

**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, NOTICE OF PROPOSED RULEMAKING, AND
MEMORANDUM OPINION AND ORDER**

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By the Commission: Commissioners O’Rielly and Carr issuing separate statements; Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. In this Order, we extend the previously announced deadline for the close of the Mobility Fund Phase II (MF-II) challenge window by an additional 90 days. Challengers will have until November 26, 2018, to submit speed test data in support of a challenge. We adopt this extension to ensure that interested parties can initiate and submit speed test data for areas they wish to challenge. In addition, given this extension, we propose to make modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests. We also address two applications for review regarding the procedures and parameters of the MF-II challenge process and grant in part and deny in part a related extension request.

II. ORDER EXTENDING THE CHALLENGE WINDOW

A. Background

2. In February 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to \$4.53 billion of MF-II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution (LTE) services.¹ The Commission also determined that it would compile a list of areas that were presumptively eligible for MF-II support and provide a limited timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (i.e., “presumptively ineligible” areas).² In February 2018, the Rural Broadband Auctions Task Force, in conjunction with the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus), published a map of areas presumptively eligible for MF-II support based on a one-time collection by the Commission of 4G LTE coverage data and subsidy data from the Universal Service Administrative Company (USAC).³

¹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017) (*MF-II Report & Order* or *MF-II FNPRM*).

² *MF-II Report & Order*, 32 FCC Rcd at 2175, 2181, paras. 56, 66.

³ See *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6287-88, 6295-96, paras. 10-11, 25 (2017) (*MF-II Challenge Process Order*);

3. The *MF-II Challenge Process Order* established the framework for a robust challenge process that will refine the map of areas presumptively eligible to receive MF-II support.⁴ This challenge process is designed to efficiently resolve disputes about areas that are presumptively ineligible through the submission, analysis, and validation of mobile network speed test data.⁵ The Commission initially established a 150-day challenge window for interested parties to contest the initial determination of areas deemed presumptively ineligible for MF-II support.⁶ The challenge window opened on March 29, 2018, and it was scheduled to close on August 27, 2018.⁷

4. As part of the challenge process framework, the Commission established various parameters for the acceptance of speed test data, including that such data would only be accepted if they were collected within six months of the scheduled close of the challenge window.⁸ That six-month period commenced on February 27, 2018.⁹ After the close of the challenge window, a respondent (i.e., a “challenged party”) will have the opportunity to respond to challenges by submitting its own speed test data or certain technical information that is probative of the validity of the challenger’s speed tests.¹⁰ Speed test data submitted by respondents is subject to the same standards and requirements applicable to challengers, except that the Commission established in the *MF-II Challenge Process Order* that it would only accept data submitted by a respondent that was collected within six months of the scheduled close of the response window.¹¹

5. After the Commission adopted the timeframe for the challenge window, the Rural Wireless Association (RWA) submitted data regarding estimated burdens of the challenge process, including specific estimates of the amount of time required to conduct speed tests in certain areas.¹²

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Mobility Fund Phase II Initial Eligible Areas Map Available; Challenge Window Will Open March 29, 2018, Public Notice, 33 FCC Rcd 2041 (WCB/WTB 2018) (*MF-II Initial Eligible Areas Map Public Notice*).

⁴ *MF-II Challenge Process Order*, 32 FCC Rcd at 6282-83, 6296-314, paras. 1, 27-64.

⁵ *Id.* at 6296, para. 27.

⁶ *Id.* at 6296, para. 29.

⁷ The initial MF-II map of presumptively eligible areas was published on February 27, 2018, and the challenge window opened on March 29, 2018. Because the 150th day from the opening of the challenge window would fall on August 26, 2018, which is a Sunday, the challenge window was scheduled to remain open through August 27, 2018, the following business day. See 47 CFR § 1.4(d), (j); *MF-II Initial Eligible Areas Map Public Notice; Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, 33 FCC Rcd 1985, 1990-92, paras. 11-13 (WCB/WTB 2018) (*MF-II Challenge Process Procedures Public Notice*).

⁸ *MF-II Challenge Process Order*, 32 FCC Rcd at 6309, para. 51.

⁹ The map of presumptively eligible areas was released on February 27, 2018, and this was six months before the initially scheduled close of the challenge process window on August 27, 2018.

¹⁰ *MF-II Challenge Process Order*, 32 FCC Rcd at 6311, paras. 59-60. Challenged parties will have 30 days to review challenges and supporting data in the USAC portal before the opening of the response window. See *MF-II Challenge Process Order*, 32 FCC Rcd at 6311, para. 59; *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 2005, para. 43. The response window will open no sooner than 30 days after the USAC system finishes processing the data submitted by challengers. *Id.* Once opened, the response window will close 30 days later. *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 2005, para. 44.

¹¹ *MF-II Challenge Process Order*, 32 FCC Rcd at 6312, para. 60.

¹² Letter from Caressa D. Bennet, General Counsel, RWA, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed Mar. 21, 2018) (RWA Mar. 21, 2018 *Ex Parte* Letter); Letter from Caressa D. Bennet, General Counsel, RWA, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 20, 2018) (RWA Apr. 20, 2018 *Ex Parte* Letter) (focusing on challenges to certain areas initially deemed ineligible in Alabama, Kansas, Montana, North Dakota, Oklahoma, and Wyoming, and quantifying the estimated

B. Discussion

6. We extend the previously established deadline for challengers to submit data in the challenge process and provide an additional 90 days, until November 26, 2018, for the submission and certification of challenges. We direct USAC to implement this change in the challenge portal.¹³

7. The MF-II challenge process provides a unique mechanism for establishing a map of areas eligible for MF-II support. The Commission adopted a challenge window of 150 days notwithstanding that no party argued that such a long period was necessary.¹⁴ The Commission adopted a 150-day window “out of an abundance of caution” and found that this length of time was “appropriate to allow challengers to complete all the tasks necessary to submit challenges, such as reviewing the map of presumptively eligible areas, identifying areas to challenge, conducting speed tests, analyzing test data, and preparing the submission.”¹⁵

8. In light of new estimates (discussed further below) and again out of an abundance of caution, we conclude that while a 150-day challenge window may still be sufficient for parties to conduct speed tests and submit challenges,¹⁶ providing an additional 90 days for this window will ensure that all interested parties have ample opportunity to conduct speed tests and submit speed test data for the areas they wish to challenge.¹⁷ Providing this additional time, for a total challenge window of 240 days, ultimately should result in a more efficient allocation of support funds, while still advancing the overall auction process to a timely conclusion, directing our limited funds to the unserved areas most in need, and completing the phase down of duplicative support that directs subsidies to areas already served by

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time required to conduct speed tests in the Oklahoma panhandle and in certain parts of Alabama, as discussed in the April 18, 2018 *ex parte* meeting with Commission staff).

¹³ Because the 90th day from the initially-scheduled close of August 27, 2018 would fall on November 25, 2018, which is a Sunday, the challenge window will close on the following business day, November 26, 2018. *See* 47 CFR § 1.4(d), (j).

¹⁴ CTIA Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 17 (Apr. 26, 2017) (proposing that challengers submit their challenges to the Commission within “60 total days from the date of the MF-II map’s publication”); Letter from L. Charles Keller, Counsel to ATN and Blue Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208, Attach. at 1 (filed June 2, 2017) (ATN/Blue Wireless June 2, 2017 *Ex Parte* Letter) (challengers should have 60 days to review the provisional eligibility maps, identify areas where they believe the data needs to be improved, and conduct actual testing of coverage to correct the provisional maps in such areas); Letter from David Lafuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at 2 (filed July 27, 2017) (U.S. Cellular July 27, 2017 *Ex Parte* Letter) (requesting 120 days “to analyze maps, deploy technicians, drive test relevant areas, analyze drive test data, and prepare challenge submissions”); Letter from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at 2 (filed July 26, 2017) (RWA July 26, 2017 *Ex Parte* Letter) (urging the adoption of a 120-day challenge window because of the size of the areas to be tested and the possibility of inclement weather during the testing); Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at 5 (filed July 27, 2017) (CCA July 27, 2017 *Ex Parte* Letter) (encouraging the adoption of a 120-day challenge window because of the time required to obtain and configure a device for testing and the number of observations required as part of the testing).

