

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

Mobility Fund Phase II Challenge Process)	WC Docket No. 10-90
Procedures and Technical Implementation)	WT Docket No. 10-208
)	

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Federal Communications Commission’s (the “Commission’s”) October 18, 2017 Public Notice seeking comment on the Mobility Fund Phase II (“MF II”) challenge process and procedures and technical implementation.² NTCA appreciates the Commission’s effort in this proceeding and the desire to move quickly to an auction. However, some of the proposals would prove unnecessarily burdensome for the small providers who must participate in this process to obtain accurate identification of areas eligible for support.

To address such concerns regarding the impact on small businesses and the accuracy of the data to be gathered, NTCA recommends minor, targeted modifications to the Commission’s

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers and broadband providers, and many utilize fixed and/or mobile wireless platforms in the delivery of such services.

² *Comment Sought on Mobility Fund Phase II Challenge Process Procedures and Technical Implementation*, Public Notice, WC Docket No. 10-90, WT Docket No. 10-208 (rel. Oct. 18, 2017) (“Public Notice”).

proposals. Specifically, NTCA requests that the Commission require that handsets identified for use in speed testing not be subject to any network management practices that may affect accuracy. NTCA also requests that the Commission be mindful of the seasonal limitations associated with an attempt to gather data in many parts of rural America as it considers and finalizes its timeline.

II. HANDSETS IDENTIFIED FOR TESTING SHOULD NOT BE SUBJECT TO NETWORK MANAGEMENT PRACTICES

In its MF II Challenge Process Order,³ the Commission specified that service providers purporting to offer qualified 4G LTE coverage in a given area will be required to identify at least three readily available handset models appropriate for testing those providers' coverage.⁴ Challengers electing to use application-based tests and software-based tests are required to use the handsets specified by each service provider to verify coverage in the challenged area.⁵ The Commission proposes to require challengers to provide the data parameters associated with a speed test.⁶ In its MF II Challenge Process Order, the Commission required that if a challenged party chooses to submit speed test data to refute a challenger, the data must conform to the same standards and requirements the Commission adopted for challengers.⁷

The challenger and the challenged party should be required to submit data according to the same parameters, using the same devices so that data may be appropriately analyzed. However, the Commission's proposal regarding managed networks inserts unnecessary

³ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282 (2017) (“MF II Challenge Process Order”)

⁴ *Id.* at 6302, 6308, ¶¶ 39, 50.

⁵ *Id.* at 6308, ¶ 50.

⁶ Public Notice, ¶12.

⁷ MF II Challenge Process Order at ¶ 60.

uncertainty in the process. It suggests that challenged providers could refute (or effectively “counter-challenge”) challenger speed test data by asserting that the data speeds were throttled on the device used during the testing period. This practice would undermine, if not eviscerate, the validity of the challenge process – it risks becoming the exception that swallows the rule. If data is capable of being throttled during speed testing, there is no way for any challenger to know whether the data it is collecting and submitting is valid and represents the limitations of the network in question.⁸ Not only would this lead to unnecessary challenges, but there is no identified procedure or standards for a challenger to refute a challenged party’s claim that its network performs better than the challenger’s experience and data.

The challenge process will be time consuming and costly for small providers under the best of circumstances, but the Commission’s proposal, if adopted, will lead to unnecessary “counter-challenges” and wasted effort. Instead of injecting such uncertainty into the challenge process, the Commission should require that handsets identified as appropriate for testing not be subject to any network management practices that could or would undermine the value of the data they are used to collect.

III. THE COMMISSION’S PROPOSED TIMELINE SHOULD BE ADJUSTED FOR SEASONAL LIMITATIONS

The Commission’s proposed timeline for the challenge process could be problematic in many rural markets. The clock would effectively start with the release of the map of presumptively eligible areas, which may happen as early as February 4, 2018. The challenge window is proposed to close 150 days later. As proposed, the timeline could have rural

⁸ Public Notice, ¶ 14.

providers performing the bulk of their drive testing during the height of winter.⁹ While the Commission's desire to move the challenge process quickly is understandable, the proposed timeline should be adjusted to ensure a reasonable opportunity to gather data in rural areas and to ensure that the data gathered accurately represents service availability when foliage is intact.

