

SUPPORTING STATEMENT

*New Collection Titled:* Mobility Fund Phase II Challenge Process. This request is being submitted to obtain Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), for a period of three years for a new, one-time information collection requirement necessary to implement the framework adopted by the Federal Communications Commission (Commission) for Phase II of the Mobility Fund (MF-II), as explained below.

**A. Justification:**

1. *Circumstances that make this collection necessary.* Under this new, one-time information collection, the Commission will collect information from interested parties seeking to initiate a challenge of one or more of the areas initially deemed ineligible for MF-II support (i.e., areas that do not appear on the Commission's map of areas presumptively eligible for MF-II support), and from challenged parties wishing to respond to such challenges.

In November 2011, the Commission adopted the *USF/ICC Transformation Order*, which reformed and modernized the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. See *Connect America Fund et al.*, Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*). Among other things, the *USF/ICC Transformation Order* established the Mobility Fund to ensure the availability of mobile voice and broadband services in areas where a private-sector business case was lacking. The Mobility Fund consists of two phases. Mobility Fund Phase I (MF-I) provided one-time universal service support payments to immediately accelerate deployment of networks for mobile broadband in unserved areas.<sup>1</sup> MF-II will use a reverse auction to provide ongoing universal service support – including support to Tribal lands – to continue to advance deployment of such services.

The Commission adopted the rules and framework for MF-I in the *USF/ICC Transformation Order*, and sought comment in the accompanying *USF/ICC Transformation FNPRM* on the proposed framework for MF-II. Since then, the Commission has worked to develop a comprehensive, robust record on various issues related to the award of MF-II support—including how and where to target funding in terms of the level of service to be provided and the geographic areas eligible for support.<sup>2</sup>

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<sup>1</sup> The Commission also established a separate and complementary one-time Tribal Mobility Fund Phase I to award additional universal service funding to Tribal lands to accelerate mobile voice and broadband availability in these remote and underserved areas. On September 27, 2012, the Commission completed a nationwide reverse auction for MF-I support, with 33 winning bidders deemed eligible to receive a total of \$299,998,632.25 in one-time support. On September 25, 2014, the Commission completed a reverse auction for Tribal Mobility Fund Phase I support, with five winning bidders deemed eligible to receive a total of \$49,806,874 in support.

<sup>2</sup> See *Further Inquiry Into Issues Related to Mobility Fund Phase II*, Public Notice, DA 12-1853, 27 FCC Rcd 14798 (WTB/WCB 2012); *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, FCC 14-54, 29 FCC Rcd 7051 (2014); FCC, Wireless Telecommunications Bureau, *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis*, Docket No. 10-208 (WTB 2016) (*Mobile Broadband*

This effort culminated in the Commission's February 2017 *Mobility Fund II Report and Order (MF-II Report and Order)*, which established the rules and framework for moving forward expeditiously with the MF-II auction to award up to \$4.53 billion over the next ten years to advance the deployment of 4G Long Term Evolution (LTE) service to areas so costly that private sector has not yet deployed there and to preserve such service where it might not otherwise exist absent a subsidy. See *Connect America Fund; Universal Service Reform—Mobility Fund II*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-11, 32 FCC Rcd 2152 (2017) (*MF-II Report and Order and/or FNPRM*). Among other things, the Commission stated in the *MF-II Report and Order* that, prior to the MF-II auction, it would use the most recently available FCC Form 477 mobile wireless coverage data (together with high-cost disbursement data available from the Universal Service Administrative Company (USAC)) to compile a map of areas presumptively eligible for MF-II support, and that it would provide a limited timeframe for parties to challenge those initial determinations during the pre-auction process. The Commission sought comment in the accompanying *Mobility Fund II FNPRM* on how to best design a robust, targeted MF-II challenge process that efficiently resolves disputes about the areas eligible for MF-II support.

