

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

In the Matter of)	
)	
Connect America Fund)	WT Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**VERMONT DEPARTMENT OF PUBLIC SERVICE
REQUEST FOR LIMITED WAIVER OF MOBILITY FUND PHASE II
DESIGNATED HANDSET REQUIREMENTS**

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June 28, 2019

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The Vermont Department of Public Service (“VDPS”), pursuant to Section 1.3 of the Federal Communications Commission’s (“Commission”) rules, hereby requests a limited waiver of the designated handset requirement adopted in the *MF-II Challenge Process Order*.¹ Specifically, the VDPS requests that the Commission waive the designated handset requirement with respect to VDPS’ inadvertent use of the T-Mobile Samsung Galaxy S8 (G950U).

I. INTRODUCTION AND BACKGROUND

VDPS is an executive branch agency charged with representing the public interest in energy, telecommunications and water utility matters. The mission of the VDPS is to serve Vermont through public advocacy, planning, programs, and other actions that meet the public's need for least cost, environmentally sound, efficient, reliable, secure, sustainable and safe energy, telecommunications and regulated utility systems in the state.

In August 2017, the Commission adopted a challenge process, the intent of which was to direct Mobility Fund Phase II (“MF-II”) support to primarily rural areas that lack unsubsidized

¹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6308 (2017) (“*MF Challenge Process Order*”).

4G Long Term Evolution ("LTE") service.² The challenge process began with a one-time collection of 4G LTE coverage data from mobile wireless providers, after which time interested parties would then have an opportunity to contest an initial determination that an area is ineligible for MF-II support. As part of the challenge process, participants were required to identify area(s) within their state that they wished to challenge and submit outdoor speed test data via the Universal Service Administration Company ("USAC") online challenge portal. To ensure uniformity of the challenge process, the Commission required providers to submit a list of at least three (3) approved cellular handsets challengers could use in conducting speed tests on the provider's network.³ The FCC released a map of initial eligible areas on February 27, 2018. The challenge process ran from March 29, 2018 through November 26, 2018.

On September 10, 2018, in preparation to participate in the MF-II challenge process, the VDPS traveled to a T-Mobile retail store located at 1500 S. Willow Street in Manchester, New Hampshire.⁴ VDPS presented the "Provider_Handsets.csv" file to a T-Mobile store employee, after which time the store employee presented to VDPS what was believed to be T-Mobile designated handset Samsung Galaxy S8 Active (G892U). It was under this pretext that VDPS purchased the device in order to conduct speed tests.

Between October 5, 2018 and November 20, 2018, VDPS conducted speed tests encompassing over 6,000 miles and approximately 264 hours.⁵ VDPS conducted 30,383 speed tests using the T-Mobile device. On November 26, 2018, VDPS filed its challenge via the

² 4G LTE coverage is defined by the Commission as having download speeds of 5 Mbps at the cell edge with 80 percent probability and a 30 percent cell loading factor. *Id.* ¶ 34.

³ *Id.* ¶ 39.

⁴ There is no T-Mobile retail store located in Vermont. The Manchester, NH store, located more than 2 hours away, is the closest location.

⁵ The "drive test," as it became affectionately known, was conducted by one VDPS employee and received state and nationwide press coverage. *See, e.g.,* One Man's Quest to Prove Vermont has Terrible Cell Service, available at <https://www.npr.org/2019/02/01/690071045/one-mans-quest-to-prove-vermont-has-terrible-cell-service>, (Feb. 1, 2019).

USAC portal, at which time 4,186 additional one-kilometer square blocks were identified as potentially eligible for MF-II support.⁶ Of the 4,186 additional blocks identified, 789 one-kilometer blocks were accepted as meeting the Commission's 75 percent threshold⁷ and 3,397 blocks were provisionally accepted. One thousand eight hundred seventy-nine (1,879) blocks were rejected.⁸

On March 1, 2019, VDPS learned that the T-Mobile handset it used in conducting the speed tests, originally thought to have been a T-Mobile-approved Samsung Galaxy S8 Active (G892U), was in fact a Samsung Galaxy S8 (G950U). It is the understanding of the VDPS that the Samsung Galaxy S8 (G950U) is not on the list of T-Mobile-approved cellular handsets. On March 12, 2019, VDPS notified representatives at T-Mobile of the situation.⁹ On April 12, 2019, VDPS spoke with Commission staff to notify them of the situation and discuss the possibility of a limited waiver.¹⁰

II. WAIVER STANDARD

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive any provision of the rules for good cause where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule. VDPS meets this standard. As demonstrated herein, grant of the limited waiver is warranted and will serve the public interest by allowing VDPS to identify those rural areas of the

⁶ *Mobile Wireless in Vermont*, Vermont Department of Public Service, available at https://publicservice.vermont.gov/sites/dps/files/documents/Mobile%20Wireless%20Coverage%20in%20VT_Jan%202019.pdf, at 5 (Jan. 15, 2019) ("*VT Wireless Report*"). Out of a total territory of approximately 25,000 square kilometers, only 1,310 square kilometers were initially identified by the Commission as areas eligible to receive MF-II funding in Vermont.

⁷ *MF Challenge Process Order* ¶ 55.

⁸ *VT Wireless Report* at 5.

⁹ VDPS exchanged emails with T-Mobile representatives during March 2019, which ultimately resulted in the decision to contact the Commission. As of the date of this Petition, T-Mobile has neither supported nor opposed this request for limited waiver.

¹⁰ VDPS spoke with attorney advisor Jon McCormack and other Commission representatives.

state lacking unsubsidized 4G LTE and ultimately bring mobile voice and broadband service to Vermonters living in parts of the state that need it most.

