

**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

OPPOSITION OF SMITH BAGLEY, INC. TO VERIZON APPLICATION FOR REVIEW

Smith Bagley, Inc. (“SBI”), by counsel, hereby submits this Opposition to an application for review filed by Verizon¹ in the above-captioned proceedings.²

SBI participates in the Commission’s legacy High Cost program, the Tribal Mobility Fund, the Schools and Libraries program, and the Lifeline program. The company is an eligible telecommunications carrier in Arizona, New Mexico, and Utah, providing service on both Tribal and

¹ Application for Review of Verizon, WC Docket No. 10-90, WT Docket No. 10-208 (filed June 21, 2018) (“Verizon Application” or “Application”). The Application seeks review of *Connect America Fund; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Order on Reconsideration, DA 18-427 (WCB, WTB Apr. 30, 2018) (“*MF-II Challenge Procedures Reconsideration Order*” or “*Reconsideration Order*”), in which the Wireless Telecommunications Bureau and the Wireline Competition Bureau reconsider on their own motion, pursuant to Section 1.113(a) of the Commission’s Rules, 47 CFR § 1.113(a), certain decisions made in *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, 33 FCC Rcd 1985 (2018) (“*MF-II Challenge Process Procedures Public Notice*”). The Public Notice was published in the Federal Register on March 29, 2018. 83 FED. REG. 13417 (Mar. 29, 2018). The *Reconsideration Order* was published in the Federal Register on May 22, 2018. 83 FED. REG. 23611 (May 22, 2018).

² This Opposition is filed pursuant to *Requirements for Oppositions and Replies Regarding Applications for Review in Mobility Fund Phase II Proceeding*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, DA 18-673 (WTB, June 28, 2018) (“*Reconsideration Order Pleadings Public Notice*”), which specified July 13, 2018, as the due date for oppositions to the Verizon Application. SBI notes that the Public Notice waived service rules otherwise applicable to oppositions to applications for review pursuant to Section 1.115(f) of the Commission’s Rules, 47 CFR § 1.115(f). *Id.* at 3.

non-Tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White Mountain Apache, Zuni, and Ramah Navajo Tribal lands. Most of SBI's service area is sparsely populated (some areas have fewer than five people per square mile) and the Navajo Nation alone is approximately the size of the state of West Virginia. Many of SBI's subscribers live in extremely rural Tribal and near-reservation areas.

BACKGROUND

The Wireless Telecommunications Bureau and the Wireline Competition Bureau (collectively, the "Bureaus"), in the *MF-II Challenge Procedures Reconsideration Order*, determined, consistent with the Commission's decision in the *MF-II Challenge Process Order*³ and based on new evidence in the record,⁴ to utilize a buffer radius of 400 meters for purposes of evaluating challenges to geographic areas initially deemed to be ineligible for Mobility Fund Phase II ("MF-II") support.⁵

The Verizon Application requests that the Commission vacate the *Reconsideration Order* and reinstate the 250-meter buffer adopted in the *MF-II Challenge Process Procedures Public Notice*.⁶

³ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6309 (para. 51), 6310 (para. 55 n.162) (2017) ("*MF-II Challenge Process Order*") cited in *Reconsideration Order Pleadings Public Notice*, at 1 n.1.

⁴ See *Reconsideration Order* at para. 3.

⁵ *Id.* at para. 4 (footnote omitted) (indicating that "[s]ince ... the radius of the buffer will equal one-half of the maximum distance parameter, we will require that speed test measurements be taken no further than 800 meters (eight-tenths of one kilometer) apart from one another, resulting in an associated buffer radius of 400 meters (four-tenths of one kilometer)").

⁶ Verizon Application at 1, 7.

DISCUSSION

A principal objective of the MF-II challenge process is to ensure that initial claims of unsubsidized mobile wireless coverage advanced by incumbent service providers are subjected to sufficient scrutiny to ensure that ultimate determinations of coverage are as accurate as possible. The challenge posed in meeting this objective is to devise requirements that ensure that challengers will submit the most accurate data possible that depicts areas currently lacking unsubsidized coverage, while at the same time making sure that these requirements do not unreasonably inhibit the ability of potential challengers to collect the data and submit challenges.

The *Reconsideration Order* reflects an understanding of the fact that, if the testing parameters are too rigorous, less challenges will be undertaken because the burdens and costs associated with the data collections will be too great. This result must be avoided because it would increase the likelihood that inaccuracies in unsubsidized coverage claims made by incumbent carriers will go undetected, and service areas that should be eligible for MF-II support will in fact be deprived of that support. Such a result would contravene the Commission's goal of ensuring that rural and high-cost areas of our country do not continue to be left behind,⁷ and that "rural consumers will be adequately served by the mobile carriers receiving universal service support."⁸

⁷ See *Connect America Fund; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2153 (para. 1) (2017) ("*MF-II Framework Order*").

⁸ *Id.* at 2154 (para. 2).