In August 2017, the Commission released an *Order on Reconsideration and Second Report and Order* in which it (1) reconsidered its earlier decision to use FCC Form 477 data to compile the map of areas presumptively eligible for MF-II support and decided it would instead conduct a new, one-time data collection with specified data parameters tailored to MF-II to determine the areas in which there is deployment of qualified LTE that will be used (together with high-cost disbursement data available from USAC) for this purpose, and (2) adopted a streamlined challenge process that will efficiently resolve disputes about areas deemed presumptively ineligible for MF-II support. See *Connect America Fund; Universal Service Reform—Mobility Fund II*, Order on Reconsideration and Second Report and Order, FCC 17-102, 32 FCC Rcd 6282 (2017) (*Challenge Process Order*). The map of areas presumptively eligible for MF-II support will serve as the starting point for the challenge process pursuant to which an interested party may initiate a challenge with respect to one or more areas initially deemed ineligible for MF-II support (i.e., areas not listed on the Commission's map of areas presumptively eligible for MF-II support) and challenged parties can respond to challenges.

Statutory authority for this information collection is contained in 47 U.S.C. §§ 154, 254, 303(r).

***New information collection requirements for this collection:***

**Challenge Process Information Collection for Mobility Fund Phase II**

The Commission is seeking approval for a new, one-time collection of information from parties interested in initiating a challenge concerning one or more areas initially deemed ineligible for MF-II support ("challengers"), and from parties submitting additional data in response to such challenges ("challenged parties").

The decision regarding whether to submit a challenge or respond to a challenge rests exclusively with the respondents. Thus, the number of challenge submissions and responses to such challenges will be determined exclusively by the respondents. For this reason, it is difficult to know how many parties will elect to submit or respond to a challenge. However, the Commission estimates that there will

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Coverage Data and Analysis) (available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341539A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341539A1.pdf)).

500 total respondents to this information collection (325 challengers and 175 challenged parties), each filing one response.

A challenger seeking to initiate a challenge of one or more areas initially deemed ineligible in the Commission's map of areas presumptively eligible for MF-II support may do so via the online challenge portal developed by the Universal Service Administrative Company (USAC) for this purpose (the USAC portal). For each state, a challenger must (1) identify the area(s) it seeks to challenge, (2) submit detailed proof of a lack of unsubsidized, qualified 4G LTE coverage in each challenged area in the form of actual outdoor speed test data collected using the standardized parameters specified by the Commission in the *Challenge Process Order* and any other parameters the Commission or the Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) may implement, and (3) certify its challenge. Specifically, a challenger must:

- Submit actual outdoor speed test data from hardware- or software-based drive tests or application-based tests that cover the challenged area(s) conducted pursuant to standard parameters using Commission-approved testing methods on pre-approved handset models;
- Provide proof of a lack of unsubsidized, qualified 4G LTE coverage in the form of measured download throughput test data for each of the unsubsidized providers claiming to have 4G LTE coverage in the challenged area;
- Conduct all speed tests between the hours of 06:00 AM and 12:00 AM local time;
- Take speed measurements that are no more than a fixed distance apart from one another within the challenged area (as specified by the Commission or the Bureaus in a public notice to be released prior to the opening of the challenge window), and which substantially cover the entire area;
- Collect speed test data no sooner than the date on which the map of areas presumptively eligible for MF-II support is released and no later than six months prior to the close of the challenge window; and
- Substantiate the speed test data by the certification of a qualified engineer (or, if the challenger is a governmental entity, a government official with actual knowledge of the accuracy of the data that is authorized to act on behalf of the organization) under penalty of perjury.

A challenged party that chooses to respond to/oppose any valid challenge(s) will have a response window within which to submit additional data via the online USAC portal.<sup>3</sup> A challenged party may submit technical information that is probative regarding the validity of a challenger's speed tests (i.e., information demonstrating that the challenger's speed tests are invalid or do not accurately reflect network performance), including speed test data and other device-specific data collected from transmitter monitoring software or, alternatively, may submit its own speed test data that conforms to the same standards and requirements specified by the Commission and the Bureaus for challengers.

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<sup>3</sup> After the challenge window closes, the USAC system will use an automated challenge validation process developed by USAC to validate a challenger's evidence and will determine which challenged areas pass validation and which fail. The challenge response window will open after the automated challenge validation process is completed and all valid challenges have been identified.

