

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Connect America Fund

WC Docket No. 10-90

Comments of Alaska Communications in Support of the Petition for Reconsideration and Clarification filed by USTelecom – The Broadband Association, ITTA - The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association

Alaska Communications hereby offers these comments in support of the above-captioned Petition for Reconsideration and Clarification (the “Petition”) of the Order released by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology establishing testing procedures and metrics for measuring compliance with Connect America Fund (“CAF”) broadband performance requirements.¹ In these comments, Alaska Communications particularly supports the requests in Section III of the Petition for clarification that speed testing should measure compliance only with the applicable minimum CAF-required speed, and reconsideration of the decision to exclude speed test results that substantially exceed the “advertised speed” of the service.²

A. CAF Broadband Speed Testing Should Measure Compliance with the Relevant CAF-Mandated Minimum

Alaska Communications agrees with the Petition that the Bureaus should clarify that the Order requires speed testing solely with reference to the relevant CAF-mandated minimum.³ As the Petition observes, the Order states that purpose clearly.⁴ But, in another context (discussed below), the Order also requires comparison of individual test results to the *advertised* speed of

¹ See *Connect America Fund*, WC Docket No. 10-90, Order, DA 18-710 (Wir. Comp. Bur., Wireless Telecom. Bur., Office of Engr. and Tech. rel. July 18, 2018) (the “Order”).

² Petition at 15-19.

³ Petition at 15-16.

⁴ See Petition at 15; see also Order at ¶ 51, n.146 (stating unequivocally that, “[t]he speed for which the provider should be testing is the speed required by the relevant CAF rules, not the advertised speed”).

the service, which may be tiered in levels that exceed the CAF-mandated minimum. And, the Order variously refers to testing by “speed tier,” “service tier,” and “performance tier,” without specifying that these requirements refer to CAF-mandated minimums.⁵ These references introduce a level of ambiguity about whether the Order can be interpreted to require testing according to provider-defined speed tiers used to market the service, rather than the CAF-mandated minimum alone.

The purpose of testing and reporting the speed of broadband connections funded through the CAF programs is to ensure compliance with the Commission’s associated broadband performance requirements, and thus ensure that recipients are, in fact, using the CAF support for its intended purpose, as required by the Communications Act of 1934, as amended (“Communications Act”).⁶ In the *Transformation Order*, the Commission specifically required recipients of CAF support to meet certain broadband performance requirements defined in terms of speed, latency, and capacity of the supported service, and to measure and report actual performance results according to verifiable metrics to be developed jointly by the Wireline Competition and Wireless Telecommunications Bureaus, together with the Office of Engineering and Technology (the “Bureaus”).⁷

Regarding the measurement and reporting of CAF-supported broadband speed, the Commission explained that this performance regulation is intended to “ensure that ETCs that receive universal service funding are providing *at least the minimum broadband speeds*, and thereby using support for its intended purpose as required by section 254(e)” of the

⁵ Petition at 15.

⁶ 47 C.F.R. § 254(e).

⁷ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*Transformation Order*”), at ¶¶ 90-112.

Communications Act.⁸ Defining the testing and reporting requirements in terms of the minimum speeds that are required to be offered as a condition of CAF support ensures that the Commission's performance rules are reasonably related to the conditions placed on support recipients. Requiring measurement or reporting of any speeds *other than* the applicable mandatory CAF minimum would impose new obligations on CAF recipients that diverge from the obligations they undertake when they accept CAF support. Thus, the Bureaus should clarify that the sole speed metric against which CAF recipients should test is the mandatory minimum associated with the CAF support for each particular broadband service provider.

Moreover, measuring compliance based on speed tiers defined by the provider in marketing broadband Internet access service would impermissibly intrude on the domain of the Federal Trade Commission ("FTC").⁹ In restoring the historical classification of broadband Internet access service as an information service under the Communications Act, the Commission specifically observed that "[t]he FTC has broad authority to protect consumers from 'unfair or deceptive acts or practices,'" and that one benefit of its action was to restore the FTC's authority to "prohibit[] companies from selling consumers one product or service but provid[e] them something different" with respect to broadband Internet access services.¹⁰ The Commission should continue to defer to that expertise.

