

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

In the Matter of)
)
Petition of the Nebraska Farm Bureau) WT Docket No. 10-208
For Waiver to Participate in Mobility Fund II)
Challenge Process)

ORDER

Adopted: June 12, 2018

Released: June 12, 2018

By the Chief, Auctions and Spectrum Access Division:

I. INTRODUCTION

1. In this Order, we grant the Nebraska Farm Bureau (NFB) a waiver to participate as a challenger in the Mobility Fund Phase II (MF-II) challenge process, subject to the conditions set forth herein.1 For the reasons discussed below, we instruct the Universal Service Administrative Company (USAC) to grant access to the challenge process portal to the users identified in NFB’s Petition for Waiver.

II. BACKGROUND

2. In the MF-II Challenge Process Order, the Commission established the framework for a robust and efficient challenge process to resolve disputes about areas found to be presumptively ineligible for MF-II support.2 The Commission concluded that government entities (state, local, and Tribal) and all service providers required to file Form 477 data with the Commission are best suited to participate as challengers in the MF-II challenge process.3 The Commission found that limiting participation to these interested parties would satisfy its policy goal of administrative efficiency because they are the entities that are most likely to have access to and be able to provide data relevant to the Commission’s consideration of a challenge.4 The Commission explained, however, that other entities wishing to participate in the process as a challenger could request a waiver of this rule.5

3. On June 7, 2018, NFB filed a petition for a waiver of the rule limiting participation in the MF-II challenge process.6 NFB states that it is neither a governmental entity nor a service provider required to file Form 477 data with the Commission and, thus, is not entitled as a matter of right to

1 Petition of the Nebraska Farm Bureau for Waiver to Participate in Challenge Process, WT Docket No. 10-208 (filed Jun. 7, 2018) (Petition for Waiver).

2 Connect America Fund; Universal Service Reform – Mobility Fund, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6282, 6296-314, paras. 1, 27-64 (2017) (MF-II Challenge Process Order).

3 Id. at 6303, para. 42.

4 Id. at 6303-04, para. 42 & n.115.

5 Id. at 6304, para. 43 n.119 (citing 47 CFR § 1.3); see also Mobility Fund Phase II Challenge Process Handsets and Access Procedures for the Challenge Process Portal, Public Notice, 32 FCC Rcd 10372, 10376, para. 10 & n.33 (WCB/WTB 2017).

6 Petition for Waiver at 1, 3.

participate as a challenger.⁷ However, NFB contends that it qualifies for a rule waiver because it has a bona fide interest in the MF-II challenge process and a plausible ability to submit a valid challenge.⁸

III. DISCUSSION

4. The Commission may waive its rules and requirements where there is “good cause shown” to do so.⁹ Good cause, in turn, may be found “where particular facts would make strict compliance inconsistent with the public interest.”¹⁰ A waiver is therefore “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”

¹¹ For the rule limiting participation in the MF-II challenge process, the Commission anticipated that this good-cause standard would be met “in cases in which a[] . . . business demonstrates a bona fide interest in the challenge process and a plausible ability to submit a valid challenge.”¹²

5. We conclude that there is good cause for granting the requested waiver. NFB asserts it has a bona fide interest in the challenge process because the promotion of reliable 4G LTE service throughout the state of Nebraska is part of its mission as a not-for-profit advocacy organization that is dedicated to supporting farms and ranch families and working for the benefit of all Nebraskans.¹³ The organization claims the promotion of reliable 4G LTE service around the state of Nebraska is crucial to its 61,000 member families in all 93 counties of the state but especially the approximately 14,000 that participate in farming and ranching.¹⁴ NFB claims that these farm and ranch members rely on 4G LTE service to conduct business on their phones, check grain prices, deal with equipment breakdowns, manage their operations and natural resources, and, if necessary, access emergency services in the remote rural locations where they work.¹⁵ NFB further claims that, in the absence of reliable wired broadband infrastructure, wireless hotspots powered by 4G LTE enable all Nebraskan communities to pursue educational endeavors, grow business ventures, and connect with the broader world regardless of their proximity to population.¹⁶

6. NFB also has a plausible ability to submit the data necessary to support a valid challenge.¹⁷ In particular, NFB asserts that, through information provided by its members located across the state, it can quickly identify areas that may be currently underserved by 4G LTE providers.¹⁸ The organization claims that its regional staff located throughout the state can verify information provided by its members and relay such information to its headquarters for compilation and remittance to the

⁷ *Id.* at 1.

⁸ *Id.* at 2-3.

⁹ 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

¹⁰ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹¹ *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

¹² *MF-II Challenge Process Order* at 6304, para. 43 & n.119; *see also Petition for Waiver of the Kansas Farm Bureau to Participate in Mobility Fund II Challenge Process*, Order, DA 18-453, at 2-3, paras. 4-8 (WTB May 2, 2018) (granting waiver request to participate in the challenge process).

¹³ *Petition for Waiver* at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Commission for use in the MF-II challenge process.¹⁹ The organization further claims that it is aware of the handset requirements of the challenge process and is prepared to meet them.²⁰

7. NFB has assigned an employee to review the technical requirements of the challenge process and this individual has demonstrated an understanding of the technical requirements, asking Commission staff a series of questions about the requirements. This engagement suggests that NFB has the intention and plausible ability to understand and follow the required technical procedures of the challenge process. NFB is reminded that speed tests are only valid if conducted in accordance with our technical requirements and that in order to certify a challenge, an authorized representative of NFB will need to certify, under penalty of perjury, that (1) a qualified engineer has examined all data submitted; and (2) the qualified engineer has certified that all data and statements contained in the submission were generated in accordance with these specifications and are true, accurate, and complete to the best of his or her knowledge, information, and belief.²¹

8. Thus, we conclude that there is good cause for granting the requested waiver and instruct USAC to grant the users included in NFB's Petition for Waiver access to the MF-II challenge portal. This waiver is subject to NFB's compliance with its representations and with the requirements of the MF-II challenge process.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to the 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 sections 0.131(a), 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131(a), 0.331, and 1.3, that the Petition for Waiver of the Nebraska Farm Bureau, is HEREBY GRANTED to permit it to participate in the MF-II challenge process, subject to the conditions set forth herein.

10. 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

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 3.

²¹ *MF-II Challenge Process Order*, 32 FCC Red at 6308, para. 49; *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, DA 18-186, at 19-20, paras. 39-40 & n.143 (WCB/WTB Feb. 27, 2018).