

**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

RURAL WIRELESS CARRIERS REPLY TO OPPOSITION

United States Cellular Corporation (“U.S. Cellular”), East Kentucky Network, LLC d/b/a Appalachian Wireless, Cellular Network Partnership d/b/a Pioneer Cellular, NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Nex-Tech Wireless LLC, and Smith Bagley, Inc. (collectively, the “Rural Wireless Carriers” or “RWC”), by counsel and pursuant to Section 1.429 of the FCC’s Rules,¹ hereby submit this Reply to the Opposition to Petitions for Reconsideration filed by Verizon in the above-captioned proceedings² against a Petition for Reconsideration and Clarification of the Mobility Fund Phase II (“MF-II”) Report and Order³ filed by the Rural Wireless Carriers.⁴

I. INTRODUCTION.

Arguments and requests for reconsideration raised by the Rural Wireless Carriers in their Petition have received strong support in comments filed by the Rural Wireless Association.⁵ RWA

¹ 47 C.F.R. § 1.429.

² Verizon, Opposition to Petitions for Reconsideration, WC Docket No. 90-10, *et al.* (filed May 16, 2017) (“Verizon Opposition”). The Verizon Opposition was filed against several petitions for reconsideration.

³ *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017) (“*MF-II Order*”).

⁴ Rural Wireless Carriers, Petition for Reconsideration and Clarification, WC Docket No. 90-10, *et al.* (filed Apr. 27, 2017) (“Petition”).

⁵ Rural Wireless Association (“RWA”), Comments in Support of Petitions for Reconsideration, WC Docket No. 90-10, *et al.* (filed May 16, 2017) (“RWA Comments”).

agrees with RWC that the Commission should use a 10 Mbps speed benchmark to determine the eligibility of geographic areas for MF-II support, and that the Commission has not provided any reasonable rationale for its selection of a 5 Mbps threshold.⁶ RWA also agrees with RWC that the Commission's MF-II budget is insufficient to deliver 10 Mbps/1 Mbps mobile broadband service throughout rural America, which is needed to achieve the goal of making services in rural areas reasonably comparable to those in urban areas, and that the Commission should begin a proceeding to consider universal service contribution reform as a means of augmenting the budget.⁷

Verizon is the only party opposing the Rural Wireless Carriers' Petition, raising specious arguments against a 10 Mbps speed threshold for determining eligibility for MF-II support, and incorrectly characterizing RWC's position regarding the use of a median or a minimum speed benchmark for determining eligibility.

II. THE COMMISSION SHOULD CAREFULLY WEIGH THE ADVANTAGES OF USING EITHER A MINIMUM OR A MEDIAN SPEED BENCHMARK FOR PURPOSES OF DETERMINING MOBILITY FUND PHASE II FUNDING ELIGIBILITY.

Verizon takes the position that the Rural Wireless Carriers, and other petitioners seeking reconsideration, "appear[] [to] want the Commission to treat their proposed 10/1 eligibility benchmark as a minimum threshold speed"⁸ Verizon is wrong in ascribing to RWC this desired treat-

⁶ *Id.* at 2-6.

⁷ *Id.* at 12-13. RWA also agrees with the Rural Wireless Carriers that the Commission should not continue to maintain letters of credit to secure MF-II performance, *id.* at 10-12, and that "MFII support should be front-loaded to better match initial capital outlays." *Id.* at 14.

⁸ Verizon Opposition at 3 & n.10 (emphasis in original) (citing RWC Petition at 8). Verizon does not cite positions taken by any other petitioners regarding this issue. Verizon also concedes that "[i]t is not clear from the petitions how the proponents of a 10/1 Mbps eligibility benchmark would apply that benchmark to determine eligible areas." *Id.* at 3.

ment of the 10 Mbps benchmark. The relevant part of RWC’s Petition focuses on broadband service currently provided by U.S. Cellular in rural Tennessee. The Petition includes a map showing green areas in which speeds of 10 Mbps/1 Mbps or better can be expected to be available, and red areas in which “users would expect to receive speeds below 10 Mbps/1 Mbps.”⁹ RWC concludes that, “[i]f the Commission retains the 5 Mbps benchmark for eligibility adopted in the *MF-II Order*, most or even all of the red areas will be denied support for a decade.”¹⁰

Thus, the Rural Wireless Carriers’ analysis focuses on differing outcomes that would result based upon the Commission’s selection of a 5 Mbps or a 10 Mbps speed benchmark. RWC never discusses the merits of using a median or a minimum 10 Mbps benchmark. RWC therefore is baffled by Verizon’s claim that the Petition is advocating adoption of a 10 Mbps *minimum* speed benchmark.