¹⁵ *MF-II Challenge Process Order*, 32 FCC Rcd at 6296-97, para. 29 n.81.

¹⁶ *See* NTCA Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 5-6 (Nov. 8, 2017) (supporting a challenge window of 150 days in length); RWA Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 3 (Nov. 8, 2017) (expressing support for the Commission’s adoption of a 150-day challenge window); U.S. Cellular Reply, WC Docket No. 10-90, WT Docket No. 10-208 at 13 (Nov. 29, 2017) (commending the Commission’s decision to provide a 150-day challenge window).

¹⁷ RWA Apr. 20, 2018 *Ex Parte* Letter (providing, in Attachment E, specific estimates of hours required to test certain parts of Oklahoma and Alabama).

unsubsidized providers.¹⁸ Accordingly, we make a procedural change to the challenge process by extending the deadline for filing challenges to November 26, 2018.

III. NOTICE OF PROPOSED RULEMAKING TO MODIFY THE DATA TIMING REQUIREMENTS

A. Background

9. In the *MF-II Challenge Process Order*, the Commission stated that speed test measurements taken before the submission of updated coverage maps might not accurately reflect current network deployment and accordingly adopted a requirement that speed test measurements from challengers must be taken after the publication of the initial eligible areas map and within six months of the scheduled close of the challenge window.¹⁹ Similarly, the Commission stated it would only accept measurements from challenged parties that were collected after the publication of the initial eligibility map and within six months of the scheduled close of the response window.²⁰

B. Discussion

10. To ensure that the extension of the challenge filing deadline does not inadvertently create hardships for those challengers that have already conducted speed tests, and to provide similar testing parameters for both the challengers and the challenged parties, we tentatively conclude that it would be in the public interest to modify the initially-adopted requirements that speed test data be collected within six months of the scheduled close of the relevant challenge or response window.²¹ Accordingly, we propose to accept speed test data in support of challenges collected at any time on or after February 27, 2018, the date of the publication of the map of presumptively eligible areas, through the new close of the challenge window, November 26, 2018. This would provide challengers with an additional three months (for a total of nine months) to conduct speed tests. Consistent with the *MF-II Challenge Process Order's* generally parallel standards for challengers and respondents, we propose to make a corresponding change to afford

¹⁸ We note that we are not modifying the requirements that define the window for filing responses to a challenge. Thus, the deadline for filing responses will remain 30 days after the Bureau opens the response window (which will follow the November 26, 2018 challenge deadline) for filing responses. See *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 2005, para. 44. In the comment cycle in this proceeding, no party argued for a response window longer than 30 days. CTIA Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 17, 20 (Apr. 26, 2017) (proposing a 30-day response window); Deere Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 9 (Apr. 26, 2017) (same); ATN/Blue Wireless June 2, 2017 *Ex Parte* Letter, Attach. at 2 (same). The Commission implemented a 30-day response window for incumbents to respond to challenges. Thereafter, a party made an untimely request for a 60-day response window. U.S. Cellular Reply at 16-17; see *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 2005, para. 44 n.153 (noting that U.S. Cellular's request was effectively an untimely petition for reconsideration). While challengers and challenged parties are generally subject to the same requirements, we affirm that the difference in time afforded to each is justified based on how each party can substantiate or rebut a challenge. *MF-II Challenge Process Order*, 32 FCC Rcd at 6312, para. 59 ("We agree with commenters that propose that the response window does not need to be open for the same amount of time as the challenge window."). To substantiate a valid challenge, challengers must collect speed tests covering at least 75 percent of the challengeable area in a grid cell. *Id.* at 6310, para. 55. To rebut a challenge, however, respondents need only to collect speed tests that reduce the validly challenged area in a grid cell to less than 75 percent. In addition, only incumbent mobile service providers participate in the response window, as compared to several types of entities participating in the challenge window, and these incumbent providers must test only one network (their own), a network of which they have in-depth knowledge. Further, incumbents can rebut challenges with location-based observations from transmitter monitoring software that routinely collects speed observations from multiple devices in a cell area, rather than through the process of collecting individual speed tests. *Id.* at 6312, para. 60. We also note that the response window will not open until at least 30 days after the challenge window closes. *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 2005, para. 43.

¹⁹ *MF-II Challenge Process Order*, 32 FCC Rcd at 6309, para. 51.

²⁰ *Id.* at 6312, para. 60.

²¹ See generally *id.* at 6309, 6312, paras. 51, 60.

respondents at least the same amount of time as challengers to collect data. Accordingly, respondents would have at least nine months to collect speed test data of their own network, and respondent speed tests collected on or after April 29, 2018, would be considered valid.²²

11. We tentatively conclude that the extension of the filing deadline warrants a modification of the current data timing requirements for challengers and respondents. We tentatively conclude that modifying these requirements will serve the public interest by preventing challengers from having to repeat speed tests, and it should permit more effective implementation of Commission policy. In contrast, we tentatively conclude that failing to modify this timing requirement would prohibit challengers from using the speed tests conducted between February 27 and May 28 (i.e., tests conducted more than six months before the new November 26 deadline), thereby forcing such challengers to engage in more testing than they would otherwise have had to conduct. Further, we believe that providing respondents (i.e., the “challenged parties”) with a similar data timing requirement appropriately balances the interests of respondents with the Commission’s interest in receiving data collected recently, after the one-time 4G LTE data collection that initiated the challenge process.²³ We seek comment on our tentative conclusions and these proposed modifications of the timing requirements.

IV. MEMORANDUM OPINION AND ORDER ADDRESSING APPLICATIONS FOR REVIEW FROM RWA AND VERIZON

A. Background

12. In the *MF-II Challenge Process Procedures Public Notice*, the Bureaus determined, consistent with the Commission’s decision in the *MF-II Challenge Process Order*,²⁴ that speed test measurements submitted to support or respond to a challenge to an area that initially is deemed ineligible for MF-II support must be no more than one-half of one kilometer apart from one another.²⁵ The Bureaus also decided to assess challenges using a uniform grid with cells of one square kilometer and a “buffer” with a radius equal to one-half of the maximum distance parameter, i.e., one-quarter of one kilometer (250 meters).²⁶

²² With the challenge window closing on November 26, 2018, the earliest the response window will close will be on January 29, 2019: challenged parties have at least 30 days to review challenges and 30 days to submit responses to the USAC portal. April 29, 2018 is nine months before January 29, 2019.

²³ See *MF-II Challenge Process Order*, 32 FCC Rcd at 6309, para. 51 (“[G]iven upcoming, expected deployment of new 4G LTE service in conjunction with our decision to perform a new data collection, we are concerned that speed measurements taken before the submission of updated coverage maps may not reflect the current consumer experience.” (footnote omitted)).

²⁴ *Id.*; see also *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1995, para. 19 (“The Commission decided in the *MF-II Challenge Process Order* that a challenger must submit actual outdoor speed test measurements with sufficient density to reflect actual consumer experience throughout the entire challenged area. Specifically, the Commission adopted a requirement that a challenger must take measurements that: (1) are no more than a fixed distance apart from one another in each challenged area; and (2) substantially cover the entire area.” (footnote omitted)).