I. The Reconsideration Order Should Be Affirmed.

The Bureaus, seeking to maximize data accuracy while minimizing burdens imposed on challengers' data collection efforts, reasonably balanced these objectives. The Bureaus acknowledged that, "by increasing the buffer radius [from 250 meters] to 400 meters, a challenger will be able to meet the 75% threshold with fewer speed test measurements"⁹ and concluded that, based on their review of the record, "applying a slightly larger maximum distance parameter and, correspondingly, a slightly larger buffer radius will ... not unduly compromis[e] the Commission's interest in collecting accurate data that reflects consumers' experience."¹⁰

At the same time, the Bureaus concluded that record evidence compelled action to mitigate substantial burdens that would be imposed on challengers if the 250-meter buffer were to remain in place. Specifically, Rural Wireless Association, Inc. ("RWA"), explained that:

In the majority of rural America, roads are situated directly on the borders of a one mile by one mile grid. RWA and other parties expressed serious concerns about the use of a one square kilometer grid to determine challenge areas, noting that a square kilometer grid cell could be entirely encapsulated within a square mile road grid cell, leaving no access to drive any portion of a single kilometer-based grid cell. The Bureaus' decision to ignore this reality has yielded a challenge scheme in which thousands of kilometer grid squares lack the necessary roads to access and test the claimed coverage using drive tests.¹¹

⁹ *Reconsideration Order* at para. 4 n.13. The 75 percent threshold refers to the requirement that "a challenger's speed test points substantially cover a challenged area (i.e., cover at least 75 percent of the challenged area)" *Id.*

¹⁰ *Id.* at para. 4.

¹¹ Letter from Caressa D. Bennet, General Counsel, RWA, & 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 Letter"), at 1-2 (footnotes omitted) (emphasis in original).

Based on these facts, RWA concluded that, “[u]nder the Commission’s current rules, small rural carriers will be forced to mount challenges by testing on foot, or via drones, horseback, four-wheeler, or crop duster. The difficulty of doing so poses a significant deterrent to conducting such measurements.”¹²

SBI can attest to the fact that, in many Tribal and near-reservation areas in Arizona, New Mexico, and Utah, the reality is at least as problematic as described by RWA.¹³ The huge areas to be tested and the lack of accessible or drivable roads in many of these areas makes it virtually impossible to conduct the required testing if the 250-meter buffer adopted in the *MF-II Challenge Process Procedures Public Notice* were allowed to remain in effect.¹⁴ Even if testing could be done, the burden of conducting so many tests over such a large area is overwhelming, and cannot be completed within the applicable deadline. Based on SBI’s knowledge of, and operations in, Tribal and near-reservation lands, SBI believes that RWA’s analysis of areas in Montana, Wyoming, and North Dakota would produce similar results for Tribal and near-reservation lands in Arizona, New Mexico, and Utah. Further, no one could reasonably conclude that it would be feasible for small rural carriers to use means other than road testing to measure vast rural areas in the high desert.

¹² *Id.* at 2.

¹³ The RWA Letter, for example, included information:

depict[ing] portions of Montana, Wyoming, and North Dakota divided into one square kilometer grid cells, utilizing a ¼ kilometer [250 meters] buffer. 91 percent of the kilometer grid cells would be unmeasurable using drive tests. In each case, ... utilizing a one square mile grid with a ¼ mile [400 meters] buffer would more than double the number of grid cells that are measurable using drive tests.

Id.

¹⁴ In SBI’s view, the task of complying with the Commission’s testing requirements will be extremely daunting, even with the Bureaus’ decision in the *Reconsideration Order* to use a buffer of 400 meters.

II. The Verizon Application for Review Should be Rejected.

Only one party—Verizon—has objected to the Bureaus’ reinstatement of the 250-meter buffer. Verizon asserts that, as a result of the Bureaus’ action, “the challenge phase will provide neither an accurate nor reliable indication of coverage in the challenged area.”¹⁵

Verizon pays virtually no attention to the fact that, as RWA has demonstrated, a 250-meter buffer will likely significantly reduce the number of challenges that can be made, which, in turn, will enable claims of unsubsidized coverage to be accepted without having been subjected to any meaningful validation process. In short, Verizon pursues a stringent testing process, while conveniently ignoring the fact that, for many potential challengers, the process would be too burdensome to carry out. 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. Rural consumers will pay the price, and they will keep on paying for the next decade.¹⁶

CONCLUSION

At a time when our nation’s remote rural areas require improved access to fixed and mobile broadband to drive advances in telemedicine, education, public safety, and economic development, any area incorrectly blocked from receiving support for a decade will suffer greatly. Verizon’s Application threatens to expand areas incorrectly designated as “served.”

¹⁵ Verizon Application at 7.

¹⁶ RWA Letter at 2-3.

Therefore, the Commission should affirm the Bureaus' decision in the *MF-II Challenge Procedures Reconsideration Order* to increase the maximum distance between speed test measurements to 800 meters and the associated buffer radius to 400 meters.

Respectfully submitted,

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