



May 6, 2019

Filed Via ECFS

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:

On Thursday May 2, 2019, Evelyn Jerden of LICT Corporation (via telephone), Robert DeBroux of TDS Telecom (via telephone) and Derrick Owens and Gerry Duffy representing WTA – Advocates for Rural Broadband (“WTA”) met with Suzanne Yelen, Stephen Wang and Ian Forbes (via telephone) of the Wireline Competition Bureau to discuss performance testing requirements for Rate of Return local exchange carrier (“RoR LEC”) recipients of high-cost support, and in particular the proposals presented by WTA in its letter of April 17, 2019 in the referenced docket.

REQUIRED ROUTE TO BE TESTED. 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. However, whereas WTA members have constructed and are continuing to construct their networks to comply with their broadband build-out obligations, they continue to be concerned that testing beyond the boundaries of their broadband networks – both inside customer premises using equipment selected and deployed by customers and between their networks and Internet exchange points (“IXPs”) over middle mile transport facilities and routes operated by one or more unrelated entities – can result in test “failures” that they have no ability to control or repair but which can result in the loss or withholding of critically needed high-cost support. The problem appears to be that the two primary goals of performance testing – to measure the consumer experience and to measure compliance with high-cost support obligations – are not necessarily satisfied by the same data. WTA has previously proposed two alternatives for testing – one involving separate network-only tests and customer experience tests, the other involving separate and revolving weeks of network-only testing and customer experience testing – that would address both Commission testing goals without penalizing high-cost recipients for conditions beyond their control. If the Commission rejects these alternatives, WTA urges it to facilitate and monitor a sufficient amount of customer premises-to-IXP testing prior to the imposition of high-cost support penalties to determine the extent to which outside-network factors such as consumer premises equipment or middle mile transport may affect the speed and latency test results of some carriers.

ADVANCE TESTING. RoR LECs and other high-cost support recipients are required to test for one week during each of the four designated calendar quarters, and have full discretion every year to choose their testing week within each quarter. WTA requests clarification that the Universal Service Administrative Company (“USAC”) will not assign testing weeks and that recipients will not have to

notify USAC in advance of the weeks when they will be testing. Rather, WTA proposes that recipients will be required only to conduct their testing during the week that they choose each quarter (which week may differ from one quarter to the next), and report the results of such testing for only the test week to USAC thereafter.

WTA is aware that the Commission has prohibited high-cost recipients from beginning testing during their quarterly testing week, and then throwing out some of the initial test results that they might not like. Rather, once a recipient begins testing during its quarterly testing week, all test results for that test week must be reported.

However, some WTA members want to do some informal or limited pre-testing in advance of their quarterly testing week. Particularly in an area where broadband facilities have been deployed or upgraded recently or where changes were made to existing network facilities due to new residential construction or disaster recovery, recipients want to have the opportunity to discover and repair any problems in certain portions of their networks as soon as possible and not wait for their formal testing week. WTA believes that the results of such “advance” pre-testing should not be required to be reported to USAC.

Given that the last paragraph of Appendix A to the July 6, 2018 *Order*¹ states that “[a]ll test results must be submitted,” WTA requests the Commission to clarify that this requirement applies only to test results during the quarterly testing weeks, but not to the results of advance or informal or partial pre-testing during other time periods.

SPEEDS AND TIERS TO BE TESTED. Some WTA members have been concerned that they might be required to reduce the broadband speeds that they provide to certain customers for testing purposes – for example, where they have reported a location to the High Cost Universal Broadband (“HUBB”) portal in satisfaction of their 25/3 build-out requirement, but the customer at the location actually orders the 50/6 service tier. WTA asks the Commission to clarify that a recipient does not have to turn down a location’s actual broadband speed in order to test for the service speed that the recipient reported to the HUBB in satisfaction of its high-cost support build-out obligations. WTA proposes that, if an RoR LEC reports a 25/3 location to the HUBB as part of its build-out obligation and the customer at that location actually orders 50/6 service, the RoR LEC will be deemed to have “passed” its speed test for that location if the measured speed for the location during the test exceeds 25/3 (or actually even 80% of 25/3 – or 20/2.4).