²⁵ *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1996, 2007-08, paras. 21, 49.

²⁶ *Id.* at 1995-96, 2001-03, paras. 20-21, 35-38. The Commission determined in the *MF-II Challenge Process Order* that the buffer radius will equal one-half of the maximum distance parameter. *MF-II Challenge Process Order*, 32 FCC Rcd at 6310, para. 55 n.162. Accordingly, by establishing a maximum distance parameter of 500 meters, the Bureaus also established a buffer radius of 250 meters. *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1996, para. 21.

13. On March 21, 2018, RWA submitted data regarding the burden a challenger would experience as a result of these decisions.²⁷ On March 29, 2018, RWA filed an application for review in which it argued that the speed test buffer radius size should have been set at one-quarter mile and that the size of the uniform grid cells should have been one square mile.²⁸ One party—Verizon—opposed RWA’s application for review and argued that the grid cell size and the buffer radius should not be increased.²⁹

14. On April 30, 2018, RWA filed an *ex parte* letter indicating that increasing the speed test buffer to 400 meters (approximately one-quarter mile) and maintaining a grid cell size of one square kilometer would yield largely similar results to increasing the grid cell size to one square mile and the buffer size to one-quarter mile.³⁰ On April 30, 2018, the Bureaus, on their own motion, adopted an order on reconsideration that increased the buffer size to 400 meters.³¹ AT&T, the Competitive Carriers Association (CCA), and U.S. Cellular filed replies to Verizon’s opposition to RWA’s AFR, in which they supported the Bureaus’ decision to implement a 400-meter buffer radius.³² On the issue of the grid cell size, AT&T argued that the grid cells should not be resized.³³ CCA and U.S. Cellular argued that the grid cells should be resized.³⁴

15. On June 21, 2018, Verizon filed an application for review of the Bureaus’ order on reconsideration in which it sought reinstatement of the 250-meter buffer radius.³⁵ NTCA, Smith Bagley, RWA, and Panhandle Telecommunication opposed Verizon’s application for review and argued that the 400-meter buffer should be maintained.³⁶ CCA filed a reply to the oppositions supporting the 400-meter

²⁷ See generally RWA Mar. 21, 2018 *Ex Parte* Letter. RWA warns that, “[i]f unchanged, the challenge process parameters will impose significant and unnecessary costs on prospective challengers.” *Id.* at 2.

²⁸ Application for Review of the Rural Wireless Association, Inc., WC Docket 10-90, WT Docket No. 10-208 (filed Mar. 29, 2018) (RWA Application for Review or RWA AFR).

²⁹ Verizon Opposition to RWA Application for Review, WC Docket 10-90, WT Docket No. 10-208 (Apr. 27, 2018) (Verizon Opposition).

³⁰ Letter from Caressa D. Bennet, General Counsel, RWA, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 30, 2018) (RWA Apr. 30, 2018 *Ex Parte* Letter).

³¹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration, DA 18-427 (WCB/WTB Apr. 30, 2018) (*MF-II Challenge Process Procedures Order on Reconsideration or Order on Reconsideration*).

³² United States Cellular Corporation Reply to Verizon Opposition to RWA Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (May 7, 2018) (U.S. Cellular Reply to Verizon Opposition); Competitive Carriers Association Reply to Verizon Opposition to RWA Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (May 7, 2018) (CCA Reply to Verizon Opposition); AT&T Reply to Verizon Opposition to RWA Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (May 7, 2018) (AT&T Reply to Verizon Opposition).

³³ AT&T Reply to Verizon Opposition at 3-4.

³⁴ CCA Reply to Verizon Opposition at 1; U.S. Cellular Reply to Verizon Opposition at 1.

³⁵ Application for Review of Verizon Communications, Inc., WC Docket No. 10-90, WT Docket No. 10-208 (filed June 21, 2018) (Verizon Application for Review or Verizon AFR). On June 22, 2018, Verizon filed a version of its AFR that included minor corrections. Application for Review of Verizon Communications, Inc., WC Docket No. 10-90, WT Docket No. 10-208 (filed June 22, 2018).

³⁶ Rural Wireless Association Opposition to Verizon Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (July 13, 2018) (RWA Opposition); NTCA Opposition to Verizon Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (July 13, 2018) (NTCA Opposition); Smith Bagley, Inc. Opposition to Verizon Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (July 13, 2018) (SBI Opposition); Letter from Caressa D. Bennet, Counsel for Panhandle Telecommunication Systems, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket 10-208 (filed July 13, 2018) (Panhandle July 13, 2018 *Ex Parte* Letter).

buffer radius,³⁷ and Verizon filed a reply to the oppositions restating its support for a 250-meter buffer radius.³⁸

B. RWA's Application for Review

16. RWA's application for review seeks review of the Bureaus' procedures adopted in the *MF-II Challenge Process Procedures Public Notice* establishing a one kilometer grid cell size and a one-quarter kilometer "buffer" for assessing challenges to areas deemed ineligible for MF-II support.³⁹ RWA advocates instead for a one square mile grid size and a one-quarter mile buffer.⁴⁰ It argues that roads in certain areas of rural America have been laid out on square mile grids rather than square kilometer grids, which according to RWA means that using a square kilometer grid would yield more grid cells that cannot be fully tested by drive testing.⁴¹ RWA argues further that a 250-meter buffer for each test point would require needlessly dense testing points which would increase the cost and technical difficulty of submitting challenges.⁴²

17. RWA's subsequent *ex parte* on April 30, 2018, included additional information. In Alabama and the Oklahoma Panhandle, RWA found that increasing the buffer to 400 meters, while maintaining the one square kilometer grid cell size, would result in a significant reduction of the percentage of cells for which a challenger could not fully test by drive testing.⁴³ Indeed, RWA found that changing the buffer size would provide better results in Alabama than if both the buffer and grid cell size were increased. In the area in Alabama that RWA studied, the number of grid cells requiring some off-road testing dropped by 26 percentage points when increasing the buffer to 400 meters, versus a decrease of 16 percentage points when increasing buffer size to 400 meters *and* increasing the grid cell size to one square mile.⁴⁴

18. In the Oklahoma Panhandle, RWA found that the results were largely the same if the buffer size was increased, regardless of whether the grid cell size was also increased. In both cases, RWA found that the grid cells requiring some off-road testing would decrease by nearly 40 percentage points, from 82.3 percent to either 44.7 percent (buffer size alone) or 43.6 percent (buffer and grid cell size).⁴⁵ Summarizing its analysis, RWA stated that it "recognizes the Bureaus' desire to utilize a square kilometer grid cell scheme, and believes that the use of a one square kilometer grid cell and accompanying longer

³⁷ Competitive Carriers Association Reply to Oppositions to Verizon Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (July 23, 2018) (CCA Reply to Oppositions).

³⁸ Verizon Reply to Oppositions to Verizon Application for Review, WC Docket No. 10-90, WT Docket No. 10-208 (July 23, 2018) (Verizon Reply to Oppositions).

³⁹ RWA AFR at 1.

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 2-6 ("In the majority of rural America, roads are laid out directly on the borders of a one *mile* by one *mile* square grid. By utilizing a one square kilometer grid for the determination of challenge areas, the Bureaus have created a situation where thousands of kilometer grid squares lack the necessary roads to access and test the claimed unsubsidized 4G LTE coverage using drive tests.").

⁴² *Id.* at 7-8.

⁴³ RWA Apr. 30, 2018 *Ex Parte* Letter, Attachment A at 2-5, Attachment B at 2-5.