Critically, Verizon incorrectly asserts that RWC has advocated a median speed benchmark for the buildout requirement and a minimum speed benchmark for eligibility, which “makes little sense and conflicts with petitioners’ argument that the eligibility benchmark should be the same as the buildout requirement.”¹¹ To correctly state RWC’s position, whether it is expressed as a median or a minimum, the download speed for the benchmark should be the same for both area eligibility determinations and build-out requirements, and the speed should be 10 Mbps. As discussed in Section III, below, the central flaw in the Commission’s proposed approach is the mismatch of eligibility and buildout speeds (5 Mbps and 10 Mbps, respectively).

⁹ RWC Petition at 8.

¹⁰ *Id.*

¹¹ Verizon Opposition at 4. Verizon points out that the 10/1 Mbps buildout requirement is defined as a median speed. *Id.* at 3.

With respect to the application of a median or minimum speed benchmark, the Rural Wireless Carriers do not disagree with the Commission's decision to apply a median 10 Mbps benchmark as an MF-II buildout requirement; in fact, it is reasonable. A median benchmark is appropriate for determining whether an MF-II support recipient has met deployment requirements for its entire funded service area, especially since the Commission has combined use of the median benchmark with a requirement that at least 90 percent of the required download speed measurements taken by support recipients must meet a minimum threshold speed.¹²

On the other hand, Verizon is not correct that it “makes little sense” to use a minimum speed benchmark for purposes of determining whether geographic areas are eligible for MF-II support. A compelling case can be made that the Commission should declare that a geographic area will be eligible for MF-II support if consumers throughout the area do not have access to mobile broadband service meeting a 10 Mbps minimum speed threshold. Use of a minimum speed in this instance would increase the number of areas eligible for support and more aggressively fill in dead zones because, if any area is not covered by broadband service meeting the minimum speed benchmark, then the entire geographic area would be treated as eligible. The interests of consumers in these areas would best be served by adopting a 10 Mbps minimum speed benchmark that would enable MF-II auction participants to compete for funding to serve these areas, even though RWC acknowledges that making these areas eligible would not guarantee that any carrier would win support in the auction and ultimately bring service to these areas.

In addition, the Commission's overall universal service policies favor such an approach. The Commission has “reaffirm[ed] that [it] should target universal service funding to coverage

¹² *MF-II Order*, 32 FCC Rcd at 2189 (para. 87). The minimum threshold speed has not yet been determined.

gaps”¹³ Using a 10 Mbps minimum speed benchmark would be more effective than a median speed benchmark in making these coverage gaps eligible for MF-II support.

The Rural Wireless Carriers also acknowledge, however, that using a median speed benchmark would not be an unreasonable method for taking account of various factors and conditions, such as terrain, usage volume, and structural obstructions, that can affect both speed and signal strength measurements. Using a median benchmark can serve to “even out” these coverage vagaries, thus producing a picture of “typical” coverage in a given geographic area. In light of these considerations, RWC would not oppose the use of a median speed benchmark for purposes of determining eligibility for MF-II support. RWC encourages the Commission to give careful consideration to the question of whether a minimum speed benchmark or a median speed benchmark for determining eligibility for MF-II funding would better serve rural consumers and the Commission’s MF-II objectives, and especially its policy to target funding to coverage gaps.

Finally, the Rural Wireless Carriers underscore that the central issue here is not how the speed benchmark for determining area eligibility should be applied, but, rather, what the speed benchmark should be. RWC urges the Commission to heed the arguments and information presented by RWC and other petitioners, and to set the speed benchmark at 10 Mbps so that the benchmarks for both eligibility for funding and for buildout requirements in all eligible areas align.

