilometer and a “buffer” with a radius equal to one-half of the maximum distance parameter, i.e., one-quarter of one kilometer (250 meters).

8. On March 21, 2018, RWA submitted data regarding the burden a challenger would experience as a result of these decisions. On March 29, 2018, RWA filed an application for review in which it argued that the speed test buffer radius size should have been set at one-quarter mile and that the size of the uniform grid cells should have been one square mile. One party—Verizon—opposed RWA’s application for review and argued that the grid cell size and the buffer radius should not be increased.

9. On April 30, 2018, RWA filed an ex parte letter indicating that increasing the speed test

buffer to 400 meters (approximately one-quarter mile) and maintaining a grid cell size of one square kilometer would yield largely similar results to increasing the grid cell size to one square mile and the buffer size to one-quarter mile. On April 30, 2018, the Bureaus, on their own motion, adopted an order on reconsideration that increased the buffer size to 400 meters. AT&T, the Competitive Carriers Association (CCA), and U.S. Cellular filed replies to Verizon's opposition to RWA's AFR, in which they supported the Bureaus' decision to implement a 400-meter buffer radius. On the issue of the grid cell size, AT&T argued that the grid cells should not be resized. CCA and U.S. Cellular argued that the grid cells should be resized.

10. On June 21, 2018, Verizon filed an application for review of the Bureaus' order on reconsideration in which it sought reinstatement of the 250-meter buffer radius. NTCA, Smith Bagley, RWA, and Panhandle Telecommunication opposed Verizon's application for review and argued that the 400-meter buffer should be maintained. CCA filed a reply to the oppositions supporting the 400-meter buffer radius, and Verizon filed a reply to the oppositions restating its support for a 250-meter buffer radius.

11. RWA's application for review seeks review of the Bureaus' procedures adopted in the MF-II Challenge Process Procedures Public Notice establishing a one kilometer grid cell size and a one-quarter kilometer "buffer" for assessing challenges to areas deemed ineligible for MF-II support. RWA advocates instead for a one square mile grid size and a one-quarter mile buffer. It argues that roads in certain areas of rural America have been laid out on square mile grids rather than square kilometer grids, which according to RWA means that using a square kilometer grid would yield more grid cells that cannot be fully tested by drive testing. RWA argues further that a 250-meter buffer for each test point would require needlessly dense testing points which would increase the cost and technical difficulty of submitting challenges.

12. RWA's subsequent ex parte on April 30, 2018, included additional information. In Alabama and the Oklahoma Panhandle, RWA found that increasing the buffer to 400 meters, while

maintaining the one square kilometer grid cell size, would result in a significant reduction of the percentage of cells for which a challenger could not fully test by drive testing. Indeed, RWA found that changing the buffer size would provide better results in Alabama than if both the buffer and grid cell size were increased. In the area in Alabama that RWA studied, the number of grid cells requiring some off-road testing dropped by 26 percentage points when increasing the buffer to 400 meters, versus a decrease of 16 percentage points when increasing buffer size to 400 meters and increasing the grid cell size to one square mile.

13. In the Oklahoma Panhandle, RWA found that the results were largely the same if the buffer size was increased, regardless of whether the grid cell size was also increased. In both cases, RWA found that the grid cells requiring some off-road testing would decrease by nearly 40 percentage points, from 82.3 percent to either 44.7 percent (buffer size alone) or 43.6 percent (buffer and grid cell size). Summarizing its analysis, RWA stated that it “recognizes the Bureaus’ desire to utilize a square kilometer grid cell scheme and believes that the use of a one square kilometer grid cell and accompanying longer buffer radius will give prospective challengers the ability to more meaningfully participate in the MF-II challenge process.”

14. U.S. Cellular supports RWA’s AFR. The company estimated that the one-kilometer grid cell size in conjunction with the original 250-meter buffer radius size would make mounting a challenge by drive-testing alone impossible for as much as 78 percent of the areas involved.

