

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
)	

ORDER

Adopted: December 4, 2017

Released: December 4, 2017

By the Chief, Wireless Telecommunications Bureau, and Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In light of the destruction caused by Hurricanes Irma and Maria, we waive the upcoming filing deadline for mobile wireless providers on Puerto Rico and the U.S. Virgin Islands to submit certain information regarding 4G Long Term Evolution (LTE) coverage to the Commission for the purpose of determining eligible areas for Mobility Fund Phase II (MF-II). We grant the waiver for a period of 180 days (i.e., until July 3, 2018), or until the Commission takes action addressing the appropriate approach, given the circumstances, for providing ongoing, high-cost support for mobile services in Puerto Rico and the U.S. Virgin Islands, whichever occurs earlier.

II. BACKGROUND

2. On August 3, 2017, the Commission adopted the *MF-II Challenge Process Order*, which established the framework for a challenge process to ensure that the Commission targets MF-II support to areas that lack unsubsidized 4G LTE service.¹ As part of that process, the *MF-II Challenge Process Order* adopted parameters for a one-time collection of qualified 4G LTE coverage data, which will be used to establish the map of areas presumptively eligible for MF-II support.² Additionally, the challenge process allows challengers and responding providers to submit actual speed tests within specified windows to confirm existing coverage.³

3. After release of the *MF-II Challenge Process Order*, the Rural Broadband Auctions Task Force, in conjunction with the Wireline Competition Bureau and the Wireless Telecommunications

¹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6296-6314, paras. 27-64 (2017) (*MF-II Challenge Process Order*).

² *Id.* at 6287-88, 6296, 6298-6303, paras. 10-11, 28, 34-40. For purposes of MF-II, “qualified 4G LTE service” is defined as mobile wireless service provided using 4G LTE technology with download speeds of at least 5 Mbps at the cell edge with 80 percent probability and a 30 percent cell loading factor. *Id.* at 6298-6303, paras. 34-40.

³ *Id.* at 6296-97, 6306-09, 6311-12, paras. 29-31, 47, 49-51, 59-60.

Bureau, released instructions for submitting the data⁴ and announced a deadline of January 4, 2018, to submit the required information.⁵ Specifically, any entity that previously reported 4G LTE coverage on any FCC Form 477 and has qualified 4G LTE coverage based on the specifications described in the *MF-II Challenge Process Order* must provide coverage maps and other supporting documentation.⁶ Any provider that previously reported 4G LTE coverage on FCC Form 477, but does not have qualified 4G LTE coverage must provide a certification that its coverage does not qualify.⁷

4. In September 2017, Hurricanes Irma and Maria struck Puerto Rico and the U.S. Virgin Islands.⁸ These hurricanes, which occurred within weeks of each other, were some of the strongest storms ever recorded on a U.S. territory and caused extensive damage to the islands and their communications and power grids.⁹ Recognizing the catastrophic impact on the islands' communications networks, the Commission took rapid action to help providers with restoring service by, among other things, waiving on its own motion certain programmatic requirements for the Connect America Fund.¹⁰

⁴ *Instructions for Filing 4G LTE Coverage Data to Determine Areas Presumptively Eligible for Mobility Fund II Support*, Public Notice, 32 FCC Rcd 7023, 7024-28 (WCB/WTB 2017) (*4G LTE Collection Instructions Public Notice*). As set forth in that public notice, filers must collect and submit the data no later than 90 days after the Commission published, in the Federal Register, a notice of approval by the Office of Management and Budget (OMB) of the one-time information collection request. *Id.* at 7023, 7027. The Commission published notice of OMB's approval in the Federal Register on October 5, 2017. 82 Fed. Reg. 46494, 46494 (Oct. 5, 2017).

⁵ *Responses to the Mobility Fund Phase II 4G LTE Data Collection Are Due by January 4, 2018*, Public Notice, 32 FCC Rcd 7431 (WCB/WTB 2017).

⁶ *MF-II Challenge Process Order*, 32 FCC Rcd at 6288, 6296, 6298-6303, paras. 11, 28, 34-40; *4G LTE Collection Instructions Public Notice*, 32 FCC Rcd at 7024-27.

⁷ *4G LTE Collection Instructions Public Notice*, 32 FCC Rcd at 7027.

⁸ *See Connect America Fund*, Order, 32 FCC Rcd 7981, 7981, 7983, paras. 1, 7 (2017) (*CAF PR-USVI Order*).

⁹ *Id.* at 7981, 7983, paras. 1-2, 7, 9; Jeremy Peters, *In the Virgin Islands, Hurricane Maria Drowned What Irma Didn't Destroy* (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/us/hurricane-maria-virgin-islands.html>. Shortly after the hurricanes hit the islands, the Commission's Public Safety and Homeland Security Bureau reported that, as of October 1, 2017, 88.8 percent of cell sites were out of service in Puerto Rico and 68.9 percent were out of service in the U.S. Virgin Islands. *See* FCC, Communications Status Report for Areas Impacted by Hurricane Maria at 2-3 (Oct. 1, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-346989A1.pdf. More than two months after the hurricanes, 25.3 percent of cell sites were still out of service in Puerto Rico and 30.3 percent were still out of service in the U.S. Virgin Islands. *See* FCC, Communications Status Report for Areas Impacted by Hurricane Maria at 2-3 (Dec. 1, 2017) (*December 1 Status Report*), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/DOC-348048A1.pdf.