NTCA's members serve many areas that face a harsh season with areas that are inaccessible because of snow. Mountainous and northern locations receive heavy snowfall well into spring. While drive testing could be performed along major thoroughfares, the areas that are most likely to be unserved are those that are more difficult to access.

Unlike other providers who may be drive testing more heavily populated areas with pockets of unserved territory, rural providers are likely to be testing wide swaths of territory with many unpaved roads and doing it with minimal staff. It may be a massive undertaking – one that is daunting for any provider, but particularly burdensome and challenging for the kinds of smaller providers that tend to operate in deeply rural areas. Many wilderness areas that are frequented during the summer months are difficult, if not impossible, to access during the winter months. While the challenge window would not close earlier than July 5, 2018, the act of drive testing is only the first step in preparing a challenge. It is likely to take multiple trips to an area to determine the precise boundaries of an unserved area and once the data is collected, it must be assembled into a form for filing with the Commission. For smaller providers again, condensing such activities into a shortened spring window is likely to be particularly burdensome. Weather delays combined with weather limitations make it likely that many smaller rural providers will

⁹ The Commission proposes that it would accept data collected only after the publication of the initial eligibility map. Public Notice, ¶16.

fail to complete drive testing *and* the work necessary to file a challenge during the proposed period.

Furthermore, the accuracy of measurements is vastly different in winter as compared to summer, particularly in rural areas. Foliage in the path of the communication link has been found to play a significant role on the quality of service for wireless communications over many years.¹⁰ Leaves, shrubs and crops can cause attenuation, scattering, diffraction, and absorption of the radiated waves. Testing during the winter months is likely to overstate service availability in many rural areas. An accurate measurement of a consumer's ability to access 4G LTE throughout the year can only be obtained when the trees and plants have their leaves. Testing should be performed during the summer months and challenged parties in areas with deciduous foliage should be required to respond to challenges with data from months when the foliage is intact.

For the challenge process to work as intended, and to avoid a compression of time that will disproportionately and negatively affect smaller operators, in particular, all rural providers must be provided reasonable opportunity to test the claimed service territory. To ensure that rural providers can complete the necessary drive testing and that the tests accurately identify the precise contours of areas served or not by 4G LTE capability, the Commission should ensure that the challenge window is open through the entirety of the summer months and that it be no shorter

¹⁰ See, e.g., Karaliopoulos, M. S. and F. N. Pavlidou, "Modelling the land mobile satellite channel: A review," IEE Electron. Commun. Eng. J., Vol. 11, No. 5, 235–248, 1999 ; Bertoni, H. L., Radio Propagation for Modern Wireless Systems, Prentice Hall PTR, New Jersey, 2000; Rogers, N. C., A. Seville, J. Richter, D. Ndzi, N. Savage, R. Caldeirinha, A. Shukla, M. O. Al-Nuaimi, K. H. Craig, E. Vilar, and J. Austin, "A generic model of 1–60 GHz radio propagation through vegetation," Tech. Report, Radiocommunications Agency, May 2002.

than 150 days in length. This would help ensure that conditions are conducive to testing of actual coverage and speeds, and that smaller rural providers specifically have sufficient time *after* the drive testing is finished to complete the follow-on paperwork necessary to file accurate challenges. This short delay is unlikely to have any material effect on the reverse auction, but will help ensure that support is targeted to where it is needed.

V. CONCLUSION

For the above stated reasons, NTCA recommends that the Commission modify its challenge process proposals as follows: (1) require that handsets identified for use in the challenge process not be subject to any network management practices that may affect data accuracy; and (2) the timeline of events be adjusted as necessary to reflect seasonal limitations.

Respectfully submitted,



By: /s/ Jill Canfield
Jill Canfield
Vice President, Legal & Industry
Assistant General Counsel
jcanfield@ntca.org
703-351-2020 (Tel)

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203