



April 17, 2019

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

WTA – Advocates for Rural Broadband (“WTA”) submits this letter as a follow-up to a telephone meeting that took place on April 2, 2019 among Evelyn Jerden of LICT Corporation and Derrick Owens and Gerry Duffy representing WTA; Sue McNeil, Suzanne Yelen and Stephen Wang of the Wireline Competition Bureau; and Cathy Zima and Alec MacDonell of the Office of Economics and Analytics. That meeting was held to discuss the performance testing requirements for Rate of Return (RoR) recipients of high-cost support. The purpose of this letter is to present a number of specific, explicit proposals for improving the efficiency, effectiveness and equity of the performance testing process that were developed by WTA’s Public Policy Committee during the recent WTA Spring Conference (April 7 – 10).

WTA reiterates that its members support the testing of their networks and other networks receiving high-cost support to ensure that such support is being used for the intended purposes. WTA’s focus in this matter has been to modify or supplement the testing requirements adopted in the July 2018 *Performance Testing Order*,¹ which were designed primarily by and for large price cap carriers, to take into account the very different sizes, resources, operating circumstances and reporting milestones of RoR LECs.

TESTING CARRIER NETWORK FACILITIES ONLY: A major issue that continues to concern WTA is that the July 2018 rules require testing to be conducted between customer premises equipment (“CPE”) inside households and Internet exchange points (“IXPs”) – both of which end points are generally outside RoR LEC network boundaries and control. WTA recognizes the desire within the Commission to measure the experience of customers, but notes that the CPE-to-IXP testing path puts critically needed RoR LEC high-cost support at risk due to non-network factors and conditions which recipients have little or no ability to avoid, minimize, repair or otherwise control.

During the April 2 call, WTA noted that it had been working on a two-tiered performance testing approach -- namely: (a) an RoR LEC network-only test for high-cost program compliance purposes; and (b) a CPE-to-IXP test in response to customer complaints that would diagnose the sources and

¹ *Connect America Fund*, Order, WC Docket No. 10-90, DA 18-710, released July 6, 2018 (“*Performance Testing Order*”).

locations of problems and refer only unresolved network-only problems for high-cost program compliance action.

An alternative approach would be to require each RoR LEC to conduct a prescribed portion (*e.g.*, half) of its required number of speed and latency tests on a network-only basis, and the remaining portion on a CPE-to-IXP basis. If the Commission continues to require four weeks of testing per year on a seasonal basis, one way to do this would be to have network-only testing during two of the seasonal weeks and CPE-to-IXP testing during the other two weeks, with the seasonal testing areas reversed each year (*e.g.*, network-only testing during the Winter and Summer weeks one year, and during the Spring and Fall weeks the next year). This approach would enable the Commission to obtain both: (a) data showing use of high-cost support to construct the required RoR LEC broadband networks; and (b) data indicating the quality of the customer experience with their overall broadband service. WTA proposes that a RoR LEC's high-cost support should not be reduced or withheld if its two annual weeks of network-only testing demonstrate the requisite compliance with its broadband build-out obligations (see Correct and Retest Section below). If a RoR LEC's two weeks of annual CPE-to-IXP testing produces results that do not achieve the target speed and latency levels, the recipient should be required to work with USAC to determine the cause of such unsatisfactory results and to take reasonable steps to address the diagnosed causes (for example, by notifying customers of ways to upgrade or reconfigure their CPE to improve their service or by exploring reasonably priced middle mile alternatives if any are available).

FLEXIBLE START TIME WITHIN THE HOUR FOR TESTING: Another area outside of the control of RoR LECs and other high-cost support recipients is the lines or other facilities leading to and from the sixteen IXPs designated by the Commission as destinations for CPE-to-IXP testing. WTA members have a reasonable and legitimate concern that the current testing procedures – which appear to require tests to begin at the top of each hour – could result in congestion at the IXP that could have impacts similar to a distributed denial of service (“DDOS”) attack if several hundred recipients were to send test packets to the same IXP at the same time. The proposal above to allow RoR LECs to choose different seasonal weeks of network-only versus CPE-to-IXP testing would reduce this potential problem somewhat. In addition, WTA proposes that the problem can be further reduced or avoided by allowing carriers to stagger the hourly test commencement times to commence at any minute during the hour rather than everyone being required to commence testing at the top of the hour.