¹⁰ *See CAF PR-USVI Order*, 32 FCC Rcd at 7983, 7984-5, paras. 3, 12. The Commission also made up to \$76.9 million in universal service support immediately available for the restoration of communications networks in Puerto Rico and the U.S. Virgin Islands. *Id.* at 7983, para. 3. Shortly thereafter, several telecommunications providers in Puerto Rico and the U.S. Virgin Islands filed various petitions seeking additional relief of universal service obligations and deadlines due to the extensive damage caused by the hurricanes. *See, e.g.*, PRWireless, Inc. d/b/a Open Mobile Emergency Petition for Waiver and Other Relief, WT Docket No. 10-208, et al., at 5-17 (filed Oct. 4, 2017) (seeking support to rebuild its wireless network in Puerto Rico); ATN International, Inc., parent company of Viya Wireless, Emergency Petition, WT Docket No. 10-208, et al. (filed Oct. 5, 2017); Vitelcom Cellular, Inc., d/b/a Viya Wireless, and Choice Communications, LLC, Emergency Petition, WT Docket No. 10-208, et al., at 9-10 (filed Oct. 5, 2017) (requesting a one-time infusion of \$50 million for mobile providers to restore wireless networks in the U.S. Virgin Islands); Telrite Corporation Emergency Petition, WC Docket No. 10-90, et al. (filed Oct. 6, 2017); *see also* Comments of the Public Service Commission of the United States Virgin Islands in Response to Emergency Petitions for Waiver in Connections with Hurricanes Irma and Maria, WT Docket No. 10-208, et al., at 2-8 (filed Nov. 13, 2017) (supporting petitions filed by U.S. Virgin Islands providers).

III. DISCUSSION

5. We waive, on our own motion, the upcoming deadline of January 4, 2018, for submitting (i) qualified 4G LTE coverage data, as required under the *MF-II Challenge Process Order* and (ii) any certifications connected with the 4G LTE data collection, for the Commonwealth of Puerto Rico and territory of the U.S. Virgin Islands.¹¹ We limit the waiver to mobile wireless providers that previously reported 4G LTE coverage on FCC Form 477 for Puerto Rico or the U.S. Virgin Islands.¹² We grant the waiver for a period of 180 days (i.e., until July 3, 2018), or until the Commission takes action addressing the appropriate approach, given the circumstances, for providing ongoing, high-cost support for mobile services in Puerto Rico and the U.S. Virgin Islands, whichever occurs earlier.

6. We take this action consistent with other recent steps taken by the Commission to extend filing and other regulatory deadlines due to the special circumstances of the widespread service disruption resulting from the unprecedented destruction caused by Hurricanes Irma and Maria.¹³ Given the current network outages,¹⁴ we conclude that it is not possible to collect data by the deadline that will be meaningful for purposes of establishing the map of areas on Puerto Rico and the U.S. Virgin Islands that would be presumptively eligible for MF-II support. Moreover, we do not believe the public interest in ensuring efficient targeting of funding for areas that lack unsubsidized qualified 4G LTE service would be served by relying on coverage data that would be affected by the massive outages caused by these two hurricanes.¹⁵ We therefore conclude that a temporary delay of this requirement will allow the Commission adequate time to consider the best way to provide future on-going support for mobile voice and broadband coverage on these islands.

7. We find that the waiver period is an appropriate timeframe for delaying the submission of the required data to allow the Commission to determine, in light of the widespread destruction that has taken place in these areas, the appropriate path forward.¹⁶ By taking this action, we make no determination regarding how the Commission may address future universal service funding, including the Mobility Fund, for Puerto Rico and the U.S. Virgin Islands. Indeed, no further determination will be made on how to proceed with the Mobility Fund for these areas until further Commission action.

¹¹ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where "the particular facts make strict compliance inconsistent with the public interest." *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy" on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Ne. Cellular*, 897 F.2d at 1166.

¹² See *MF-II Challenge Process Order*, 32 FCC Rcd at 6288, 6296, 6298-6303, paras. 11, 28, 34-40; *4G LTE Collection Instructions Public Notice*, 32 FCC Rcd at 7024-27.

¹³ See, e.g., *CAF PR-USVI Order*, 32 FCC Rcd at 7984-5, para. 12; *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Extend Filing and Regulatory Deadlines and Streamline Environmental Notification Process for Areas Affected by Hurricane Maria*, Public Notice, 32 FCC Rcd 7453, 7453-55 (WTB/PSHSB 2017) (*PR-USVI Public Notice*).

¹⁴ As of December 1, 2017, wireless providers report that, while progress in restoring coverage is being made, many cell sites remain out of service throughout the islands. See, e.g., *December 1 Status Report* at 2-3.

¹⁵ See, e.g., *id.* at 2-3, 7 (stating that, in Puerto Rico, 13 counties have greater than 50 percent of their cell sites out of service, and that, in the U.S. Virgin Islands, two islands have greater than 25 percent of their cell sites out of service and the third has greater than 66 percent of its cell sites out of service).

¹⁶ The grant of an additional 180 days is consistent with the waiver of other deadlines by the Commission. See, e.g., *PR-USVI Public Notice*, 32 FCC Rcd at 7453 (waiving certain rules for six months in order to alleviate the burden of regulatory compliance as Puerto Rico and the U.S. Virgin Islands recover from Hurricane Maria).

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under Sections 0.91, 0.131, 0.291, and 0.331 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.291, 0.331, the deadline to submit information in connection with the one-time 4G LTE data collection established in the *MF-II Challenge Process Order* IS WAIVED to the extent described above.

9. 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

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