⁴⁴ *Id.* at 4, Attachment B at 2-5 (presenting analysis that the percentage of grid cells in Alabama for which drive testing alone could not cover 75 percent of the cell would be: 86 percent when using a one square kilometer grid cell and one-quarter kilometer buffer; 69.6 percent when using a one square mile grid cell and one-quarter mile buffer; and 60.2 percent when using a one square kilometer grid cell and 400-meter buffer).

⁴⁵ *Id.* at 3, 4, Attachment A at 2-5.

buffer radius will give prospective challengers the ability to more meaningfully participate in the MF-II challenge process.”⁴⁶

19. U.S. Cellular supports RWA’s AFR.⁴⁷ The company estimated that the one-kilometer grid cell size in conjunction with the original 250-meter buffer radius size would make mounting a challenge by drive-testing alone impossible for as much as 78 percent of the areas involved.⁴⁸

20. *Buffer size.* After considering the data RWA filed in its March 21, 2018 *ex parte* submission, the Bureaus decided to expand the buffer surrounding each test point from 250 meters to 400 meters (approximately equivalent to one-quarter mile), explaining that the new data persuaded them that the previous buffer size and resulting number of test points required may be unduly burdensome to some challengers.⁴⁹ The new evidence illustrated both the considerable increase in area that could be covered by drive-testing and the decrease in the number of speed test measurements typically needed per grid cell resulting from using a buffer radius of one-quarter of one mile rather than a radius of one-quarter of one kilometer.⁵⁰ These modified parameters decreased the burden on challengers by reducing the number of speed test measurements needed to file a successful challenge.⁵¹ Accordingly, because the Bureaus have already effectively granted RWA’s request regarding buffer size, we dismiss RWA’s application for review on these grounds as moot.⁵²

21. *Grid cell size.* In contrast, RWA has not shown that changing the grid cell size is warranted. We find that the expansion of the speed test point buffer to 400 meters (as supported by numerous commenters) while retaining the square kilometer grid cell size properly balances the

⁴⁶ *Id.* at 5.

⁴⁷ U.S. Cellular Reply to Verizon Opposition at 1. CCA’s arguments in favor of RWA’s AFR are based upon estimates in the submissions from RWA and U.S. Cellular, CCA Reply to Verizon Opposition at 2-5, and thus we do not need to repeat our responses to these estimates.

⁴⁸ U.S. Cellular Reply to Verizon Opposition at 2 (“Based upon a review of 16 of its key states, U.S. Cellular observes that using a one kilometer grid size along with a 250-meter buffer zone will make it impossible for any challenger to submit data to the Commission within the challenge window for 78% of the areas involved because they lack sufficient roads to achieve the Commission’s 75% area requirement”).

⁴⁹ *MF-II Challenge Process Procedures Order on Reconsideration* at 2-3. The new evidence that RWA submitted into the record is based, in part, on the initial eligible areas map which was made available to the public the same day the *MF-II Challenge Process Procedures Public Notice* was released. *See Mobility Fund Phase II Initial Eligible Areas Map Available; Challenge Window Will Open March 29, 2018*, Public Notice, 33 FCC Rcd 2041 (WCB/WTB Feb. 27, 2018); *see also* RWA Mar. 21, 2018 *Ex Parte* Letter, Attachments A-D.

⁵⁰ *See* RWA Mar. 21, 2018 *Ex Parte* Letter, Attachments A-D.

⁵¹ As explained in the *MF-II Challenge Process Procedures Public Notice*, we will determine whether a challenger’s speed test points substantially cover a challenged area (i.e., cover at least 75 percent of the challenged area) by buffering each speed test point that reports a downstream speed less than 5 Mbps, calculating the buffered area, and then comparing the area of the buffered points to the challengeable area within a one kilometer by one kilometer grid cell. *MF-II Challenge Process Procedures Public Notice* 33 FCC Rcd at 1995, para. 20; *see also MF-II Challenge Process Order*, 32 FCC Rcd at 6310, para. 55. By increasing the size of the buffer radius, the buffered area around each speed test measurement will cover a larger area of the grid cell. As a result, by increasing the buffer radius to 400 meters, a challenger will be able to meet the 75 percent threshold with fewer speed test measurements.

⁵² A buffer radius of one-quarter mile is equal to 402.34 meters, or 400 meters when rounded to the nearest multiple of ten. Because we consider one-quarter mile and 400 meters to be approximately equivalent, the Bureaus’ decision to adopt a maximum distance of 800 meters, resulting in a buffer radius of 400 meters, effectively granted the request for a one-quarter mile buffer radius in RWA’s AFR. RWA indicated support for an even larger 500-meter buffer radius in a later *ex parte* filing. RWA Apr. 30, 2018 *Ex Parte* Letter at 5. However, in RWA’s subsequent Opposition to Verizon’s AFR, RWA supported retaining the 400-meter buffer radius, noting that “while a 500 meter buffer would have been more RWA’s preference, the 400 meter buffer strikes the right balance between a 250 meter and 500 meter buffer.” RWA Opposition at 5.

measurements needed for meaningful testing with the burdens placed on challengers and challenged parties.⁵³ This decision also furthers the Commission's goals of moving expeditiously to conduct the MF-II auction and of administrative efficiency.⁵⁴ The Commission and the Bureaus have carefully considered the burdens on entities that choose to submit challenges and entities that choose to respond to challenges, the goals of administrative efficiency, and the record evidence.⁵⁵

22. As Verizon and AT&T noted, to implement RWA's proposed resizing of the grid, "the Commission would have to reprocess the carrier coverage maps using a one square mile grid, generate a new map of presumptively eligible areas, and finally direct USAC to modify its challenge process software to accept challenges based on one square mile grid cells."⁵⁶ AT&T argues that RWA's proposed reconfiguration of the grid cells "would be too disruptive" and would "significantly delay the start" of the MF-II auction.⁵⁷ Similarly, Verizon argues that "[s]topping the current challenge process and then starting over with a one square mile grid would extend the challenge process—and delay the start of the Mobility Fund auction—by many months."⁵⁸

23. Moreover, as AT&T notes, the benefit sought by RWA—an increase in the percentage of the area that can be drive tested—"can effectively be addressed by modifying the buffer radius, as the Bureaus recently did, on their own motion."⁵⁹ As RWA admits in its various submissions, the buffer size is the key parameter affecting the percentage of cells that can be drive tested and the change made to the

⁵³ The challenge process was initiated with a mandatory collection of LTE coverage data but is otherwise optional – no party is obligated to submit a challenge, and no party is obligated to respond to a challenge.

⁵⁴ In its reply to Verizon's opposition to RWA's AFR, CCA argues that "[t]o comply with the new challenge requirements, parties must be granted an additional 90 days to complete the challenge process." CCA Reply to Verizon Opposition at 5 n.20. CCA neither cites to nor makes any argument for an extension under section 1.46 of the Commission's rules, and thus we dismiss this cursory request for additional time as improper. *Id.* In any event, we have extended the challenge window for 90 days, thus rendering this request moot.

