

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

In the Matter of )
Establishing the Digital Opportunity Data ) WC Docket No. 19-195
Collection )
Verizon Petition for Partial Waiver of Certain )
Section 1.7004 Rules Concerning Verizon's )
Submission of 3G Data in BDC Filings )

ORDER

Adopted: December 21, 2022

Released: December 21, 2022

By the Acting Chief, Wireless Telecommunications Bureau and the Chief, Office of Economics and Analytics:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA), in conjunction with the Broadband Data Task Force, grant a limited waiver of section 1.7004(c)(3)-(7) of the Commission's rules to Verizon Wireless (Verizon) regarding the filing of certain data as part of the Broadband Data Collection (BDC).1 Specifically, we waive the requirement that Verizon submit broadband availability and quality of service data for its 3G network as of December 31, 2022, in its BDC filing due on March 1, 2023.2

II. BACKGROUND

2. In March 2020, Congress passed the Broadband DATA Act3 requiring the Commission to adopt new rules for "the biannual collection and dissemination of granular data . . . relating to the availability and quality of service with respect to terrestrial fixed, fixed wireless, satellite, and mobile broadband internet access service."4 In July 2020, the Commission released the Second Order and Third Further Notice in this proceeding,5 establishing the requirements for the biannual submission of fixed and mobile broadband Internet access service availability and quality of service data.6 In addition to

1 47 CFR § 1.7004(c)(3)-(7). The BDC was formerly known as the Digital Opportunity Data Collection.
2 See Verizon Petition for Partial Waiver, WC Docket No. 19-195 at 1, 6 (filed Nov. 21, 2022) (Verizon Petition). We do not grant, nor does Verizon request, a waiver of the BDC submission obligations with respect to Verizon's 4G LTE, 5G, or fixed availability data. See id. at 1, n.2.
3 Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act or Act).
4 47 U.S.C. § 642(a)(1)(A).
5 See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (2020) (Second Order and Third Further Notice).
6 Second Order and Third Further Notice, 35 FCC Rcd at 7462, para. 3; see 47 CFR § 1.7004(c) (requiring providers to submit certain data relating to the availability and quality of service of their broadband internet access service).

implementing the Act's requirement that mobile broadband providers must submit maps showing their 4G LTE coverage, the Commission also required providers to submit information, data, and coverage maps for their 3G networks and next-generation 5G-NR networks.<sup>7</sup> The Commission found that requiring "reporting for 3G, 4G LTE, and 5G-NR networks is consistent with the requirements of the Broadband DATA Act" and that "[s]uch a requirement should serve the public interest by providing accurate, granular data on the availability of the most prevalent generations of mobile broadband service."<sup>8</sup> In requiring providers to submit 3G coverage data, the Commission noted that "[a]lthough the transition to networks capable of supporting 5G technology is underway nationwide, we recognize that many mobile broadband network service providers continue to operate 3G networks—particularly providers that serve customers in rural areas of the country."<sup>9</sup>

3. The first BDC biannual collection required providers to report broadband availability data as of June 30, 2022, and was due by September 1, 2022.<sup>10</sup> The Commission subsequently published its new National Broadband Map rendering the BDC data on November 18, 2022.<sup>11</sup> According to the Verizon data depicted on the map, Verizon's 3G network covered no more than 0.51% of the geographic area of the country as of June 30, 2022.<sup>12</sup> The second biannual collection of BDC data will require providers to submit data as of December 31, 2022, and will be due on or before March 1, 2023.<sup>13</sup>

4. On November 21, 2022, Verizon filed a petition requesting a limited waiver of the requirement to submit broadband availability and quality of service data as of December 31, 2022, for its 3G network in the BDC filing due on March 1, 2023.<sup>14</sup> In support of the limited waiver, Verizon states that it will shut down its 3G network on January 3, 2023,<sup>15</sup> "just three days after the 'as of' network snapshot date of December 31, 2022, two months before the filing is due on March 1, 2023."<sup>16</sup> It argues that "[w]aiving Verizon's obligation to submit information as of December 31, 2022, regarding a network that will not exist just three days later will avoid consumer confusion, avoid unnecessary work, and serve the public interest by ensuring that the public has useful information."<sup>17</sup>

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<sup>7</sup> *Id.* at 7474, para. 33.

<sup>8</sup> *Id.* at 7478, para. 42.

<sup>9</sup> *Id.* at 7481, para. 47.

<sup>10</sup> *Broadband Data Task Force and Office of Economics and Analytics Announce Inaugural Broadband Data Collection Filing Dates*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-182, 2022 WL 565718 at \*1, \*9, paras. 3, 22 (OEA Feb. 22, 2022) (*Initial BDC Filing Dates Public Notice*).

<sup>11</sup> *Broadband Data Task Force Releases Pre-Production Draft of the National Broadband Map; Announces the Start of the Broadband Availability Challenge Processes*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-182, 2022 WL 17100909, at \*1 (WTB/WCB/OEA/CGB Nov. 18, 2022).

<sup>12</sup> See Provider Detail – Mobile | FCC National Broadband Map, [https://broadbandmap.fcc.gov/provider-detail/mobile?zoom=4&env=0&pct\\_cvg=0](https://broadbandmap.fcc.gov/provider-detail/mobile?zoom=4&env=0&pct_cvg=0) (last visited Dec. 12, 2022) (showing 0.51% of area with coverage of outdoor stationary 3G signal, and 0.02% of areas with coverage of in-vehicle mobile 3G signal).

<sup>13</sup> See 47 CFR § 1.7004(b); *Second Order and Third Further Notice*, 35 FCC Rcd at 7484, para. 55.

