



Advocates for Rural Broadband

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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 Wednesday, October 16, 2019, Gerry Duffy representing WTA – Advocates for Rural Broadband (“WTA”) met with Joel Miller, Chief of Staff and Senior Legal Advisor, Media to Commissioner Michael O’Rielly to discuss the Commission’s draft Order on Reconsideration (FCC-CIRC1910-01) regarding performance testing requirements for rural telecommunications companies (“Rural LECs”) and other recipients of Connect America Fund (“CAF”) support.

WTA reiterated the support of its members for performance testing that fairly and accurately measures speed and latency for a sample of the locations for which they have received Connect America Fund (“CAF”) support. WTA and its members expressed appreciation for the Order’s revised formal testing start dates for Rural LECs, and particularly for the 12-month pre-testing periods that precede formal testing.

However, WTA noted that the draft Order rejects most of the small carrier alternatives that had been advanced, including those regarding testing end points, daily and quarterly testing, and the number of testing locations. The discussion focused upon testing end points, with WTA reiterating the unfairness of being subjected to potential loss of CAF support due to problems and shortcomings regarding customer premises equipment (“CPE”) and middle mile routes for which Rural LECs receive no CAF support and over which they have no control. With respect to CPE, many Rural LECs have little or no influence over the quality and age of the CPE that their customers elect to purchase and employ, or the manner in which their customers may use or overuse their CPE and broadband service during testing periods. With respect to middle mile, the Order is simply wrong when it assumes that all Rural LECs – even smaller ones – have some influence and control over the type and quality of Internet transport they purchase. Some do; but others are stuck with a single transport carrier that has no interest in upgrading its route or in negotiating price or service quality. And even where acceptable middle mile transport options and services are available, Rural LEC performance testing can be adversely affected by middle mile line breaks, outages and congestion with respect to which the Rural LECs have no notice or control. WTA members, who have had experience with the costs and delays of the Commission’s waiver process, have little confidence that waivers can effectively and efficiently address these problems.

WTA reported that more and more of its members that are performing preliminary testing are finding many instances where customers are using much more than 64 kbps of bandwidth. WTA supports the Order's determination that testing does not have to begin immediately at the beginning of the hour, but questions why the relief provided in instances where there is more than 64 kbps of cross-talk encompasses only the first 15 minutes of a testing hour. More important, as smart devices and the Internet of Things grow in use and importance, cross-talk is virtually certain to exceed the 64 kbps level more frequently and in more households. WTA is reaching out to engineers and other technical experts, but does not at present have a specific cross-talk solution to propose. Whereas the first step is to look for a technical solution, WTA notes that the large amount of cross-talk being currently encountered and the likelihood of further increases may require more comprehensive changes to the performance testing system if more and more test locations are excluded and/or more and more test data is adversely affected.

WTA expressed concern with the Order's attempt to combine the Section 54.320(d)(2) CAF recovery penalties for noncompliance with "final milestone" deployment obligations to include not only the actual number of required physical locations to which service was not deployed, but also extrapolations from the performance testing survey results of the estimated number of locations that may not be receiving the applicable broadband speeds and latency. Combining actual non-deployed locations with extrapolated sampling results is like adding apples and potatoes, and will create significant uncertainty by making it possible that a problem with a portion of 50 sampled customers can result -- via the "1.89 times" and "10 percent" penalty provisions -- in USAC attempts to recover multiple years of CAF support for hundreds (perhaps, thousands) of "projected" customers at the end of existing build-out periods. And given the issues regarding testing end points, this change makes it possible that some Rural LECs could be subjected to USAC demands in 5 or 10 years for return of substantial amounts of the CAF support that they had received and used to deploy their broadband networks due to problems with CPE and/or middle mile facilities over which they had no control.

WTA proposed a solution to many of these performance testing issues -- specifically that, in addition to allowing CAF recipients to become familiar with their testing equipment and the testing process, the 12-month pre-testing periods be used to collect data that can address the uncertainties and differences that remain unresolved between the Commission's staff and the industry. For example, no one knows at this point whether the Commission's "80/80" standard provides a reasonable buffer to protect Rural LECs that have deployed high-quality broadband networks from failing speed and latency tests due to CPE and/or middle mile problems beyond their control. This matter can be addressed during the pre-testing periods by allowing Rural LECs and others to perform speed and latency tests not only on the customer premises-to-IXP routes required by the Commission but also on the ONT-to-middle mile meet point routes on their own networks in order to determine the extent (if any) to which these carriers may be failing speed and latency tests due to conditions occurring outside their CAF-supported networks. Similar data can be collected during the pre-testing periods regarding cross-talk impacts, the ease or difficulty of obtaining customer consent to testing, the effectiveness of Commission website explanations in obtaining customer participation, the amount of additional useful information acquired by quarterly testing and by hourly testing from 6 pm to midnight, and the additional costs to small companies of the required performance testing.

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This proposal is consistent with the sentence in paragraph 75 of the draft Order which states: “We direct the Bureaus to amend the performance measures as appropriate based on the information learned and experience gained from the pre-testing period.” WTA asks that the finally adopted Order on Reconsideration make a specific and explicit commitment to encourage and allow the data collected during the 12-month pre-testing periods to be used by Rural LECs and other small carriers to request and obtain a fresh look not only at “performance measures” but also at testing end points and other performance testing issues for which Commission is rejecting industry proposals and concerns in this draft. And, because it would make little sense to go through another round of reconsideration petitions or appeals at this time if there will be an explicit opportunity for affected parties to obtain a fresh look based upon pre-testing data, WTA requests that the adopted Order on Reconsideration expressly indicate that requests for a fresh look will not be dismissed or denied on the grounds that they constitute untimely petitions for reconsideration or applications for review of the present order.

An example of substitute language that could address these matters is:

The Commission recognizes that the performance testing requirements set forth in this Order are new for small carriers and that the information learned and experience gained from the pre-testing period can be very useful to both the Bureaus and CAF recipients in determining how the testing requirements function under actual operating conditions. Pre-testing data will help to reduce uncertainties and will enable testing requirements to be refined or modified if such data indicates that changes will improve their effectiveness, efficiency and equity. Hence, we direct the Bureaus to amend the performance testing requirements as appropriate based upon the information learned and experience gained from the pre-testing period, and to accept and consider petitions from CAF recipients and their representatives for fresh looks at performance testing determinations in this Order on the basis of data collected during the pre-testing period. (Footnote: the Commission and its Bureaus will not consider such petitions for fresh looks based upon pre-testing period data to be untimely petitions for reconsideration of this Order.)

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,
/s/ Gerard J. Duffy
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