The Commission or the Bureaus will issue public notices prior to the opening of the challenge window providing detailed instructions, guidance, and specifications concerning requesting an account with which to access the online USAC portal and submitting challenges and responses to challenges via the online USAC portal, including formatting information and any other technical parameters that may be necessary for such submissions.

2. *Use of Information.* In identifying the specific areas of the country without 4G LTE coverage to determine the areas that may require ongoing support and in examining the current distribution of high-cost support to assess the efficacy of that support, the Commission found that a significant amount of support being distributed to mobile providers is being directed to areas where it is not needed, while areas that either lack 4G LTE or are being served only by subsidized 4G LTE providers are not receiving necessary support. The information that will be collected under this new MF-II challenge process information collection is designed to ensure that the Commission's limited MF-II funds are directed toward expanding and maintaining mobile broadband service in areas so costly that private sector has not yet deployed there and to preserve such service where it might not otherwise exist absent a subsidy. In conjunction with the qualified 4G LTE data collection separately collected pursuant to OMB 3060-1242 that will be used to create the map of areas presumptively eligible for MF-II support, the information collected under this new MF-II challenge process information collection will enable the Commission to efficiently resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF-II support and establish the final map of areas eligible for such support, thereby furthering the Commission's goal of targeting MF-II support to areas that lack adequate mobile voice and broadband coverage absent subsidies through a transparent process.

3. *Technological collection techniques.* Parties seeking to initiate or respond to challenges will submit the required information electronically via the online USAC portal. This collection mechanism is being used to reduce the technological burden on the public and the Commission. The Commission or the Bureaus will issue a public notice prior to the opening of the challenge window that provides detailed instructions, guidance, and specifications concerning submitting and responding to challenges via the online USAC portal, including formatting information and any other technical parameters that may be necessary for such submissions.

4. *Efforts to identify duplication.* There will be no duplicative information collected. This information collection is a new information collection with specified data parameters tailored to MF-II for use in the MF-II challenge process. Thus, the information being collected under this collection is not already available.

5. *Impact on small entities.* In conformance with the Paperwork Reduction Act of 1995, the Commission has made an effort to minimize the burden on all respondents regardless of size by limiting the information collected under this collection to that which is necessary to obtain the information needed to resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF-II support and establish the final map of areas eligible for such support. Moreover, the requirement to submit information under this collection is limited to only those parties seeking to challenge or respond to challenges concerning the eligibility or ineligibility of an area initially deemed ineligible for MF-II support, and the decision about whether to submit a challenge or respond to a challenge rests exclusively with such parties. In addition, the Commission or the Bureaus will issue public notices prior to the opening of the challenge window that provides detailed instructions, guidance, and specifications concerning requesting an account with which to access the online USAC portal and submitting challenges and responding to challenges, thereby further

minimizing the burden on all respondents, including small entities, related to this new MF-II challenge process information collection.

6. *Consequences if information is not collected.* As the Commission noted in the *Challenge Process Order*, while the mobile deployment data collected on FCC Form 477 represent an improvement over the deployment data previously available on a national scale, the various uses of the FCC Form 477 broadband deployment data identified by the Commission to date do not include determining areas eligible for MF-II. This concern is in part what prompted the Commission's decision to undertake a new, one-time 4G LTE data collection with specified data parameters tailored to MF-II to be used to create the map of areas presumptively eligible for MF-II support that will serve as the starting point for the challenge process. The information collected under this new MF-II challenge process information collection will enable the Commission to efficiently resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF-II support and establish the final map of areas eligible for such support, thereby furthering the Commission's goal of targeting MF-II support to areas that lack adequate mobile voice and broadband coverage absent subsidies through a transparent process. Moreover, requiring challengers to submit the specific evidence/proof required by this collection in support of a challenge should deter frivolous challenges and thereby expedite the challenge process and in turn the start of the MF-II auction process.<sup>4</sup> Without this information, the process of confirming the final map of areas eligible for MF-II support will take significantly longer and be less efficient, which would substantially delay the start of the MF-II auction process and result in a corresponding delay in the distribution of MF-II support and harm to the program and the public.

7. *Special circumstances.* The new collection does not have any of the characteristics that would require separate justification under 5 C.F.R. § 1320.5(d)(2).