15. After considering the data RWA filed in its March 21, 2018 *ex parte* submission, the Bureaus decided to expand the buffer surrounding each test point from 250 meters to 400 meters (approximately equivalent to one-quarter mile), explaining that the new data persuaded them that the previous buffer size and resulting number of test points required may be unduly burdensome to some challengers. The new evidence illustrated both the considerable increase in area that could be covered by drive-testing and the decrease in the number of speed test measurements typically needed per grid cell resulting from using a buffer radius of one-quarter of one mile rather than a radius of one-quarter of one

kilometer. These modified parameters decreased the burden on challengers by reducing the number of speed test measurements needed to file a successful challenge. Accordingly, because the Bureaus have already effectively granted RWA's request regarding buffer size, the Commission dismiss RWA's application for review on these grounds as moot.

16. In contrast, RWA has not shown that changing the grid cell size is warranted. The Commission finds that the expansion of the speed test point buffer to 400 meters (as supported by numerous commenters) while retaining the square kilometer grid cell size properly balances the measurements needed for meaningful testing with the burdens placed on challengers and challenged parties. This decision also furthers the Commission's goals of moving expeditiously to conduct the MF-II auction and of administrative efficiency. The Commission and the Bureaus have carefully considered the burdens on entities that choose to submit challenges and entities that choose to respond to challenges, the goals of administrative efficiency, and the record evidence.

17. As Verizon and AT&T noted, to implement RWA's proposed resizing of the grid, "the Commission would have to reprocess the carrier coverage maps using a one square mile grid, generate a new map of presumptively eligible areas, and finally direct USAC to modify its challenge process software to accept challenges based on one square mile grid cells." AT&T argues that RWA's proposed reconfiguration of the grid cells "would be too disruptive" and would "significantly delay the start" of the MF-II auction. Similarly, Verizon argues that "stopping the current challenge process and then starting over with a one square mile grid would extend the challenge process—and delay the start of the Mobility Fund auction—by many months."

18. Moreover, as AT&T notes, the benefit sought by RWA—an increase in the percentage of the area that can be drive tested—"can effectively be addressed by modifying the buffer radius, as the Bureaus recently did, on their own motion." As RWA admits in its various submissions, the buffer size is the key parameter affecting the percentage of cells that can be drive tested and the change made to the

buffer size, by itself, would provide similar results—in terms of the increase in the percentage of cells that could be challenged by drive testing—to changing both the buffer size and the grid cell size.

19. RWA, CCA, and U.S. Cellular argue that the one square kilometer grid cell size prevents challenges in less accessible areas. The Commission disagrees. Nothing in the challenge process framework prevents challenges in less accessible areas or in areas that require some off-road testing. As shown in RWA’s own submissions, the buffer radius is the key parameter affecting the percentage of area that can be fully tested by drive testing, and increasing the grid cell size in some areas increases the percentage of cells that require off road testing in certain areas. Indeed, U.S. Cellular concedes that the Bureau’s increase of the buffer radius to 400 meters undermines its argument that it cannot use drive testing for much of the MF-II challenge process.

20. The Commission appropriately balanced the competing interests of challengers and challenged parties in this proceeding with the need to efficiently administer the challenge process. Roads do not match perfectly with any uniform grid, regardless of the size of the grid cell. The Commission decided to conduct an auction based upon land area, not road miles, because of limited universal service funds on the unserved areas where people live, work, and travel. No commenter sought reconsideration of that decision. Similarly, the Commission decided to not make special accommodations for less accessible areas, and no commenter sought reconsideration of that decision. Any ineligible area may be challenged, and it is incumbent upon challengers and challenged parties to collect the required speed test points to substantiate or rebut a challenge. Indeed, as of July 31, 2018, challengers had already uploaded over 1.6 million speed tests, with a significant number of those tests taken in primarily rural areas. Accordingly, the Commission denies RWA’s application for review on the grid cell size.

21. RWA submitted an extension request along with its application for review, requesting that the challenge window be open for 150 days after its application for review was addressed. The Commission granted a 90-day extension of the challenge window, which will extend the challenge window through November 26, 2018. This extension will mean that the challenge window now provides

200 days after the Order on Reconsideration for submitting challenges under parameters that largely address RWA's concerns regarding the percentage of areas that could be fully tested by drive testing. The Commission thus has already effectively granted RWA's extension request insofar as it sought at least 150 days for the challenge window after the modifications to the challenge process that it sought were implemented.