⁵⁵ RWA argues that the *MF-II Challenge Process Procedures Public Notice* violated section 553 of the Administrative Procedure Act ("APA") by ignoring record evidence regarding the grid cell size and the buffer radius. RWA AFR at 9-10. We disagree. RWA's comments to the *MF-II Challenge Process Comment Public Notice* argued for changing the eligibility of grid cells based upon the cell's accessibility by road, asking in effect for the Bureaus to override the Commission's decision not to make special accommodations for less accessible areas. Rural Wireless Association, Inc. Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 3-4 (Nov. 8, 2017). In its reply comments, RWA argued in the alternative for a larger grid cell and buffer without providing specific estimates of the burdens on parties. Rural Wireless Association, Inc. Reply Comments, WC Docket No. 10-90, WT Docket No. 10-208 at 5-7 (Nov. 29, 2017). These claims were fully considered and analyzed by the Bureaus. *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1996-98, paras. 22-26 (citing to and engaging RWA's arguments regarding buffer size and grid cell size). Based upon the record before it at the time, the Bureaus balanced the interests of the parties with the goals of the Commission in this proceeding and made reasonable decisions regarding the buffer size and the grid cell size. When RWA subsequently filed specific estimates and made arguments about the buffer size that were supported with detailed evidence, the Bureaus acted on their own motion to reconsider the evidence and increase the buffer size. See generally *MF-II Challenge Process Procedures Order on Reconsideration*. As was demonstrated in the *Order on Reconsideration*, and in this *Memorandum Opinion and Order*, the evidence that RWA has submitted in this proceeding has been fully considered by the Commission, has informed the Commission's decision making, and RWA has been afforded more than ample opportunity to participate in this rulemaking in accordance with the requirements of 5 U.S.C. § 553. CCA repeats RWA's claim of a violation of the APA, CCA Reply to Verizon Opposition at 5 n.20, and our response to this repeated claim is the same.

⁵⁶ Verizon Opposition at 4.

⁵⁷ AT&T Reply to Verizon Opposition at 3-4.

⁵⁸ Verizon Opposition at 4.

⁵⁹ AT&T Reply to Verizon Opposition at 4.

buffer size, by itself, would provide similar results—in terms of the increase in the percentage of cells that could be challenged by drive testing—to changing both the buffer size and the grid cell size.⁶⁰

24. RWA, CCA, and U.S. Cellular argue that the one square kilometer grid cell size prevents challenges in less accessible areas. We disagree. Nothing in the challenge process framework prevents challenges in less accessible areas or in areas that require some off-road testing.⁶¹ As shown in RWA’s own submissions, the buffer radius is the key parameter affecting the percentage of area that can be fully tested by drive testing, and increasing the grid cell size in some areas *increases* the percentage of cells that require off road testing in certain areas. Indeed, U.S. Cellular concedes that the Bureau’s increase of the buffer radius to 400 meters undermines its argument that it cannot use drive testing for much of the MF-II challenge process.⁶²

25. The Commission appropriately balanced the competing interests of challengers and challenged parties in this proceeding with the need to efficiently administer the challenge process. Roads do not match perfectly with any uniform grid, regardless of the size of the grid cell.⁶³ The Commission decided to conduct an auction based upon land area, not road miles, because of the need to focus our limited universal service funds on the unserved areas where people live, work, and travel.⁶⁴ No commenter sought reconsideration of that decision. Similarly, the Commission decided to not make special accommodations for less accessible areas, and no commenter sought reconsideration of that decision.⁶⁵ Any ineligible area may be challenged, and it is incumbent upon challengers and challenged parties to collect the required speed test points to substantiate or rebut a challenge.⁶⁶ Indeed, as of July

⁶⁰ See discussion *supra* paras. 17-18 (describing RWA Apr. 30, 2018 *Ex Parte* Letter). RWA’s contention that the Bureaus did not adequately support their rationale to use a grid with one square kilometer cells is also without merit. RWA AFR at 5-6. In the *MF-II Challenge Process Procedures Public Notice*, the Bureaus adopted the use of kilometers instead of miles for all geospatial analysis in order “to be consistent with the *de minimis* challenge size adopted by the Commission, as well as to be consistent with the units used for the ‘equal area’ map projection” used to generate the uniform grid. *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1995-96, para. 21. RWA argues that the Bureaus used “circular reasoning” to justify their use of kilometers because the Bureaus “chose kilometers as the unit for the equal area map projection.” RWA AFR at 5-6. While it is true that the Bureaus chose the particular equal area projection to use when generating the uniform grid, their choice was consistent with equal area projections used by the U.S. Census Bureau and U.S. Geological Service for mapping the United States, and the industry-standard spatial reference systems implementing such projections use metric units. See, e.g., NAD83 / Conus Albers – EPSG:5070, available at <https://epsg.io/5070>; North America Albers Equal Area Conic – EPSG:102008, available at <https://epsg.io/102008>.

⁶¹ RWA argues that road-testing is both more economical and more accurate than other forms of testing. RWA AFR at 4 (asserting that “tests conducted from the air can overstate the availability of 4G LTE service on the ground . . .”). RWA cites no record evidence as to technical superiority, and we decline to express any preference for speed test techniques here. To the extent RWA and other challenge process participants find drive testing economically preferable, the expanded buffer radius addresses those concerns for the reasons already stated.

⁶² U.S. Cellular initially estimated that the one-kilometer grid cell size in conjunction with the original 250-meter buffer radius size would make mounting a challenge by drive testing alone “impossible” for as much as 78 percent of the areas involved. U.S. Cellular Reply to Verizon Opposition at 2. U.S. Cellular indicated that it would provide the Commission with additional data in light of the 400-meter buffer radius but has not done so. See *id.* The analysis U.S. Cellular submitted in its reply was based upon the prior, smaller buffer size and has been superseded.

⁶³ No commenter objected to the Bureaus’ proposal to use a uniform grid to administer the challenge process.

⁶⁴ *MF-II Report & Order*, 32 FCC Rcd at 2160-72, paras. 40-46.

⁶⁵ *MF-II Challenge Process Order*, 32 FCC Rcd at 6309-11, paras. 51, 56 (“We decline to provide any special accommodations for a challenger to indicate that it was unable to access any part of the challenged area.”).

⁶⁶ *MF-II Challenge Process Order*, 32 FCC Rcd at 6311, para. 56 (“We note that while the system will not provide any special accommodations, challengers may still include areas with inaccessible land in their challenges so long as

31, 2018, challengers had already uploaded over 1.6 million speed tests, with a significant number of those tests taken in primarily rural areas.⁶⁷ Accordingly, we deny RWA's application for review on the grid cell size.

26. *Extension of Time.* RWA submitted an extension request along with its application for review, requesting that the challenge window be open for 150 days after its application for review was addressed.⁶⁸ We have granted a 90-day extension of the challenge window, which will extend the challenge window through November 26, 2018. This extension will mean that the challenge window now provides 200 days after the *Order on Reconsideration* for submitting challenges under parameters that largely address RWA's concerns regarding the percentage of areas that could be fully tested by drive testing. We thus have already effectively granted RWA's extension request insofar as it sought at least 150 days for the challenge window after the modifications to the challenge process that it sought were implemented.

27. RWA has not demonstrated that a further extension of the window for filing challenges to areas deemed ineligible for MF-II support is in the public interest. As noted above, the window has been extended to now provide a window of 200 days with parameters that largely address RWA's concerns, thus providing 50 more days than RWA requested. Although parties may disagree with the specific rules promulgated to achieve the purposes of MF-II, the mere filing of an application for review does not alter the effective date of those rules; a party is not entitled to an extension of the challenge window on the hope that the Commission will act favorably on its application for review. Moreover, as discussed above, the Bureaus have already acted to make it easier to conduct speed tests. Thus, all affected parties must comply with the rules and the requirements of the challenge process, should they choose to participate in it, absent Commission grant of a stay (which RWA did not request).⁶⁹ RWA has not cited any unanticipated circumstances that might explain its members' need for an extension nor provided a reasonable justification for granting it.⁷⁰

28. Moreover, granting a further extension as requested by RWA would work at cross-purposes with the goals of the MF-II proceeding. In the *MF-II Report and Order*, the Commission stated that the purpose of MF-II is "to allocate up to \$4.53 billion . . . to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist."⁷¹ The Commission also indicated that MF-II would redirect legacy subsidies away from areas that are fully covered by unsubsidized 4G LTE service.⁷² Further extension of the challenge window undermines the purpose of the MF-II proceeding by delaying the conclusion of the challenge process, the release of the final eligible areas map, the commencement of the MF-II auction, and the refocusing of our limited universal service funds to the primarily rural areas of the country that need the funds the most. Under these circumstances, and for the reasons set forth above, we find that the now extended window will provide eligible parties with sufficient time to prepare and

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the submitted speed measurements otherwise meet the validation threshold showing that 75 percent of the area has insufficient coverage.").