<sup>14</sup> Verizon Petition at 1, 6.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 1. In March 2021, Verizon first announced that it would retire its 3G network on December 31, 2022, "but to maintain availability for customers through the new year, [Verizon has] moved the actual implementation date to January 3, 2023." *Id.* at 2.

<sup>17</sup> *Id.* at 1.

### III. DISCUSSION

5. In this *Order*, we grant Verizon's Petition because we find that special circumstances warrant deviation from the Commission's rule requiring Verizon to submit broadband availability and quality of service data for its 3G network and that granting the waiver is in the public interest.

6. Section 1.3 of the Commission's rules provides that the Commission may "on its own motion or on petition" waive a rule "for good cause shown, in whole or in part, at any time."<sup>18</sup> The Commission may find that the "good cause shown" standard is met when (1) "special circumstances warrant a deviation from the general rule;" and (2) "such deviation will serve the public interest."<sup>19</sup> A rule waiver may serve the public interest when the relief would not undermine the policy objectives of the rule.<sup>20</sup> In this case, granting a limited waiver of section 1.7004 of the Commission's rules requiring that Verizon report broadband availability and quality of service data for its 3G network meets both prongs of this test.<sup>21</sup> We therefore waive the requirement that Verizon submit broadband availability and quality of service data as of December 31, 2022, for its 3G network.

7. Verizon indicates that it plans to shut down its 3G network on January 3, 2023.<sup>22</sup> Verizon states that it has worked over the past five years to migrate customers from its 3G network to its 4G LTE, and more recently its 5G, networks, and that it stopped activating new 3G-only devices as of April 30, 2019.<sup>23</sup> Since April 30, 2019, Verizon states, it has offered customers free and discounted device upgrades, including free basic phones and entry-level smartphones, and discounted premium smartphones.<sup>24</sup> Verizon states that, although it announced that the final 3G shut down date would be December 31, 2022, it moved the actual implementation date for the shutdown to January 3, 2023, in order to maintain availability for customers through the New Year holiday.<sup>25</sup> Verizon notes that submitting 3G data for the March 1, 2023, filing would require it to devote time and resources to validate the underlying data to generate the maps, and to conduct extensive validation of the maps with the field teams in each market.<sup>26</sup> Verizon argues that "[r]elief from the requirement to produce 3G maps will allow Verizon to spend time and resources on meeting our customers' needs."<sup>27</sup>

8. We find that the imminent shutdown of Verizon's 3G network constitutes "special circumstances" that warrant a deviation from the rule requiring Verizon to submit broadband availability and quality of service data for its 3G network. Section 1.7004 of the Commission's rules requires Verizon to report BDC data for its 3G network as of December 31, 2022, and submit it to the Commission on or before March 1, 2023.<sup>28</sup> Verizon's 3G network will be shut down on January 3, 2023, only three days after the required December 31, 2022, reporting date. Absent a waiver, Verizon would be required to submit data showing 3G network coverage even though Verizon's 3G network would no longer exist

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<sup>18</sup> 47 CFR § 1.3. WTB and OEA issue this *Order* pursuant to their delegated authority. *See id.* §§ 0.21(t), 0.131(a), 0.271, 0.331.

<sup>19</sup> *E.g., Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*).

<sup>20</sup> *See WAIT Radio*, 418 F.2d at 1155, 1157.

<sup>21</sup> *See* 47 CFR § 1.7004.

<sup>22</sup> Verizon Petition at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> 47 CFR § 1.7004(b), (c)(3)-(7).

by the time that data was submitted into the BDC system and then subsequently published by the Commission as part of an updated FCC National Broadband Map. We agree with Verizon that “these circumstances are sufficiently unique” because “only three generations of mobile service have been phased out” and wireline technologies are not (generally) “altered on a network-wide, generational basis” in the same way as mobile wireless technologies.<sup>29</sup>

9. We also find that granting Verizon’s Petition is in the public interest and consistent with the objectives of the Broadband DATA Act and the Commission’s effort to develop more granular and accurate broadband data. The Commission’s rule requiring mobile providers to report their 3G coverage was intended to help ensure the collection of data about the most prevalent generations of mobile broadband service and based on the Commission’s recognition that many mobile broadband providers continued to serve customers on 3G networks.<sup>30</sup> Granting the waiver supports the rule’s objective because it will help the Commission provide consumers and other stakeholders with up-to-date information about which providers continue to offer 3G broadband services across the country. We agree with Verizon that including Verizon’s 3G data in the updated maps that the Commission will publish after it receives December 31, 2022, broadband coverage data from broadband providers in March 2023 could cause consumer confusion because consumers would see 3G coverage for Verizon in the Commission’s data and “mistakenly believe that Verizon’s 3G network remains available, contrary to Verizon’s communications to [its] customers over the past few years.”<sup>31</sup> Granting the waiver and excluding Verizon’s retired 3G data from the next iteration of the FCC National Broadband Map will help prevent this potential confusion and is consistent with the Commission’s objective of providing more accurate information about broadband availability and quality of service to the public.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, and 801-806 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 641-646, and section 1.3 of the Commission’s rules, 47 CFR § 1.3, this *Order* is ADOPTED and section 1.7004, 47 CFR § 1.7004 is WAIVED to the extent indicated herein.

11. This action is taken by the Acting Chief of the Wireless Telecommunications Bureau and the Chief of the Office and Economics and Analytics under delegated authority pursuant to sections 0.21, 0.131, 0.271, and 0.331 of the Commission’s rules, 47 CFR §§ 0.21, 0.131, 0.271, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt  
Acting Chief, Wireless Telecommunications Bureau

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Chief, Office of Economics and Analytics

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<sup>29</sup> Verizon Petition at 4.

<sup>30</sup> *Second Order and Third Further Notice*, 35 FCC Rcd at 7478, 7481, paras. 42, 47.

<sup>31</sup> Verizon Petition at 3.