22. RWA has not demonstrated that a further extension of the window for filing challenges to areas deemed ineligible for MF-II support is in the public interest. The window has been extended to now provide a window of 200 days with parameters that largely address RWA's concerns, thus providing 50 more days than RWA requested. Although parties may disagree with the specific rules promulgated to achieve the purposes of MF-II, the mere filing of an application for review does not alter the effective date of those rules; a party is not entitled to an extension of the challenge window on the hope that the Commission will act favorably on its application for review. Moreover, the Bureaus have already acted to make it easier to conduct speed tests. Thus, all affected parties must comply with the rules and the requirements of the challenge process, should they choose to participate in it, absent Commission grant of a stay (which RWA did not request). RWA has not cited any unanticipated circumstances that might explain its members' need for an extension nor provided a reasonable justification for granting it.

23. Moreover, granting a further extension as requested by RWA would work at cross-purposes with the goals of the MF-II proceeding. In the MF-II Report and Order, 82 FR 15422, March 28, 2017, the Commission stated that the purpose of MF-II is "to allocate up to \$4.53 billion . . . to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist." The Commission also indicated that MF-II would redirect legacy subsidies away from areas that are fully covered by unsubsidized 4G LTE service. Further extension of the challenge window undermines the purpose of the MF-II proceeding by delaying the conclusion of the challenge process, the release of the final eligible areas map, the commencement of the MF-II auction, and the refocusing of its limited universal service

funds to the primarily rural areas of the country that need the funds the most. Under these circumstances, the Commission finds that the now extended window will provide eligible parties with sufficient time to prepare and submit any challenges they intend to file and that RWA has failed to demonstrate that a further extension of the challenge window would serve the public interest.

24. Accordingly, RWA's extension request is granted in part and is otherwise denied.

25. Verizon's application for review requests that the Commission vacate the Bureaus' decision to increase the maximum speed test distance parameter from 500 meters to 800 meters and the associated speed test buffer radius from 250 meters to 400 meters. The thrust of Verizon's application for review is that the Bureaus have shifted the balance of the MF-II challenge process too far in favor of challengers. The outcome, Verizon argues, will be to "allow challengers to successfully challenge a one square kilometer area with as few as two speed test points" and will "result in widespread false positives, i.e., presumptively successful challenges of large areas that are in fact well-served by 4G LTE, particularly if providers cherry-pick test points with an aim of minimizing actual coverage." Several carriers and trade associations filed oppositions to Verizon's arguments; no filers supported the Verizon AFR. The Commission rejects Verizon's arguments, agrees with the unanimous opposition to Verizon's AFR, and affirms the decision of the Bureaus to expand the maximum distance between speed tests to 800 meters and the buffer radius of speed tests to 400 meters.

26. Verizon argues that the increased speed test buffer radius allows challengers to "cherry-pick" speed test data to challenge the unsubsidized providers' coverage maps. The Commission disagrees. The Bureaus did not modify the other numerous and rigorous challenge process requirements in the MF-II Challenge Process Procedures Public Notice. Challengers must submit not only speed test data demonstrating throughput below 5 Mbps, but also data collected demonstrating speeds equal to or greater than 5 Mbps. Thus, in grid cells well served by existing 4G LTE, the data submitted to the challenge portal are likely to reflect speed test results favoring incumbents. Moreover, contrary to Verizon's argument, providing only two speed tests in a grid cell with high quality 4G LTE service will

likely not be sufficient to successfully challenge the grid cell. Rather, the combined buffer areas of sub-5 Mbps speed tests in or adjacent to challengeable grid cells must cover 75 percent of the challengeable areas of all carriers in the grid cell. Further, even where combined testing points do cover 75 percent of the challengeable areas in a grid cell, the resulting presumptive challenge simply shifts the burden of production (though not the burden of persuasion) to the challenged carrier to produce evidence rebutting the presumption. A presumptive challenge does not automatically result in any change to eligibility; final adjudications of eligibility will occur after challenged parties have an opportunity to respond to challenges.