⁶⁷ *Mobility Fund Phase II Challenge Process Portal Update: July 2018*, DA 18-802 (WTB Aug. 1, 2018).

⁶⁸ Request for Extension of Challenge Window of the Rural Wireless Association, WC Docket No. 10-90, WT Docket No. 10-208 (filed Mar. 29, 2018).

⁶⁹ See 47 CFR § 1.102(b)(1).

⁷⁰ See *Family Vision Ministries, Inc.; Licensee of Noncommercial Educational Station KAYH(FM) Fayetteville, Arkansas*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1418, para. 1 n.2 (2003); *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, Order, 10 FCC Rcd 12174, 12174, para. 5 (1995).

⁷¹ *MF-II Report & Order*, 32 FCC Rcd at 2154, para. 2; see *id.* at 2156-57, para. 14.

⁷² *Id.* at 2154, 2157, 2160, paras. 2, 15, 23.

submit any challenges they intend to file and that RWA has failed to demonstrate that a further extension of the challenge window would serve the public interest.

29. Accordingly, RWA's extension request is granted in part, as explained above, and is otherwise denied.

C. Verizon's Application for Review

30. Verizon's application for review requests that the Commission vacate the Bureaus' decision to increase the maximum speed test distance parameter from 500 meters to 800 meters and the associated speed test buffer radius from 250 meters to 400 meters.⁷³ The thrust of Verizon's application for review is that the Bureaus have shifted the balance of the MF-II challenge process too far in favor of challengers.⁷⁴ The outcome, Verizon argues, will be to "allow challengers to successfully challenge a one square kilometer area with as few as two speed test points" and will "result in widespread false positives, i.e., presumptively successful challenges of large areas that are in fact well-served by 4G LTE, particularly if providers cherry-pick test points with an aim of minimizing actual coverage."⁷⁵ Several carriers and trade associations filed oppositions to Verizon's arguments;⁷⁶ no filers supported the Verizon AFR. We reject Verizon's arguments, agree with the unanimous opposition to Verizon's AFR, and affirm the decision of the Bureaus to expand the maximum distance between speed tests to 800 meters and the buffer radius of speed tests to 400 meters.

31. Verizon argues that the increased speed test buffer radius allows challengers to "cherry-pick" speed test data to challenge the unsubsidized providers' coverage maps.⁷⁷ We disagree. The Bureaus did not modify the other numerous and rigorous challenge process requirements in the *MF-II Challenge Process Procedures Public Notice*. Challengers must submit not only speed test data demonstrating throughput below 5 Mbps, but also data collected demonstrating speeds equal to or greater than 5 Mbps.⁷⁸ Thus, in grid cells well served by existing 4G LTE, the data submitted to the challenge portal are likely to reflect speed test results favoring incumbents. Moreover, contrary to Verizon's argument, providing only two speed tests in a grid cell with high quality 4G LTE service will likely not be sufficient to successfully challenge the grid cell. Rather, the combined buffer areas of sub-5 Mbps speed tests in or adjacent to challengeable grid cells must cover 75 percent of the challengeable areas of all carriers in the grid cell.⁷⁹ Further, even where combined testing points do cover 75 percent of the challengeable areas in a grid cell, the resulting presumptive challenge simply shifts the burden of production (though not the burden of persuasion) to the challenged carrier to produce evidence rebutting the presumption.⁸⁰ A presumptive challenge does not automatically result in any change to eligibility;

⁷³ See generally Verizon AFR.

⁷⁴ *Id.* at 1.

⁷⁵ *Id.*

⁷⁶ See RWA Opposition; NTCA Opposition; SBI Opposition; Panhandle July 13, 2018 *Ex Parte* Letter; CCA Reply to Oppositions.

⁷⁷ Verizon AFR at 6 (arguing that "a square [kilometer] area . . . will be treated as unserved as long as the challenger can find—and perhaps cherry-pick—just two sub-5 Mbps test points somewhere in or near that square").

⁷⁸ See *MF-II Challenge Process Procedures Public Notice*, 33 FCC Rcd at 1998, para. 27 ("[W]e adopt our proposal to require a challenger to submit all speed test measurements collected during the relevant time frame, including those that show speeds greater than or equal to 5 Mbps." (internal footnotes omitted)).

⁷⁹ *Id.* at 2002-03, para. 38.

⁸⁰ *Id.* at 2013-14, para. 66.

final adjudications of eligibility will occur after challenged parties have an opportunity to respond to challenges.⁸¹

32. Verizon also argues that increasing the speed test buffer radius to 400 meters will increase the number of presumptively successful challenges in areas already served by 4G LTE—which Verizon terms “false positives”—which will degrade the accuracy of the MF-II eligibility map.⁸² We disagree. The risk of so-called “false positives” from a 400-meter buffer is adequately addressed by the challenge process framework that the Commission adopted. While increasing the buffer radius to 400 meters can make challenges more feasible in areas where roads are less dense, it does not lead to the conclusion that more challenges will cause the accuracy of the final auction eligibility map to suffer. Verizon’s argument appears to conflate a presumptive challenge with the final disposition of a challenge. Challenged carriers will have an opportunity to provide evidence refuting a challenge in any challenged grid cell. And because speed test points submitted by challenged parties are buffered by the same distance as points submitted by challengers,⁸³ increasing the buffer radius increases the ability of challenged carriers to respond to challenges.⁸⁴

33. The Bureaus’ increase in the number of grid cells that may be fully tested by drive testing does not alter the network performance that is being tested, nor will it necessarily result in an increase in the number of valid challenges. Indeed, as several entities have noted, more opportunities for challengers to participate in the challenge process should improve the accuracy of the final eligibility map, insofar as it subjects more grid cells to confirmation testing.⁸⁵ We likewise agree with NTCA and SBI that the potential risks associated with increasing the buffer size for the challenge process to 400 meters—i.e., increased availability of challenges—are outweighed by the benefits of ensuring, through a process that does not unduly deter challenges, that all areas that lack unsubsidized 4G LTE mobile service are designated eligible for the auction and have an opportunity to compete for MF-II support.⁸⁶

34. We also reject Verizon’s argument that the Bureaus exceeded their authority by increasing the maximum speed test distance parameter and buffer radius. In the *MF-II Challenge Process Order*, the Commission directed the Bureaus to establish the challenge process speed testing parameters.⁸⁷ Specifically, the Commission directed Bureaus to establish a maximum distance between tests of up to one mile and to set a corresponding buffer around tests to balance the benefits to the MF-II process, the burdens on small carriers, and an administratively efficient adjudication of challenges regarding network

⁸¹ *Id.*

⁸² See Verizon AFR at 6-7.

⁸³ See *MF-II Challenge Process Order*, 32 FCC Rcd at 6312, para. 60.

⁸⁴ See AT&T Opposition at 5 (arguing that respondents’ “opportunity to refute challengers’ data should help mitigate Verizon’s data accuracy concerns”).

