



February 25, 2019

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

Re: *Ex Parte* Communication: WC Docket No. 10-90

Dear Ms. Dortch:

On February 21, 2019, Sara Cole of TDS Telecom and Dave Junker of Great Plains Communications, participating by telephone, along with Ken Pfister of Great Plains Communications, Stacey Mueller of Blackfoot, and Genny Morelli and the undersigned of ITTA, met with Travis Litman of the Office of Commissioner Rosenworcel regarding the *Order* in the above-referenced proceeding, as well as the pending petitions for reconsideration and applications for review of it, and responsive pleadings thereto.¹

During the meeting, we emphasized the need for the Commission to issue an order or public notice holding in abeyance the current July 1, 2019 implementation date for the commencement of broadband performance testing pursuant to the *Order*.² ITTA members recognize the need for a rigorous performance testing regime and are intent on compliance with it. However, with the myriad outstanding issues raised in the cited pleadings and numerous others, adherence to the current implementation date runs the significant risk of forcing carriers to devote substantial personnel hours and financial sums to testing standards that may not ultimately be required, in the process diverting such resources from other critical and more certain endeavors such as broadband deployment to unserved and underserved areas. These concerns are compounded by the current widespread unavailability of equipment that most carriers can use in a cost-effective manner to test their networks.³ As discussed in the meeting,

¹ See *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET) (*Order*); see also, e.g., Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 (Nov. 7, 2018) (ITTA Comments); Petition of USTelecom – The Broadband Association, ITTA – The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association for Reconsideration and Clarification, WC Docket No. 10-90 (Sept. 19, 2018) (Joint Petition); Reply of USTelecom, ITTA, and WISPA to Opposition to Petition for Reconsideration and Clarification, WC Docket No. 10-90 (Nov. 19, 2018) (Joint Reply).

² Because the *Order* was released on delegated authority, so, too, could be an instrument holding the implementation date in abeyance.

³ The *Order* affords carriers flexibility to employ any combination of MBA testing, off-the-shelf testing, or self-testing. *Order*, 33 FCC Rcd at 6513, para. 9. Such flexibility is designed to “ensure that there is a cost-effective method for conducting testing for providers of different sizes and technological sophistication,” and to “allow the provider to align required performance testing with their established network management systems and operations,

(continued...)

widespread availability of embedded testing solutions for deployment and integration into networks may still be a year or more away, and such solutions, in some cases, are projected to be approximately one-quarter of the cost of “Whitebox” solutions. Moreover, the record is replete with descriptions of the pragmatic difficulties of obtaining customer consent to serve as test subjects using Whitebox solutions, and the burdens associated with implementing such solutions where customers do consent.⁴

In light of all these factors, we requested that the Commission delay the implementation date until a reasonable amount of time after it has resolved all of the issues subject to the petitions for reconsideration and applications for review, as well as after cost-effective equipment is available in a sufficiently widespread manner so as to realize the Commission’s goals of promoting a rigorous but flexible testing program.⁵ Unlike the imposition of an arbitrary date certain (e.g., January 1, 2020) that appears at this juncture to not realistically be conducive to carrier compliance, ITTA’s requested revised implementation timeline would, by its very nature, be reasonable and afford carriers sufficient opportunity to comply.

We also addressed numerous of the *Order*’s substantive decisions. Regarding testing frequency, we challenged the *Order*’s expansion of the hourly test period from 7-11 PM weeknights to 6 PM – 12 AM nightly,⁶ explaining that the burdens associated with the conduct of testing are directly proportional to the number of tests. Further, we urged clarification that “on-net” servers are suitable for testing and compliance purposes, “FCC-designated IXP” includes any IXP operating in metropolitan areas identified in the *Order*, and that carriers may test to “the nearest internet access point,” such that 16 FCC-designated IXPs are insufficient and will artificially skew measured network performance negatively.⁷

Finally, with respect to compliance, we requested that the Commission reconsider the *Order*’s overly stringent framework for penalizing non-compliance -- which deals much more harshly with minor performance infractions than a more significant degree of non-compliance with broadband deployment milestones -- and suggested that the performance measures compliance framework align more with that to which broadband deployment milestones are subject.⁸ Similarly, we argued that the compliance threshold for latency is unduly exacting, and should be harmonized with the compliance standard for speed, for instance, compliance with 175 percent of the latency standard 95 percent of the time.⁹

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making it as easy as possible for carriers to implement the required testing while establishing rigorous testing parameters and standards, based on real-world data.” *Id.* at para. 10.

⁴ See, e.g., ITTA Comments at 2-4 (citations omitted).

⁵ See *id.* at 6-7.

⁶ See *id.* at 7-8.

⁷ See Joint Petition at 21; Joint Reply at 3-4.

⁸ See Joint Petition at 12-14; Joint Reply at 2.

⁹ See Joint Petition at 10-12; Joint Reply at 9.

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Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Travis Litman