27. Verizon also argues that increasing the speed test buffer radius to 400 meters will increase the number of presumptively successful challenges in areas already served by 4G LTE—which Verizon terms “false positives”—which will degrade the accuracy of the MF-II eligibility map. The Commission disagrees. The risk of so-called “false positives” from a 400-meter buffer is adequately addressed by the challenge process framework that the Commission adopted. While increasing the buffer radius to 400 meters can make challenges more feasible in areas where roads are less dense, it does not lead to the conclusion that more challenges will cause the accuracy of the final auction eligibility map to suffer. Verizon’s argument appears to conflate a presumptive challenge with the final disposition of a challenge. Challenged carriers will have an opportunity to provide evidence refuting a challenge in any challenged grid cell. And because speed test points submitted by challenged parties are buffered by the same distance as points submitted by challengers, increasing the buffer radius increases the ability of challenged carriers to respond to challenges.

28. The Bureaus’ increase in the number of grid cells that may be fully tested by drive testing does not alter the network performance that is being tested, nor will it necessarily result in an increase in the number of valid challenges. Indeed, as several entities have noted, more opportunities for challengers to participate in the challenge process should improve the accuracy of the final eligibility map, insofar as it subjects more grid cells to confirmation testing. The Commission likewise agree with NTCA and SBI

that the potential risks associated with increasing the buffer size for the challenge process to 400 meters—i.e., increased availability of challenges—are outweighed by the benefits of ensuring, through a process that does not unduly deter challenges, that all areas that lack unsubsidized 4G LTE mobile service are designated eligible for the auction and have an opportunity to compete for MF-II support.

29. The Commission also rejected Verizon’s argument that the Bureaus exceeded their authority by increasing the maximum speed test distance parameter and buffer radius. In the MF-II Challenge Process Order, the Commission directed the Bureaus to establish the challenge process speed testing parameters. Specifically, the Commission directed Bureaus to establish a maximum distance between tests of up to one mile and to set a corresponding buffer around tests to balance the benefits to the MF-II process, the burdens on small carriers, and an administratively efficient adjudication of challenges regarding network deployment. The Bureaus could consider any maximum speed test distance parameter and buffer within the established one mile range, including the 800-meter distance parameter (approximately one-half of one mile) and corresponding 400-meter buffer radius selected. Thus, the Bureaus were well within their authority to consider newly available record evidence that supported their reconsideration of the maximum speed test distance and buffer radius. In any event, this argument is moot since the Commission has reviewed and upheld the Bureaus’ decision.

30. Although Verizon argues that customer experience is likely to vary over those distances due to signal attenuation, and terrain and clutter variations, the Commission notes that the MF-II Challenge Process Order did not call for speed tests that mirror every customer experience within a speed tested area, but rather a reasonable balance of administrative and private burdens and costs in a tested area. The 800-meter distance parameter and 400-meter buffer radius reflect such a balance. The parameters selected by the Bureaus also has received widespread support from other parties participating in this proceeding. All four of the parties opposing Verizon’s AFR, as well as a reply to the oppositions, supported expanding the buffer radius and maximum speed test distance. Similarly, in filings submitted in response to RWA’s AFR, AT&T, CCA, and U.S. Cellular all supported expanding the buffer radius.

The Commission further note that, while Verizon objects to the Bureaus' reliance on RWA's evidence, it did not cite any other record evidence, new or otherwise, that undermines the Bureaus' decision.

31. For all these reasons, the Commission denies Verizon's application for review.

#### **IV. ORDERING CLAUSES**

32. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1, 1.115, 1.412, and 1.427 of the Commission's rules, 47 CFR 1.1, 1.115, 1.412, 1.427, this Order and Memorandum Opinion and Order IS ADOPTED.

33. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.412, the deadline for challengers to submit information in connection with the MF-II challenge process IS EXTENDED, to the extent described herein.

34. IT IS FURTHER ORDERED that, pursuant to authority contained in sections 4(i), 254, 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 154(i), 254, 303(r), 332, 1302, and section 1.46 of the Commission's rules, 47 C.F.R. 1.46, RWA's Request for Extension of Challenge Window IS GRANTED IN PART, and IS DENIED IN PART, to the extent described herein.

35. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by the Rural Wireless Association, Inc. on March 29, 2018, IS GRANTED IN PART, DISMISSED AS MOOT IN PART, and DENIED IN PART to the extent described herein.

36. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by Verizon Communications, Inc. on June 22, 2018, IS DENIED.

37. IT IS FURTHER ORDERED that, pursuant to § 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order SHALL BE EFFECTIVE upon its publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

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