



August 13, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***Connect America Fund***
Docket No. 10-90
Ex Parte Communication

Dear Ms. Dortch:

The Wireless Internet Service Providers Association (“WISPA”) writes to express its support for eliminating the “operationally burdensome”¹ requirement that Connect America Fund (“CAF”) recipients be required to temporarily upgrade their subscribers in order to conduct speed testing.² Instead, in cases where a CAF recipient demonstrates that it has met its performance milestones but there are an insufficient number of random test samples that subscribe to the speed to be tested, the CAF recipient should have the right to certify that (1) there were an insufficient number of random test samples that subscribed to the speed required to be tested, and (2) it tested “x” number of subscribers outside the random test sample in order to meet the minimum number of subscribers required to be tested.

In the *Order*, the Bureaus stated that “carriers that have deployed a network with the requisite speeds must include all subscribers at that level in their testing, but may still find it necessary to upgrade individual subscriber locations, at least temporarily, to conduct speed testing.”³ This situation would arise where, say, a CAF recipient obligated to provide 100/20 Mbps speeds does not have a sufficient number of test subscribers – randomly selected pursuant to Commission guidelines – that have subscribed to that speed offering, and must therefore temporarily increase the speed of subscribers opting for slower speeds in order to satisfy the random sample requirement.

As other parties have observed, this requirement imposes substantial burdens on CAF recipients that the Bureaus may not have anticipated. As both NTCA and ITTA have emphasized,

such requirement “would be operationally burdensome as it would require providers to variously increase and decrease service at locations to meet testing calendars,” “could also cause damaging customer confusion and a blow to the company’s goodwill, as customers may not understand fully the basis for the

¹ Application for Review and Request for Clarification of NTCA – The Rural Broadband Association, WC Docket No. 10-90 (filed Sept. 19, 2018) (“NTCA AFR”) at 18.

² *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (“*Order*”).

³ *Id.* at 6528.

temporary increase and then decrease in service,” and “could also interfere with the company’s general marketing strategies and promotional efforts.”⁴

More recently, ITTA pointed to an “even more troublesome” aspect of the temporary speed increase requirement – CAF subscribers who subscribe to the speed tier to be tested but are outside of the random test sample would not be eligible test subjects.⁵

WISPA agrees that the Bureaus may have underestimated the adverse impact its requirement may have. Accordingly, the Commission, in acting on the pending applications for review and petitions for reconsideration, should adjust its temporary upgrade requirement.

First, WISPA offers additional explanation of the burdens associated with the existing requirement. In many cases, the CAF recipient would need to make hardware upgrades at the test subscriber’s residence to accommodate the potential need to test speed at faster performance level than the subscriber chose to purchase. Fixed wireless operators deploy multiple technologies in several radio bands in order to maximize utilization of available spectrum. When a subscriber elects a slower speed package, the operator will preferentially deploy end-user equipment that is ideally aligned with that subscription tier. This has two primary benefits – it distributes capacity efficiently thus reserving maximum capacity for servicing top-tier subscribers, and the lower-speed devices are normally less expensive than those used for the top speed tiers. Consequently, in order to comply with a mandated speed test where a temporary speed increase would be necessary, the operator would suffer the operating costs of a truck roll, the capital costs of an equipment swap, and the indirect capacity costs that may require further upgrades to tower-deployed radio equipment. Further, truck roll costs can be onerous in some situations, depending on circumstances of the customer’s original installation – it might require a two-man crew or more, and perhaps even rental of special equipment such as a bucket truck. Moreover, this sort of activity is disruptive to the customer. Lastly, there are additional operational costs associated with tracking and reversing temporary speed bumps, from a back-office perspective.

Second, if the requirement stands, it could deter applicants in future auctions from bidding at higher speed tiers. For example, a Rural Digital Opportunity Fund applicant may decide to bid at the 25/3 Mbps performance tier instead of the 100/20 Mbps speed tier if it would be required to test at 100/20 Mbps and may not have enough random test subjects. The disincentive created by making it “safer” for bidders to propose lower speeds is contrary to the Commission’s objectives.

To address these problems, WISPA recommends that, in cases where the number of required random test subjects exceeds the number of CAF subscribers that have elected to subscribe to the speed test tier, the CAF recipient would be permitted to select test subscribers that have chosen the speed required to be tested but which are not within the random test sample. In such circumstances, a CAF recipient that demonstrates that it has met its performance milestones would certify that (1) there were an insufficient number of random test samples that

⁴ Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 (filed Nov. 7, 2018) at 8, *quoting* NTCA AFR at 18.

⁵ Letter from Michael J. Jacobs, ITTA Vice President, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Aug. 6, 2019) at 2.

subscribed to the speed required to be tested, and (2) it tested “x” number of subscribers outside the random test sample in order to meet the minimum number of subscribers required to be tested. WISPA believes that testing those subscribers who are already receiving the service subject to speed testing will achieve the same results intended by the Commission’s rules without the burdens of temporary speed increases.

Through this process, CAF recipients will still need to test to the required number of subscribers but will not be forced to undertake burdensome, expensive and consumer-confusing temporary upgrades. Because broadband providers are financially incentivized to offer higher speed tiers, are subject to rigid build-out milestones, and would be required to make a certification confirming the lack of random test subjects, there should be no concerns about potential gamesmanship. In addition, the certification process will require fewer administrative resources than the waiver process suggested by ITTA.⁶

WISPA suggests that this recommendation can be implemented either in the upcoming order resolving the applications for review and petitions for reconsideration or in the Public Notice announcing guidelines for random speed testing.⁷

Pursuant to Section 1.1206 of the Commission’s Rules, this letter is being filed in ECFS in the above-referenced docket. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/ Louis Peraertz

Louis Peraertz, Vice President of Policy

cc: Suzanne Yelen
Ian Forbes
Stephen Wang

⁶ See *id.*

⁷ See *Order* at 6524 (“WCB will provide further guidance regarding random selection by public notice”).