WTA also has concerns regarding the testing of locations where the customer has elected to subscribe to a speed lower than the speed reported in the HUBB – for example, where a customer elects to take service on a less expensive 4/1 tier even though the recipient RoR LEC has built and reported the customer’s location to the HUBB accurately as a 25/3 location. WTA proposes that the Commission clarify that RoR LECs will not be required to increase the broadband speed at a location for the purposes of testing to a speed higher than that ordered by the customer. Rather, RoR LECs should be expressly permitted to treat a location whose subscribed speed is less than the constructed speed reported to the HUBB the same as a location with incompatible customer premises equipment or with a customer refusing to participate in testing, and should be allowed to obtain a substitute test location.

FLEXIBLE START TIME WITHIN THE HOUR FOR TESTING: WTA reiterates its request that recipients be allowed to stagger the hourly test commencement times so that they can start testing

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

at any minute during the hour and avoid potential congestion at IXPs that could result at times if everyone testing to the IXP that week is required to commence testing at the top of the hour.

WAIVERS FOR NATURAL DISASTERS. A significant number of WTA members serve areas that are susceptible to ice storms, tornados and hurricanes, floods and similar natural disasters that not only damage or destroy broadband network facilities, but also require “all hands on deck” to restore service as rapidly and thoroughly as possible. Whereas WTA assumes that the Commission will grant waivers of performance testing and other requirements during disaster recovery periods, it urges that the waiver process be as simple and expeditious as possible so that RoR LECs and other recipients can focus upon completing recovery before they have to worry about their next week of performance testing.

PROOF OF CUSTOMER REFUSALS AND INCOMPATIBLE CPE: WTA is aware that some vendors are asserting that they have some of their equipment and software solutions ready or almost ready that will allow testing to be initiated via Internet gateways in customer homes without the need for truck rolls or other on-site visits or customer contacts. WTA and its members hope that such software and other equipment will be available soon, and that it will be operational and affordable. WTA members have been made aware of one major equipment vendor that originally commenced its testing solution with one type of equipment and that is now discussing adding a second possible line of testing equipment that will most likely be much more compatible with a significant amount of current RoR LEC equipment. However, the latter solution is not slated to be available until much later in 2019.

WTA members have warned the Commission that some rural customers will refuse or be reluctant to participate in FCC-required performance testing, and that other customers have bought their own home equipment that may not be compatible with a recipient’s testing system. One way to address this problem could be an automated USAC system that would allow recipients to request and receive substitute testing locations for those initially assigned where the customer refuses to participate or has incompatible equipment or has purchased a less expensive, but slower service tier. WTA reiterates that RoR LECs and other recipients can maintain records stating why a customer location could not be tested, but urges the Commission to 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.

WTA is aware that recipients may be able to reduce or avoid customer refusals to participate in performance testing by requiring new broadband customers to agree to participate in testing as part of the terms and conditions of their service. However, it notes that adding such testing consents to the terms and conditions of existing customers may create some customer dissatisfaction or protests, and may be subject to some state consumer protection laws. In the customer consent area, WTA requests that the Commission reduce some of the uncertainties and issues by declaring whether its rules and policies require or do not require customers to be notified that their locations are being tested for broadband speed and latency pursuant to Commission rules, and whether such performance testing and reporting is covered or not covered by Commission rules or policies concerning Customer Proprietary Network Information (“CPNI”).

DEFERRAL MODE: WTA pointed out that a significant number of customers may continually be deferred from one minute to the next minute such that a test might never be able to be run based on the Commission’s requirement that if the location has a load of 64 kbps or greater, the test would be deferred to the next minute. Many RoR LEC customers have applications that continuously run on

their networks for items such as thermostats, door bells, security systems, cameras, etc. that far exceed the 64 kbps consumer load limit at all times of the day.

SUPPORT PENALTY EFFECTIVE DATES: WTA reiterates that, 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 to fall after the effective date of the RoR LEC's build-out milestones. For example, year 5 would be the first year that A-CAM carriers could have their support withheld or reduced if they fail the 80/80 testing with respect to the year 4 milestone.

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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