III. VERIZON FAILS TO PRESENT A CREDIBLE CASE AGAINST THE USE OF A 10 Mbps SPEED BENCHMARK TO DETERMINE AREAS ELIGIBLE FOR MOBILITY FUND PHASE II SUPPORT.

Flying straight into compelling record evidence and convincing arguments supporting the use of a 10 Mbps speed threshold to determine eligibility for MF-II support, Verizon would have

¹³ *Id.* at 2156 (para. 14).

the Commission find that a much lower speed threshold would “ensure that rural LTE speeds are ‘reasonably comparable’ to urban LTE speeds”¹⁴

Blooston frames the issue effectively: “How can the Commission suggest that it meets its mandate to fund ‘reasonably comparable’ services in rural areas by requiring MF-II recipients to provide 10/1 service, while at the same time eliminating from eligibility any area that is served by *half that speed*?”¹⁵ Neither Verizon nor any other party, including the Commission, has credibly answered this question.

First, the Commission provides no probative support for the 5 Mbps threshold adopted in the *MF-II Order*,¹⁶ and instead bases the benchmark on unreliable data and faulty assumptions.¹⁷ The Commission argues that the 5 Mbps benchmark is appropriate because it is based on minimum advertised download speeds generally reported by nationwide carriers.¹⁸ This argument is a *non-sequitur*. It does not follow that, because carriers advertise minimum download speeds of 5 Mbps, rural Americans have speeds that are reasonably comparable to those in urban areas. Neither Verizon nor the Commission has adequately explained why it is acceptable to tell a household currently receiving 6 Mbps of service that it will get no further investment, but that households at 4

¹⁴ Verizon Opposition at 4.

¹⁵ Blooston Rural Carriers (“Blooston”), Petition for Reconsideration and/or Clarification, WC Docket No. 90-10, *et al.* (filed Apr. 27, 2017) (“Blooston Petition”), at 2 (emphasis in original).

¹⁶ See RWC Petition at 4-7; RWA Comments at 4 (footnote omitted) (noting that “[t]he *MFII R&O* included no discussion of whether or not a 5 Mbps download speed is ‘reasonably comparable’ to the service that is available in urban America. Nor does it include any analysis as to whether or not a 5 Mbps download speed would sufficiently enable the high-speed applications that are so vital in rural areas.”).

¹⁷ See, e.g., RWA Petition for Reconsideration and/or Clarification, WC Docket No. 90-10, *et al.* (filed Apr. 12, 2017) (“RWA Petition”), at 8 (footnote omitted) (arguing that the 5 Mbps threshold is “based on unreliable (and often inflated) coverage data”).

¹⁸ *MF-II Order*, 32 FCC Red at 2173 (para. 51).

Mbps of service will get a near-term improvement to 10 Mbps, ostensibly to meet the Congressional goal of delivering service quality that is reasonably comparable to that which is available in urban areas. Equally incongruous is the idea that areas totally bereft of service today should be permitted under MF-II to leapfrog areas having some marginal level of service, receiving MF-II support to provide access to vastly superior speeds. A better result is to set the eligibility speed benchmark at 10 Mbps, so that areas with no coverage today and those areas with substandard speeds are able to compete for MF-II support.

Moreover, as Blooston observes, “these are *minimum* speeds, not *average* or *median* speeds, and it is therefore likely that urban consumers enjoy *faster* service. By considering only the minimum speeds, the Commission has failed to consider relevant factors.”¹⁹ The Commission also claims that unsubsidized carriers already meet the 10 Mbps threshold, or will do so well before the end of the MF-II support term,²⁰ but, as RWA explains, the Commission “fails to provide support” for this claim.²¹

Second, contrary to Verizon’s view, there is convincing evidence in the record that urban consumers have access to mobile broadband services that exceed a 10 Mbps download speed. As U.S. Cellular Chairman LeRoy T. Carlson, Jr., has explained, “the overall speed that Americans experience from mobile broadband networks is 12.34 Mbps download. That figure implies that

¹⁹ Blooston Petition at 3 (emphasis in original).

²⁰ *MF-II Order*, 32 FCC Rcd at 2189 (para. 87 n.220).