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Pursuant to 5 C.F.R. § 1320.8, the Commission published a 60-day notice in the Federal Register on October 6, 2017 (see 82 FR 46809) regarding above-described information collection requirements. No comments were received in response to this notice.

9. *Payments or gifts to respondents.* The Commission does not anticipate providing any payment or gifts to respondents.

10. *Assurance of confidentiality.* To the extent the information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information. See 47 C.F.R. § 0.459.

11. *Questions of a sensitive nature.* The information collection requirements do not ask questions of a sensitive nature.

12. *Estimates of the hour burden of the collection to respondents.* The decision regarding whether to submit or respond to a challenge rests exclusively with respondents and, therefore, respondents exclusively determine the number of responses that may be received under this information

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<sup>4</sup> Requiring challenged parties to submit technical information that is probative regarding the validity of a challenger's speed tests in response to a challenge should likewise deter the submission of frivolous responses to challenges and avoid delaying the challenge process.

collection. For this reason, it is difficult to know the number of respondents that will submit challenges and respond to challenges. However, the following represents the Commission's estimated hour burden for the proposed new collection of information:

- a. Number of estimated annual respondents: **Approximately 500** (325 challengers and 175 challenged parties).
- b. Total annual number of responses: **500 responses** (325 responses from challengers and 175 responses from challenged parties).
- c. Frequency of response: One-time.
- d. Total estimated annual burden: **78,725** total hours for 325 challenger-respondents and 175 challenged party-respondents, each filing once. Total estimated annual hours burden is calculated as follows:

**Challengers: 325 estimated responses x 204 hours per response = 66,300 total estimated burden hours.**

**Challenged parties: 175 estimated responses x 71 hours per response = 12,425 total estimated burden hours.**

- e. Total estimate of annual in-house cost to respondents for the burden hours: **\$2,738,011.50**.
- f. Explanation of calculation: The Commission estimates that the data required to be submitted under this collection will typically be prepared by respondents using existing in-house technical/engineering and other staff.

For challengers, the Commission estimates that it will take four in-house engineers (two at a rate equivalent to the hourly rate of a GS-9, Step 5 government staff member (\$29.85/hour) and two at a rate equivalent to the hourly rate of a GS-13, Step 5 government staff member (\$51.48/hour)) approximately 16 hours each to review and analyze the map of presumptively eligible areas to decide which ineligible area(s) to challenge. The Commission estimates that it will take two in-house engineers approximately 20 hours each to conduct speed tests/gather evidence in support of a challenge at a rate equivalent to the hourly rate of a GS-7, Step 5 government staff member (\$24.41/hour). The Commission estimates that compiling the evidence to support a challenge and certifying and submitting the challenge will require approximately 40 hours of an office automation (data entry) clerk's time at a rate equivalent to the hourly rate of a GS-4, Step 5 government staff member (\$17.61/hour), approximately 40 hours of an engineer's time at a rate equivalent to the hourly rate of a GS-13, Step 5 government staff member (\$51.48/hour), and approximately 20 hours of a paralegal or other legal staff member's time at a rate equivalent to the hourly rate of a GS-11, Step 5 government staff member (\$36.12/hour). Therefore, the estimated annual in-house cost for challengers is as follows:

*Review and analyze map of presumptively eligible areas and decide which ineligible areas to challenge:*

- 2 engineers at \$29.85/hour each x 16 hours per engineer per response x 325 estimated respondents/responses = \$310,440

- 2 engineers at \$51.48/hour each x 16 hours per engineer per response x 325 estimated respondents/responses = \$535,392

*Conduct speed tests/gather evidence in support of a challenge:*

- 2 engineers at \$24.41/hour each x 20 hours per engineer per response x 325 estimated respondents/responses = \$317,330

*Compile evidence to support a challenge and certify and submit the challenge:*

- 1 office automation (data entry) clerk at \$17.61/hour x 40 hours x 325 estimated respondents/responses = \$228,930
- 1 engineer at \$51.48/hour x 40 hours per response x 325 estimated respondents/responses = \$669,240
- 1 legal staff member at \$36.12/hour x 20 hours per response x 325 estimated respondents/responses = \$234,780