AFFILIATED COMPANIES COMBINED FOR TESTING SAMPLE SIZE: WTA continues to believe that the number of required test locations per supported service tier per state – generally, the lower of 50 locations or 10 percent of total subscribers – forces RoR LECs to test a much larger portion of their broadband subscriber locations than price cap carriers who are only testing 50 locations at 10/1. This greater proportional burden is exacerbated with respect to RoR LECs that receive support and must test on three separate service tiers (25/3, 10/1 and 4/1) per state and with respect to RoR LECs that operate integrated or closely related networks that straddle both sides of a state line. WTA proposes that this discrepancy with respect to RoR LECs be reduced by requiring them to test a total of 50 subscriber locations per state for all affiliated companies rather than per supported service tier. These locations would be allocated among the recipient's supported service tiers according to the relative number of subscribers that the recipient serves in each tier.

In addition, RoR LECs or affiliated RoR LECs that serve adjacent study areas straddling both sides of a state line and that are served primarily by the same staff (*e.g.*, 80 percent of the recipient's administrative, technical and customer service employees allocate at least 25 percent of their time to each study area) should be required to test only a total of 50 subscriber locations for both states.

RANDOMLY SELECTED LOCATION LOGISTICS: WTA has notified the Commission on several occasions that many rural households are likely to refuse to participate in performance testing on behalf of the federal government. In many cases, reluctant customers will not respond to testing requests or notices, will decline to schedule equipment or software upgrades or not be home when a technician arrives for a scheduled installation or test set-up, and/or will refuse to sign anything that an RoR LEC can use as evidence of their unwillingness to participate in testing. WTA and its members cannot predict in advance how many customers in a USAC-generated random sample of broadband customers in an RoR LEC service area will refuse to participate in performance testing, but there will be some in virtually all RoR LEC areas.

WTA proposes that the Commission simplify the logistical problems and delays of generating random samples and replacing non-consenting customers by ordering USAC to generate a random sample for each recipient consisting of at least 200 percent of the required number of testing locations. This percentage can and should be revised in light of the experience of RoR LECs and USAC during the initial years of testing. To the extent desired to limit the sampling discretion of support recipients, USAC can list the initial 50 or so required sample locations, and then list the alternative replacement locations in the order that they must be tested in the event that the residents of the initial sample locations refuse to participate or have incompatible customer CPE (see Incompatible Customer CPE section below).

INCOMPATIBLE CPE CAN BE A SAFE HARBOR CONDITION FOR RANDOM SAMPLE SUBSTITUTION: WTA also proposes that the Commission simplify the testing process, and reduce the costs of testing imposed upon RoR LECs and their customers, by allowing recipients to replace test locations randomly selected by USAC if the customer's CPE at a location is not compatible with the testing hardware and software selected for use by the recipient. Incompatible, typically older, CPE should be treated the same as a customer refusal to participate, with the recipient then required to substitute the next replacement location from the list of alternative test locations furnished by USAC.

PROOF OF CUSTOMER REFUSALS AND INCOMPATIBLE CPE: It is not clear what a RoR LEC will need to do to substantiate that a substitute randomly selected sample location is required. WTA proposes that carriers self-certify that a customer is either unwilling to participate in testing or has incompatible customer-owned CPE, and that a substitute is needed. Carriers can be required to retain documentation regarding why a customer was eliminated from testing and the next sample location was used as an alternate (but the Commission should recognize that many non-cooperating customers will refuse to sign any document, and that the best that RoR LECs will be able to do in many situations will be to obtain a report from the customer service representative or technician who dealt with the customer).

CORRECT AND RETEST REQUIREMENT: WTA reiterates its proposal that performance testing be treated similarly to cable television signal leakage testing. Specifically, before a RoR LEC is deprived of the high-cost support that it critically needs to upgrade and operate its broadband network due to a deemed failure of its test results to meet certain compliance levels, it should be given a reasonable period – for example, 120 days – to deploy the network upgrades necessary to meet the applicable speed and latency standards and to then to re-test any problem areas under its control. Only if the re-test shows that the recipient's network still has not been constructed with facilities sufficient to provide the requisite broadband speed and latency should high-cost support be withheld or reduced.

SUPPORT PENALTY EFFECTIVE DATES: Since RoR LECs do not have the same timing or level of build-out milestones as price cap carriers, the timeline for implementing penalties if a RoR LEC does not meet the 80/80 test specifications should be revised from that identified in the *Performance Testing Order*. Penalties related to the testing of locations included in the HUBB that have service from the RoR LEC that do not meet the 80/80 speed or latency levels should be adjusted to fall after the effective date of the RoR LEC's build-out milestones. For example, year 4 would be the first year that A-CAM carriers could have their support reduced if they fail the 80/80 testing. However, as specified above, the carrier should only be penalized if they fail the "Correct and Retest" requirements.

Pursuant to Section 1.1206(b) of the Commission's Rules, this submission is being filed for inclusion in the public record of the referenced proceeding.

Respectfully submitted,

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