²¹ RWA Petition at 4. RWA also indicates that the Commission should not rely on marketplace forces to achieve deployment of 10 Mbps/1 Mbps mobile broadband, especially in very rural and remote areas. *Id.* at 4-5.

consumers experience significantly faster speeds in urban areas.”²² The Commission itself has determined that a majority of urban consumers have access to mobile wireless broadband at 10 Mbps/1 Mbps speeds,²³ and that 87 percent of rural Americans lack access to LTE service with a minimum advertised speed of 10 Mbps/1 Mbps.²⁴

Third, the Commission has already decided that a 5 Mbps download speed “is simply not good enough to meet the needs of consumers[,]”²⁵ and also has concluded that 5 Mbps/1 Mbps service is insufficient to support uses that require high speeds, including video calls, streaming media, and real-time educational courses that are becoming increasingly common.²⁶ Indeed, the Commission largely concedes the issue by mandating download speed requirements of 10 Mbps in those areas deemed to be eligible for MF-II funding.

And, *fourth*, Verizon fails to advance any plausible analysis to defend its view that the availability to rural consumers of download speeds below 10 Mbps would meet the statutory objective of reasonably comparable rural and urban broadband services. Specifically, Verizon contends that, “[b]y defining the buildout requirement as a *median* speed of 10 Mbps, the Commission

²² Written Statement of LeRoy T. Carlson, Jr., before the Subcommittee on Communications and Technology, U.S. House of Representatives Energy and Commerce Committee, “Broadband: Deploying America’s Twenty-First Century Infrastructure” (Mar. 21, 2017), at 17, accessed at <http://docs.house.gov/meetings/IF/IF16/20170321/105740/HHRG-115-IF16-Wstate-CarlsonL-20170321.pdf> (citing crowdsourced data produced by OpenSignal).

²³ See RWC Petition at 5-6.

²⁴ See RWA Petition at 7.

²⁵ See *id.* at 5-6 (citing a Commission decision adopting technology-neutral bidding tiers for the Connect America Fund Phase II auction and determining that the minimum performance tier requires at least 10 Mbps/1 Mbps speeds).

²⁶ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Development Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 724 (para. 58) (2016), cited in RWA Petition at 6.

recognized that urban consumers receive a range of LTE speeds—often including speeds well below 10 Mbps. Thus, rural LTE speeds below 10 Mbps are ‘reasonably comparable’ to urban speeds.’²⁷

Verizon’s “reasonably comparable” analysis is flawed and prejudices rural Americans. That said, Verizon’s view also supports a conclusion that, since urban consumers often receive speeds well above 10 Mbps,²⁸ MF-II support recipients also must deliver speeds above 10 Mbps in order to ensure that rural broadband services are reasonably comparable to services offered to urban consumers. Rather than giving any weight to Verizon’s flawed analysis, the Commission should rely on the evidence in this reconsideration proceeding, as well as its own previous findings, showing that a 10 Mbps speed benchmark is necessary to ensure that rural and urban mobile broadband services are reasonably comparable.

IV. CONCLUSION.

The Rural Wireless Carriers respectfully renew the request made in their Petition that the Commission should reconsider and clarify the *MF-II Order* and grant their Petition. With respect to reconsideration of the Commission’s decision to use a 5 Mbps speed benchmark for determining geographic area eligibility for MF-II funding, Verizon has failed to present any arguments or in

²⁷ Verizon Opposition at 4 (emphasis in original).

²⁸ In Verizon’s analysis, this assumption is a consequence of using a median speed requirement, which, by definition, would reflect speeds both below and above the 10 Mbps median. In general, the median “is the value separating the higher half of a data sample, a population, or a probability distribution, from the lower half. In simple terms, it may be thought of as the ‘middle’ value of a data set.” Thus, “in the data set {1, 3, 3, 6, 7, 8, 9}, the median is 6, the fourth number in the sample.” WIKIPEDIA, accessed at <https://en.wikipedia.org/wiki/Median>.

formation that would warrant a denial of RWC's request that the Commission reconsider and reverse this decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, in compliance with Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), I have on this day of May 26, 2017, served a true copy of the foregoing document by first-class US Mail, upon the following:

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