**Total Estimated “In-House Cost” for Initiating Challenges: \$310,440 + \$535,392 + \$317,330 + \$228,930 + 669,240 + 234,780 = \$2,296,112.**

For challenged parties responding to a challenge, the Commission estimates that it will take two in-house engineers (one at a rate equivalent to the hourly rate of a GS-9, Step 5 government staff member (\$29.85/hour) and the other at a rate equivalent to the hourly rate of a GS-13, Step 5 government staff member (\$51.48/hour)) approximately 8 hours each to review and analyze a challenge. The Commission estimates that it will take two in-house engineers approximately 10 hours each to gather probative evidence regarding the validity of a challenger’s speed tests to respond to/oppose a challenge at a rate equivalent to the hourly rate of a GS-7, Step 5 government staff member (\$24.41/hour). The Commission estimates that compiling the technical information/evidence to respond to a challenge and submitting the response will require approximately 10 hours of an office automation (data entry) clerk’s time at a rate equivalent to the hourly rate of a GS-4, Step 5 government staff member (\$17.61/hour), approximately 20 hours of an engineer’s time at a rate equivalent to the hourly rate of a GS-13, Step 5 government staff member (\$51.48/hour), and approximately 5 hours of a paralegal or other legal staff member’s time at a rate equivalent to the hourly rate of a GS-11, Step 5 government staff member (\$36.12/hour). Therefore, the estimated annual in-house cost for challenged parties is as follows:

*Review and analyze a challenge:*

- 1 engineer at \$29.85/hour x 8 hours per response x 175 estimated respondents/responses = \$41,790
- 1 engineer at \$51.48/hour x 8 hours per response x 175 estimated respondents/responses = \$72,072

*Gather probative information/evidence regarding the validity of a challenger’s speed tests to respond to a challenge:*

- 2 engineers at \$24.41/hour each x 10 hours per engineer per response x 175 estimated respondents/responses = \$85,435

*Compile evidence to respond to/oppose a challenge and submit a response to the challenge:*

- 1 office automation (data entry) clerk at \$17.61/hour x 10 hours x 175 estimated respondents/responses = \$30,817.50
- 1 engineer at \$51.48/hour x 20 hours per response x 175 estimated respondents/responses = \$180,180
- 1 legal staff member at \$36.12/hour x 5 hours per response x 175 estimated respondents/responses = \$31,605

**Total Estimated “In-House Cost” for Responding to Challenges: \$41,790 + \$72,072 + \$85,435 + \$30,817.50 + \$180,180 + \$31,605 = \$441,899.50.**

13. *Estimates of the annual cost burden of the collection to respondents.* Respondents should not incur any capital and start-up costs or costs for operation and maintenance or purchase of services in connection with responding to this new information collection.

**Total Capital and Start-Up Costs: \$0.**

**Total Costs for Operation and Maintenance (O&M) or Purchase of Services: \$0.**

14. *Estimates of the annual cost burden to the Commission.* This new information collection will be administered by economists, GIS experts, analysts, and support specialists at several GS levels with the assistance of senior managers and attorneys. Based on its extensive experience managing similar information collections, the Commission estimates that administering this new collection will cost it \$106,250. This information collection does not envision other costs, e.g., personnel or other resources from other government agencies or from the private sector.
15. *Program changes or adjustment.* This is a new information collection resulting in a program change increase of 500 respondents, 500 responses, and 78,725 total estimated burden hours.
16. *Collections of information whose results will be published.* The information collection will not be published for statistical use.
17. *Display of expiration date for OMB approval of information collection.* The Commission seeks an exemption from the requirement to display the OMB expiration date for this information collection. The Commission publishes a list of all OMB-approved information collections and their corresponding expiration dates in 47 C.F.R. 0.408 of the Commission’s rules, 47 C.F.R. § 0.408, and will publish the OMB control number and OMB expiration date for this collection in the list contained in section 0.408 of its rules.
18. *Exception to certification statement for Paperwork Reduction Act submissions.* There are exceptions to the certification statement.



**B. Collections of Information Employing Statistical Methods:**

The Commission does not anticipate that this new collection of information will employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.