⁸ *Id.* at ¶ 110 (emphasis added).

⁹ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, FCC 17-166, 33 FCC Rcd 311 (2018), *appeal pending sub nom. Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir., oral argument scheduled Feb. 1, 2019).

¹⁰ *Restoring Internet Freedom Order* at ¶ 141 (quoting Acting Chairman Ohlhausen Comments at 10-11).

B. Speed Test Results Should Not Be Discarded Simply for Exceeding the Advertised Service Speed

Alaska Communications agrees with the Petition that the Bureaus should eliminate the requirement for CAF recipients to exclude “any speed measurements with values greater than 150% of the advertised speed, because such values are likely invalid.”¹¹ As discussed above, the advertised speed of a CAF-supported service should be irrelevant to whether the support has been used for the intended purpose of deploying broadband that meets the Commission’s mandated CAF minimums. Service providers may market their broadband services in a multiplicity of ways, and it can be difficult to identify a specific “advertised speed” against which to compare. Furthermore, advertised speed tiers are likely to change over time and may, indeed, change from one marketing campaign to the next. Enforcement of broadband advertising practices is not a purpose of this testing regime, and should be left to the FTC in its entirety.

In requiring CAF recipients to measure and report actual broadband speeds, the Commission already requires that actual performance be tracked and documented in multiple locations and on multiple occasions.¹² Therefore, there is no need for the Commission to discard any of the speed measurements in the sample set. Following the testing procedures outlined in the *Order* will necessarily produce a large data set that can be expected to include some variability in speed measurements, but which collectively will indicate whether the service provider is meeting the *minimum speeds required* for each recipient of CAF support.

Because of inherent unpredictability of network, weather, fluctuations in demand, and other conditions, Alaska Communications does not always guarantee a minimum speed that its consumer broadband Internet access services will achieve. Further complicating matters, Alaska

¹¹ Order at ¶ 51, n. 145; Petition at 16-19.

¹² See Order at ¶¶27-31.

Communications expects to deploy significant fixed wireless services to meet its CAF Phase II broadband deployment commitment.¹³ Fixed wireless services may be more susceptible than wireline alternatives to changes in weather, foliage, the electromagnetic environment, network congestion, and other factors. Out of an abundance of caution, until the company gains greater experience with the performance of these services in the specific deployment conditions it faces in Alaska, the fixed wireless service it offers to its customers may substantially exceed the “advertised” speed and minimum CAF requirements. Moreover, it expects to market the service as offering “up to” a specific speed, not a guaranteed minimum. In favorable conditions, this practice will increase the likelihood that speed test results would exceed the “advertised” speed, however, defined, by more than the Order’s 150 percent threshold. That would in no way make the test results “likely invalid”; to the contrary, it would reflect Alaska Communications’ intent to ensure that the customer receives at least an acceptable level of service, even in poor weather or otherwise unfavorable conditions. Alaska Communications should not be penalized for this approach.

¹³ See *Alaska Communications Internet, LLC Petition for Partial Waiver of Section 15.407(a)(3) of the Commission’s Rules*, ET Docket No. 18-282 (filed Sept. 6, 2018), at 4.

Conclusion

For the foregoing reasons, Alaska Communications urges the Commission to clarify that it must test and report the speed of its CAF-supported broadband Internet access services only with respect to the CAF-mandated minimum, and need not exclude test results that exceed 150 percent of the advertised speed, as proposed in the Petition.

Respectfully submitted,

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Certificate of Service

I, Richard R. Cameron, hereby certify that, pursuant to Sections 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f), I have served the foregoing "Comments of Alaska Communications" in WC Docket No. 10-90 by electronic mail on the following:

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