⁸⁵ RWA Opposition at 7 (arguing that a 250-meter buffer radius will result in more areas where challenges are not feasible); SBI Opposition at 6 (“If scores of potential challengers are dealt out of the process, the Commission, in many cases, will be left with no way to determine the extent to which unsubsidized mobile wireless coverage has been overstated.”); NTCA Opposition at 3 (arguing that “an extended buffer radius will yield better data that more accurately reflects the consumer experience by helping to validate more effectively nationwide providers’ sweeping claims of served territory.”).

⁸⁶ NTCA Opposition at 3-4 (“The Bureaus’ decision to establish a 400-meter buffer radius is the result of a careful weighing of burdens to all interested parties against the public benefit of a robust challenge process.”); SBI Opposition at 4 (“The Bureaus, seeking to maximize data accuracy while minimizing burdens on challengers’ data collection efforts, reasonably balanced these objectives.”).

⁸⁷ *MF-II Challenge Process Order*, 32 FCC Rcd at 6309-10, para. 52.

deployment.⁸⁸ The Bureaus could consider any maximum speed test distance parameter and buffer within the established one mile range, including the 800-meter distance parameter (approximately one-half of one mile) and corresponding 400-meter buffer radius selected.⁸⁹ Thus, the Bureaus were well within their authority to consider newly available record evidence that supported their reconsideration of the maximum speed test distance and buffer radius. In any event, this argument is moot since we have reviewed and upheld the Bureaus' decision for the reasons stated above.

35. Although Verizon argues that customer experience is likely to vary over those distances due to signal attenuation, and terrain and clutter variations,⁹⁰ we note that the *MF-II Challenge Process Order* did not call for speed tests that mirror every customer experience within a speed tested area, but rather a reasonable balance of administrative and private burdens and costs in a tested area.⁹¹ The 800-meter distance parameter and 400-meter buffer radius reflect such a balance. The parameters selected by the Bureaus also have received widespread support from other parties participating in this proceeding. All four of the parties opposing Verizon's AFR,⁹² as well as a reply to the oppositions,⁹³ supported expanding the buffer radius and maximum speed test distance. Similarly, in filings submitted in response to RWA's AFR, AT&T, CCA, and U.S. Cellular all supported expanding the buffer radius.⁹⁴ We further note that, while Verizon objects to the Bureaus' reliance on RWA's evidence, it did not cite any other record evidence, new or otherwise, that undermines the Bureaus' decision.

36. For all these reasons, we deny Verizon's application for review.

V. PROCEDURAL MATTERS

37. *Paperwork Reduction Act Analysis.* This Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order does not contain any new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA).⁹⁵ In addition, therefore, it does not contain any new, modified, or proposed information collection burden for business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.⁹⁶

38. *Congressional Review Act.* The Commission will not send a copy of this Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act because the extension of the challenge filing deadline in the Order is a rule of agency organization, procedure, or practice that does not "substantially affect the rights or obligations of non-agency parties."⁹⁷

⁸⁸ *Id.* at 6309, para. 51 (concluding that the Bureaus, within the maximum distance allowed, "will strike the correct balance between the benefits of increased accuracy, and the harms of burdens on small carriers and to the efficient administration of challenges").

⁸⁹ See NTCA Opposition at 3 ("The 400-meter buffer radius is thus consistent with, and fully within the scope of, the clear and settled limitations upon delegation defined in the Challenge Process Order."); RWA Opposition at 4 (arguing that "a 400 meter buffer radius is consistent with the *MFII Challenge Process Order*").

⁹⁰ Verizon AFR at 6.

⁹¹ *MF-II Challenge Process Order*, 32 FCC Rcd at 6309, para. 51.

⁹² RWA Opposition at 1; NTCA Opposition at 1; SBI Opposition at 4; Panhandle July 13, 2018 *Ex Parte* Letter at 3.

⁹³ CCA Reply to Oppositions at 1.

⁹⁴ AT&T Reply to Verizon Opposition at 1; CCA Reply to Verizon Opposition at 1; U.S. Cellular Reply to Verizon Opposition at 1.

⁹⁵ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-20).

⁹⁶ Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified at 44 U.S.C. § 3506(c)(4)).

⁹⁷ See 5 U.S.C. § 801(a)(1)(A).

39. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁹⁸ requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁹⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁰² the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ ICC Transformation FNPRM*, the *2014 CAF FNPRM*, and the *MF-II FNPRM* (collectively, *MF-II FNPRMs*).¹⁰³ The Commission sought written public comment on the proposals in *MF-II FNPRMs* including comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *CAF Report & Order and Further Notice*, the *MF-II Report & Order*, the *MF-II Challenge Process Order*, and the *MF-II Second Order on Reconsideration* (collectively, the *MF-II Orders*).¹⁰⁴

41. The new requirements proposed in this Notice of Proposed Rulemaking provide additional time for both challengers and challenged parties during which collected speed test data would be considered valid. In so doing, our proposal would align the challenge process data requirements with the procedural rule change, adopted in the Order, extending the challenge window deadline by 90 days. Due to the minor effect of these changes, we anticipate that there will be no significant economic impact on any of the small entities identified in the *MF-II FNPRMs* and *MF-II Orders*. Therefore, we certify that the requirements of the Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities.

⁹⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁹⁹ 5 U.S.C. § 605(b).

¹⁰⁰ 5 U.S.C. § 601(6).

¹⁰¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁰² 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁰³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18364-95, Appx. P, Initial Regulatory Flexibility Analysis (2011) (*USF/ICC Transformation FNPRM*); *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7216-44, Appx. D, Initial Regulatory Flexibility Analysis (2014) (*2014 CAF Order* or *2014 CAF FNPRM*); *MF-II FNPRM*, 32 FCC Rcd at 2269-73, Appx. C, Initial Regulatory Flexibility Analysis.

¹⁰⁴ *2014 CAF Order*, 29 FCC Rcd at 7190-215, Appx. C, Final Regulatory Flexibility Analysis; *MF-II Report & Order*, 32 FCC Rcd at 2258-68, Appx. B, Final Regulatory Flexibility Analysis; *MF-II Challenge Process Order*, 32 FCC Rcd at 6317-25, Appx. A, Final Regulatory Flexibility Analysis; *Connect America Fund*; *Universal Service Reform – Mobility Fund*, Second Order on Reconsideration, 33 FCC Rcd 2540, 2563-65, App. B, Supplemental Final Regulatory Flexibility Analysis (2018) (*MF-II Second Order on Reconsideration*).

42. *Ex Parte Presentations.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

43. *Deadlines and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the date indicated on the first page of this document. Under the Commission’s current procedures for the submission of filings and other documents, submissions in this matter may be filed electronically through the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. We strongly encourage interested parties to file comments electronically.

44. Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/ecfs>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers, WC Docket No. 10-90 and WT Docket No. 10-208. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: “get form.” A sample form and directions will be sent in response.

45. Parties who choose to file by paper must file an original and three copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at the FCC Headquarters building located at 445 12th Street, SW, Room TW-A325, Washington, DC, 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD, 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC, 20554.

46. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday, or 8:00 a.m. to 11:30 a.m. ET on Fridays, in the

¹⁰⁵ 47 CFR §§ 1.1200 *et seq.*

FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/ecfs>.

47. *People with Disabilities*: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

48. For further information concerning this proceeding, contact Audra Hale-Maddox, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at (202) 418-0660.

VI. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i) and (j), 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. §§ 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1, 1.115, 1.412, and 1.427 of the Commission's rules, 47 CFR §§ 1.1, 1.115, 1.412, 1.427, this Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order IS ADOPTED.

50. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 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. §§ 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1, 1.412, the deadline for challengers to submit information in connection with the MF-II challenge process IS EXTENDED, to the extent described herein.

51. IT IS FURTHER ORDERED that, pursuant to 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 section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, RWA's Request for Extension of Challenge Window IS GRANTED IN PART, and IS DENIED IN PART, to the extent described herein.

52. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 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. §§ 151, 154(i), (j), 254, 303(r), 332, 1302, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1, 1.412, that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Notice of Proposed Rulemaking.

53. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR § 1.115(g), the Application for Review filed by the Rural Wireless Association, Inc. on March 29, 2018, IS GRANTED IN PART, DISMISSED AS MOOT IN PART, and DENIED IN PART to the extent described herein.

54. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR § 1.115(g), the Application for Review filed by Verizon Communications, Inc. on June 22, 2018, IS DENIED.

55. IT IS FURTHER ORDERED that, pursuant to section 1.427(b) of the Commission's rules, 47 CFR § 1.427(b), this Order SHALL BE EFFECTIVE upon its publication in the Federal Register.¹⁰⁶

FEDERAL COMMUNICATIONS COMMISSION

¹⁰⁶ The action taken in the Order—the extension of the challenge deadline—is a “rule[] of agency organization, procedure, or practice” under 5 U.S.C. § 553(b)(A), and not a substantive rule that requires, under 5 U.S.C. § 553(d), a 30-day period following Federal Register publication before it can become effective.

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208

The Connect America Fund's Mobility Fund has had a checkered past for quite some time. Much of this was due to the lack of vision and attention paid by previous Commissions to implement needed reforms. That is why I was pleased when Chairman Pai took the necessary steps to substantially improve the program, particularly by targeting funds to only those areas without sufficient 4G wireless service and removing it from those with such service from multiple providers. At the outset of this effort, I pushed for a robust challenge process because of the lack of applicable and reliable data, which is used to populate our service maps. In order to get this right, I fully support extending the challenge process by three months, as contained in this item.

Make no mistake: our current 4G service maps are not perfect by any means and are rightfully criticized. This needs to improve significantly or Federal universal service fund monies will be wasted, thereby over-subsiding those that don't deserve it and penalizing those consumers in need. To do this, the Commission needs to work with all parties to find acceptable parameters for the challenge process. For many months, and continued in this item, we have tried to dictate a "solution" and release new maps that don't solve any of the controversies. For this reason, I thought it best that this document be made public prior to our vote so that stakeholders could have shared their views regarding the parameters of the speed test measurements, which are the subject of two applications for review denied in this item. While I will also support these portions of the item, I worry that today's action will neither be the end of the debate nor allow the Commission to quickly complete Mobility Fund Phase II.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208

In rural West Lafayette, Indiana, I heard a line that stayed with me: “If you look on any farmer’s desk, you’ll probably see old coffee mugs full of USB storage drives.” Our nation’s producers now have the technology to collect silos worth of data: drone-based images detailed enough to track even small changes to a single leaf, real-time information about soil moisture and chemistry, LiDAR-based maps that identify the micro-climates within each plot of land, and bales of information gathered by sensors on his connected combines and sprayers. But without a broadband connection—and, in particular, a wireless broadband connection for many of these applications—the data just gather dust in the bottom of a coffee mug rather than being uploaded to the Internet where it can be put to productive use and boost economic output.

Limited wireless broadband can also impact health outcomes. Take James, as an example. He served in the Navy for 24 years before suffering a spinal cord injury. As a service-disabled vet, he’s now under the active of the VA. James is enrolled in the VA’s home telehealth program, which lets him stay home and visit virtually with a range of VA specialists over a secure video connection, which he can set up on his tablet or smartphone. The virtual visits have eliminated many of his long, two-hour drives to the closest VA facility. But at first, James could not get an LTE signal at his house strong enough to run the VA apps or participate in virtual visits. So he installed a consumer signal booster in his home. For others, that step alone would not have been enough to get the wireless broadband signal needed for telehealth applications.

Like many Americans, I know the frustration of looking down at my smartphone and seeing “No Service” where it normally says “4G LTE.” Right now, this is primarily a problem in rural and remote parts of the country where the private sector business case for deployment is slim to none. It is more than a frustrating inconvenience: It limits access to economic opportunity, to a 21st century education, and to high-quality telehealth applications, to name just a few of the costs. That’s why the FCC voted early last year to award up to \$4.53 billion over the next decade to advance the deployment of 4G LTE in all parts of the country. In the intervening time period, we have heard from a broad range of stakeholders, including small and rural broadband providers, about commonsense steps that would improve the process for identifying areas eligible for funding through the Mobility Fund Phase II Auction.

So I am glad to support today’s FCC decision, which acts on a number of these good ideas. By extending the challenge process by 90 days, we give providers the additional time needed to identify areas of the country that are truly unserved. And by significantly lightening the compliance burden for participants, we will encourage more robust participation in the process and further revisions to the initial map.

As the challenge process runs, I will continue to monitor how our maps align with consumers’ real-world experiences.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208

Let's face it: the Federal Communications Commission's wireless maps are not what they should be. They have too many inaccuracies to be reliable. They overstate signal strength in rural America and understate where universal service support is needed to ensure that communities are not left behind. And if we're not careful, this agency will distribute as much as \$4.53 billion over the next decade based on this less than credible set of data.

Yikes.

The good news is that the agency has a process to fix these maps. The bad news is that it's complicated.

To challenge the data in our wireless maps, mobile providers, local, state, and Tribal government officials, and other interested parties that seek a waiver from the FCC will need to create an account at the Universal Service Administrative Company. They will need to download more than 50 pages of instructions. They will need to secure a variety of carrier-specific handsets and data plans. Next, they will have to test and record the speed, signal strength, and latency every .8 kilometers in the challenged area. At each geographic interval, they also will have to record the service provider's identity, the make and model of the device used (which must be from that provider's list of pre-approved handsets), and the international mobile equipment identity of the tested device. In addition, the challenger's records will need to include information about the hardware- or software-based methodology used for testing and the associated server. All tests need to take place between 6:00 a.m. and midnight. Furthermore, challengers will need to submit all this data with sufficient density to reflect actual consumer experience.

After their data is collected, it will need to be entered into the USAC portal, validated by the system, and laid on a grid. Then a qualified engineer or government official must certify under penalty of perjury that the challenged data is correct. At that point, the new data can still be opposed by the challenged party, kicking off an adjudication.

This process is cumbersome, to say the least. I believe it is worth providing those up to the challenge with additional time to undertake these tasks. This is why I support, in part, today's decision. But it's also worth asking what the FCC should do on its own to secure the accuracy of its maps. Placing so much of this burden on those who seek to challenge our existing data is both unwieldy and unfair.

This is not how good government should operate. Instead of sitting back and expecting the public to fix what we got wrong, we should be addressing concerns head-on.

To this end, here are three things the FCC can do right now. First, the FCC has already committed to having USAC test and validate winning bidders' network coverage and performance metrics after they've built out using their Mobility Fund support. Why not give USAC a role in validating data before the auction, even by sampling? This kind of review, like audits, can be an essential tool to ensure program effectiveness.

Second, the FCC should mobilize other resources at its disposal. That includes field offices in Atlanta; Boston; Chicago; Columbia, Maryland; Dallas; Denver; Honolulu; Los Angeles; Miami; New Orleans; New York; Portland, Oregon; and San Francisco. There's no reason why this agency should not use the spectrum expertise and tools it already has deployed.

Finally, let's use the wisdom of crowds to fix what is wrong. More than 200,000 volunteers have downloaded the FCC's Speed Test app to collect anonymized wireless broadband performance data. We need to find a way to put this information to use. Excluding crowdsourcing from our innovation toolkit means forgoing the opportunity for better maps.

In short, I believe we can—and should—do more to ensure every community in rural America has a fair shot at wireless service. That is why I am unable to offer my full support for this decision today. Accordingly, I approve in part, and dissent in part.