

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

In the Matter of)
Establishing the Digital Opportunity Data) WC Docket No. 19-195
Collection)
Choice Wireless Petition for Partial Waiver of)
Certain Section 1.7004 Rules Concerning)
Submission of CMDA Data in BDC Filings)

ORDER

Adopted: February 28, 2023

Released: February 28, 2023

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 Choice Wireless (Choice) regarding the filing of certain data as part of the Broadband Data Collection (BDC).1 Specifically, we waive the requirement that Choice submit broadband availability and quality of service data for its CDMA 3G network as of December 31, 2022, in its BDC filing due by 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

1 47 CFR § 1.7004(c)(3)-(7). The BDC was formerly known as the Digital Opportunity Data Collection.
2 See Petition for Partial Waiver filed by Commnet Wireless, together with its subsidiaries and NTUA Wireless, LLC collectively branded as Choice Wireless, WC Docket No. 19-195 at 1, n. 2 (filed Feb. 22, 2023) (Choice Petition). We do not grant, nor does Choice request, a waiver of any other of its reporting obligations under the BDC. See id.
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).

mobile broadband Internet access service availability and quality of service data.⁶ In addition to 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.⁷ 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."⁸ 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."⁹

3. The first BDC biannual collection required providers to report broadband availability data as of June 30, 2022, and was due by September 1, 2022.¹⁰ The Commission subsequently published its new National Broadband Map rendering the BDC data on November 18, 2022.¹¹ 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, 2023.¹²

4. On February 22, 2023, Choice filed a petition requesting a limited waiver of the requirement to submit December 31, 2022, broadband availability and quality of service data for its CDMA network in the BDC filing due on March 1, 2023.¹³ In support of its request for limited waiver, Choice states that it shut down its CDMA network on January 3, 2023.¹⁴ Choice argues that "[i]t is in the public interest to waive Choice's obligation to submit information about a network that no longer exists. To do otherwise would cause public confusion and create unnecessary work for both Choice and the Commission."¹⁵

III. DISCUSSION

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

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).

⁷ *Id.* at 7474, para. 33.

⁸ *Id.* at 7478, para. 42.

⁹ *Id.* at 7481, para. 47.

¹⁰ *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*).

¹¹ *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).

¹² *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-1372 (OEA Dec. 27, 2022) 2022 WL 18023110, at *1.

¹³ Choice Petition at 1.

¹⁴ *Id.*

¹⁵ *Id.*

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."¹⁶ 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."¹⁷ A rule waiver may serve the public interest when the relief would not undermine the policy objectives of the rule.¹⁸ In this case, granting a limited waiver of section 1.7004 of the Commission's rules requiring that Choice report broadband availability and quality of service data for its CDMA network meets both prongs of this test.¹⁹ We therefore waive the requirement that Choice submit broadband availability and quality of service data as of December 31, 2022, for its CDMA network.

7. Choice indicates that its network has evolved and that "part of efficient network management involves decommissioning old generations of wireless networks so that new generations can grow."²⁰ Accordingly, Choice states, it determined that "it was time to phase out its CDMA network" ... and "instead utilize its UMTS and 4G LTE networks."²¹ Choice indicates that it shut down its CDMA network on January 3, 2023.²² It states that, prior to the shut-down, it conducted outreach to customers "informing them that Choice's CDMA network would be deactivated and that they may need to purchase a new device capable of working on its UMTS or 4G LTE network."²³ Choice states that it placed notice on its website, notified customers via SMS, and called and mailed letters to them.²⁴ Choice indicates that it also "offered free device upgrades to Lifeline subscribers" and that, "[t]o date, no Lifeline customers formerly using the CDMA network have been de-enrolled from the National Lifeline Accountability Database due to non-usage as a result of the network upgrade."²⁵

8. We find that the recent shutdown of Choice's CDMA network constitutes "special circumstances" that warrant a deviation from the rule requiring Choice to submit broadband availability and quality of service data for its CDMA network.²⁶ Section 1.7004 of the Commission's rules requires Choice to report BDC data for its CDMA network as of December 31, 2022, and submit it to the Commission on or before March 1, 2023.²⁷ Choice's CDMA network was shut down on January 3, 2023, three days after the required December 31, 2022, reporting date. As Choice states, absent a waiver, it "would be required to submit data on March 1, 2023, showing CDMA network coverage even though its CDMA network has not existed since January 3, 2023, and no customers remain on that network today."

¹⁶ 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.

¹⁷ *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*).

¹⁸ *See WAIT Radio*, 418 F.2d at 1155, 1157.

¹⁹ *See* 47 CFR § 1.7004.

²⁰ Choice Petition at 2.

²¹ *Id.*

²² *Id.* at 1.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ On Dec. 21, 2022, WTB and OEA, in conjunction with the Broadband Data Task Force, granted a limited waiver of the Commission's rules to Verizon for filing data on its 3G network as part of the BDC based on the shutdown of Verizon's 3G network. *See Verizon Petition for Partial Waiver of Certain Section 1.7004 Rules Concerning Verizon's Submission of 3G Data in BDC Filings*, WC Docket No. 19-195, Order, DA22-1353 (WTB/OEA Dec. 21, 2022) 22 WL 17886502.

²⁷ 47 CFR § 1.7004(b), (c)(3)-(7).

We agree with Choice that the shut-down of its CDMA network is a special circumstance “as new generations of wireless technology are deployed and retired only infrequently.”²⁸

9. We also find that granting Choice’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.²⁹ 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 Choice that including Choice’s CDMA 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 information about Choice’s CDMA network in the Commission’s data and “believe that it is still available” even though the CDMA network is no longer operational and has been shut down since January 3, 2023.³⁰ Granting the waiver and excluding Choice’s retired CDMA data from the next iteration of the FCC National Broadband Map will help prevent this potential confusion. Moreover, excluding Choice’s outdated CDMA data from the next iteration of the map 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

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²⁸ Choice Petition at 3.

²⁹ *Second Order and Third Further Notice*, 35 FCC Rcd at 7478, 7481, paras. 42, 47.

³⁰ Choice Petition at 4.