

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

In the Matter of
)
)
)
Petition for Waiver of Senator Joe Manchin III
) WT Docket No. 10-208
to Participate in Mobility Fund II Challenge
)
Process)

ORDER

Adopted: May 25, 2018

Released: May 25, 2018

By the Chief, Auctions and Spectrum Access Division:

I. INTRODUCTION

1. In this Order, we grant U.S. Senator Joe Manchin III a waiver to participate as a challenger in the Mobility Fund Phase II (MF-II) challenge process, subject to the conditions set forth herein. For the reasons discussed below, we instruct the Universal Service Administrative Company (USAC) to grant the users identified in Sen. Manchin’s Petition for Waiver access to the challenge process portal.

II. BACKGROUND

2. In the MF-II Challenge Process Order, the Commission established the framework for a robust and efficient challenge process to resolve disputes about areas found to be presumptively ineligible for MF-II support. The Commission concluded that government entities (state, local, and Tribal) and all service providers required to file Form 477 data with the Commission are best suited to participate as challengers in the MF-II challenge process. The Commission found that limiting participation to these interested parties would satisfy its policy goal of administrative efficiency because they are the entities that are most likely to have access to and be able to provide data relevant to the Commission’s consideration of a challenge. The Commission explained, however, that other entities wishing to participate in the process as a challenger could request a waiver of this rule.

3. On May 15, 2018, Sen. Manchin filed a petition for a waiver of the rule limiting participation in the MF-II challenge process. Sen. Manchin is neither a governmental entity nor a service provider required to file Form 477 data with the Commission and, thus, is not entitled as a matter of right

1 Petition of Senator Joe Manchin III for Waiver to Participate in Challenge Process, WT Docket No. 10-208 (filed May 15, 2018) (Petition for Waiver).

2 Connect America Fund; Universal Service Reform – Mobility Fund, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6282, 6296-314, paras. 1, 27-64 (2017) (MF-II Challenge Process Order).

3 Id. at 6303, para. 42.

4 Id. at 6303-04, para. 42 & n.115.

5 Id. at 6304, para. 43 n.119 (citing 47 CFR § 1.3); see also Mobility Fund Phase II Challenge Process Handsets and Access Procedures for the Challenge Process Portal, Public Notice, 32 FCC Rcd 10372, 10376, para. 10 & n.33 (WCB/WTB 2017).

6 Petition for Waiver at 1.

to participate as a challenger.⁷ He contends, however, that, as a U.S. Senator with a long record of engagement with MF-II, he qualifies for a rule waiver because he has a bona fide interest in the MF-II challenge process and a plausible ability to submit a valid challenge.⁸ Sen. Manchin further requests that he be permitted to certify personally the challenge data on behalf of his office, consistent with the existing procedure for challengers that are government entities and do not have a qualified engineer available to certify their data.⁹

III. DISCUSSION

4. The Commission may waive its rules and requirements where there is “good cause shown” to do so.¹⁰ Good cause, in turn, may be found “where particular facts would make strict compliance inconsistent with the public interest.”¹¹ A waiver is therefore “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹² For the rule limiting participation in the MF-II challenge process, the Commission anticipated that this good-cause standard would be met “in cases in which a[] . . . business demonstrates a bona fide interest in the challenge process and a plausible ability to submit a valid challenge.”¹³

5. We conclude that there is good cause for granting the requested waiver. Sen. Manchin asserts he has a bona fide interest in the challenge process because the promotion of 4G LTE service throughout the state of West Virginia is an issue with which he has a long record of engagement.¹⁴ He also states that he authored language in the Fiscal Year 2018 Omnibus Spending Bill (P.L. 115-141) to ensure that the FCC standardizes its collection of mobile wireless coverage data.¹⁵ Sen. Manchin notes that, in the performance of his duties as a U.S. Senator, he has driven most of the road miles in West Virginia and has experienced the loss of broadband coverage along the way.¹⁶

6. Sen. Manchin also has a plausible ability to submit the data necessary to support a valid challenge.¹⁷ Sen. Manchin has assigned an employee to review the technical requirements of the challenge process and this individual has demonstrated an understanding of the technical requirements, asking Commission staff a series of questions about the requirements. Sen. Manchin acknowledges that he must purchase an appropriate service plan and an approved handset from each unsubsidized service provider in the areas he wishes to challenge, and he states his intention to “submit detailed proof of lack of unsubsidized, qualified 4G LTE coverage through application-based tests conducted between the hours

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

¹¹ *NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹² *NE Cellular Tel. Co.*, 897 F.2d at 1166.

¹³ *MF-II Challenge Process Order* at 6304, para. 43 & n.119; see also *Petition for Waiver of Kansas Farm Bureau to Participate in Mobility Fund II Challenge Process*, Order, DA 18-453, at 2-3, paras. 5-8 (WTB May 2, 2018) (granting waiver request to participate in the challenge process); *Petition for Waiver of Wireless Partners, LLC to Participate in Mobility Fund II Challenge Process*, Order, DA 18-318, at 2-3, paras. 5-6 (WTB Mar. 30, 2018) (same).

¹⁴ *Petition for Waiver* at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

of 6:00 A.M. and 12:00 A.M. local time and in accordance with all other requirements.¹⁸ As requested, we will accept Sen. Manchin's personal certification of the challenge data that he files as part of the challenge process.¹⁹

7. Sen. Manchin is reminded that speed tests are only valid if conducted in accordance with our technical requirements and that Sen. Manchin, and not a member of his staff, will need to personally certify, under penalty of perjury, that: (1) he has examined all data submitted; and (2) all data and statements contained in the submission were generated in accordance with these specifications and are true, accurate, and complete to the best of his knowledge, information, and belief.²⁰

8. Thus, we conclude that there is good cause for granting the requested waiver and instruct USAC to grant the users included in Sen. Manchin's Petition for Waiver access to the MF-II challenge portal. This waiver is subject to Sen. Manchin's compliance with his representations and with the requirements of the MF-II challenge process.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to the 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 sections 0.131(a), 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131(a), 0.331, and 1.3, that the Petition for Waiver of U.S. Senator Joe Manchin III is HEREBY GRANTED to permit him to participate in the MF-II challenge process, subject to the conditions set forth herein.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *MF-II Challenge Process Order*, 32 FCC Rcd at 6308, para. 49; *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, DA 18-186, at 19-20, paras. 39-40 & n.143 (WCB/WTB Feb. 27, 2018).