III. GRANT OF THE REQUESTED LIMITED WAIVER IS WARRANTED AND WILL SERVE THE PUBLIC INTEREST

Good cause exists to grant VDPS a limited waiver of the designated handset requirements. Specifically, grant of the limited waiver request will serve the public interest because the speed tests as conducted by VDPS simulate consumers' actual experience of cellular service in Vermont. The Samsung Galaxy S8 (G950U) model handset used to run the speed tests in question was sold by T-Mobile and was a current-model handset from the same manufacturer as two of T-Mobile's designated handsets, the Galaxy Note 8 (N950U) and Galaxy S8 Active (G892U). It is therefore very likely that the speed tests VDPS conducted using the Samsung Galaxy S8 model handset accurately reflected consumers' actual, on-the-ground experience in Vermont.¹¹

Furthermore, VDPS conducted speed tests that were otherwise in accordance with Commission technical requirements. Upon learning of the discrepancy, VDPS reviewed all other handsets used in conducting speed tests and confirmed that they are the correct handsets designated by providers for use in the MF-II challenge process.¹²

Additionally, grant of the requested relief would be consistent with Commission precedent. The Commission has previously granted limited waivers to MF-II challengers that

¹¹ It should also be noted that VDPS review of device specifications indicates that the primary difference between the Samsung Galaxy S8 and Samsung Galaxy S8 Active is that the Samsung Galaxy S8 Active operates in the 600 MHz Band and the Samsung Galaxy S8 does not. It is the understanding of VDPS that T-Mobile was not operating in the 600 MHz Band in Vermont during the time the speed tests were conducted.

¹² Specifically, VDPS confirmed that its use of all other handsets was in compliance with the "Provider_Handsets.csv" file (designated handsets VDPS used were as follows: AT&T Samsung s8 (G950U) and S7 (G930A); Verizon Samsung S8 (G950U); Sprint Samsung S8 Plus (G955U); U.S. Cellular Samsung S8 (G950U) and Motorola E4 (XT1775); and VTEL Wireless Samsung J3 (J327U)).

have conducted speed tests using the Samsung Galaxy S8 model handset.¹³ In the *NH Limited Waiver Order*, the Commission found that because the handsets used to run the speed tests were sold by T-Mobile and current-model handsets came from the same manufacturer as two of the T-Mobile designated handsets, that the speed tests in question “should have accurately reflected consumers’ actual, on-the-ground experience in New Hampshire.”¹⁴ As explained above, VDPS used the same Samsung Galaxy S8 model handset that more than likely accurately reflected consumers’ actual, on-the-ground experience in Vermont. The Commission further found that waiver was warranted as New Hampshire Public Utilities Commission staff certified, under penalty of perjury, that the speed tests were otherwise conducted in accordance with Commission technical requirements, they examined all data submitted, and all data and statements contained in the challenge submission were generated in accordance with the specifications and are true, accurate and complete to the best of their knowledge, information and belief. Here, VDPS employee Corey Chase, who conducted all speed tests on behalf of VDPS, has put forth the same certifications.¹⁵ Accordingly, grant of VDPS’ waiver request is consistent with prior Commission action.

Finally, strict enforcement of the designated handset requirements and denial of VDPS’ requested limited waiver would be inequitable, unduly burdensome, and contrary to the public interest.¹⁶ Absent the MF-II support, Vermont would be at a significant disadvantage in bringing 4G LTE service to its residents, and may altogether be unable to bring service to those unserved and underserved areas of the state. By denying VDPS’ waiver request, the Commission would

¹³ See *In the Matter of Request for Waiver of Pre-Approved Handset Requirement for Collection of Mobility Fund Phase II Challenge Process Speed Test Data*, Order, WT Docket No. 10-208 (Rel. Mar. 1, 2019) (“*NH Limited Waiver Order*”).

¹⁴ *NH Limited Waiver Order* ¶ 5.

¹⁵ See attached Affidavit of Corey Chase. It is also worth noting that the wrong device was purchased at the same store by both Vermont and New Hampshire representatives.

¹⁶ 47 C.F.R. § 1.925(b)(3).

hinder the central goals of the MF-II program and potentially impair delivery of critical 4G LTE services to some of the most vulnerable populations of the state.

IV. CONCLUSION

For the foregoing reasons, VDPS respectfully requests that the Commission grant this request in furtherance of the public interest.

Respectfully submitted,

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June 28, 2019

AFFIDAVIT OF COREY CHASE
VERMONT DEPARTMENT OF PUBLIC SERVICE

BEFORE ME, the undersigned notary, on this 28th day of June, 2019, personally appeared
Corey Chase, who being duly sworn on oath deposed and said:

1. My name is Corey Chase and I am employed by the Vermont Department of Public Service ("VDPS") as Telecommunications Infrastructure Specialist. In my position, I am responsible for performing specialized investigations, analysis and advocacy for the VDPS related to the present and future capabilities, quality, reliability and readiness of Vermont's telecommunications infrastructure.
2. I am over 18 years of age and authorized to make the statements herein.
3. The facts stated in the foregoing Request of VDPS for Limited Waiver of Federal Communications Commission designated handset requirements, as such facts apply to VDPS, are true and correct to the best of my knowledge, information and belief.

Dated this 28th day of June, 2019



Corey Chase

STATE OF VERMONT
COUNTY OF Washington, SS

On this 28th day of June, 2019, personally appeared Corey Chase known to me or satisfactorily proven to be the person who is the signatory to the foregoing, and swore to the truth of the foregoing statements.

Before me,



Notary Public

My commission expires: 01-31-21

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