

September 21, 2018

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, September 19, 2018, Mike George of NortheastTel (Louisiana); and Derrick Owens, Bill Durdach and Gerry Duffy representing WTA – Advocates for Rural Broadband (“WTA”) met with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel, to discuss concerns regarding the High-Cost Support budget for rural local exchange carriers (“RLECs”) and the *Order*, DA-18-710, released July 6, 2018, regarding the speed and latency performance testing framework for certain recipients of High-Cost Support.

With respect to the budget, Mr. George expressed the need for an early decision on pending budget revision issues and for the sufficient, stable and predictable support flows required to extend, upgrade and operate his company’s broadband network. He expressed particular concern that the budget control mechanisms have become operational again as of July 1, 2018, and that NortheastTel has already lost about \$20 thousand of high-cost support that it otherwise would have received under the applicable Commission rules and calculations.

With respect to the performance testing framework, WTA and NortheastTel recognize that the Commission has a statutory duty to ensure that high-cost support is used for the purposes intended, and that recipients must offer broadband services that meet certain basic performance requirements as a condition of receiving support. The problem with the testing framework adopted in the *Order* is that it was not designed with RLECs in mind, and imposes unnecessary burdens, practical implementation difficulties and excessive costs upon them that will impair their ability to deploy and upgrade their broadband services. WTA has filed an Application for Review of the *Order*, but is willing to work with the Commission and its staff to develop a practicable and reasonable performance testing framework for RLECs.

WTA and NortheastTel understand that much of the contemplated broadband performance testing equipment is not yet available, and may not be readily available at affordable pricing for small carriers for several years. These equipment availability uncertainties alone argue for postponing, at least for RLECs, the commencement of the performance testing that is scheduled to begin during the Third and Fourth Quarters of 2019.

Even if and when affordable testing equipment becomes available, WTA noted that the *Order's* testing framework appears to have been designed predominately for price cap carriers, and needs to be revised substantially before it is viable and cost-effective for much smaller RLECs. WTA stated that the required numbers of test locations and hourly tests, plus the required testing during all four seasons and during evening hours (requiring overtime pay or complete shifts of employee work schedules to the evening), impose excessive labor and cost burdens upon RLECs. Mr. George indicated that NortheastTel has only 12 employees who are already fully burdened with multiple responsibilities, and that it would have to hire and train at least one additional employee to handle the *Order's* performance testing requirements. He further indicated that seasonal testing is not necessary in rural northeastern Louisiana, given that weather and broadband usage patterns there do not change significantly throughout the year.

Mr. George stressed the difficulties of reaching rural customers and getting them to agree to allow testing of their broadband service for federal government purposes. He stated that, when NortheastTel extends fiber into additional areas, it is very difficult and time-consuming to contact customers and arrange for permission and appointments to come to their homes to install or upgrade actual broadband services that they want. Obtaining customer agreement and scheduling for performance testing that many customers may not understand or want is going to be a much more difficult task.

WTA noted that its request that performance testing be limited to each covered RLEC's own network – where it can exercise control over speed and latency – was rejected in the *Order*. Mr. George stated that his company has only one middle mile option – a fiber route to Dallas – and no significant capability to negotiate speed, routing, service quality or pricing. WTA reiterated that it is unfair to penalize RLECs for middle mile and consumer premises equipment (“CPE”) problems and congestion that are outside their control and that can adversely impact speed and latency. Over and above the quality of the middle mile service they can obtain, RLECs have no control over how their broadband traffic is routed or what bottlenecks or congestion it might encounter once they hand it off to the initial middle mile service provider.

Similar uncertainties and uncontrollable circumstances affect CPE. Mr. George noted that his company has little or no control over the CPE that customers use, how well they maintain it or how many devices they connect to it. A substantial majority of NortheastTel's trouble calls regarding customer broadband service problems are ultimately found to be due to customer equipment or equipment usage outside of the company's control. All that NortheastTel's technicians can do in such instances is to explain the reasons for the problems and advise the customers to upgrade their equipment or limit what they connect to it.

WTA recognizes that the *Order* approves the use of financial incentives (such as a period of free service) to try to get rural customers to agree to participate in performance testing. These incentives may or may not have some value in obtaining test participants. However, they constitute an additional testing cost piled on top of costs including, but not limited to, new testing equipment and licenses, modifications to existing network equipment to accommodate testing equipment and software, the hiring and training of additional employees, evening overtime pay, truck rolls to rural test households, installation and removal of equipment inside customer households, handling of customer negotiations and complaints, compilation and reporting of test data, and increased middle mile costs. WTA has long asserted that the imposition of additional regulatory and reporting costs upon RLECs reduces dollar-for-dollar the amount of net high-cost support available to upgrade and operate their broadband networks. In the case of the contemplated performance testing framework, these potential adverse net impacts appear to be very substantial, and will be further exacerbated if an RLEC's test data numbers do not show “full compliance” and its high-cost support is reduced by 5% to 25% penalties.

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 proceedings.

Respectfully submitted,

/s/ Gerard J. Duffy

Gerard J. Duffy
WTA Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Email: gjd@bloostonlaw.com

cc: Travis Litman