



November 12, 2021

***Notice of Ex Parte***

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

**Re: *Connect America Fund, Docket No. 10-90***

Dear Ms. Dortch:

On November 10, 2021, Zachary Cochran of Alexicon, Marlene Bennett of Consortia Consulting, Andy Deinert of Vantage Point Solutions, and the undersigned (collectively, the parties) met via video conference with Suzanne Yelen, Gilbert Smith, and Jesse Jachman (collectively, Staff) of the Wireline Competition Bureau to discuss performance measurement testing.

The parties expressed their appreciation for prior adjustments to the performance measurement testing protocols that the Commission implemented in recognition of various industry and marketplace conditions. For example, the Commission implemented the “test the testing” period to ensure both the “ability of all carriers to undertake the required performance testing” as well as to “allow[] additional time for the marketplace to further develop solutions for carriers to undertake the required testing.”<sup>1</sup> Subsequently, the Bureau, on delegated authority, took notice of the unprecedented impact of the COVID-19 pandemic and permitted pre-testing carriers to test and file results for 70% of the USAC-selected locations.<sup>2</sup> The Commission also recognized that the 70% threshold could be unobtainable for some carriers, and provided an uncomplicated method for carriers to seek further relief as warranted from the modified obligation.<sup>3</sup> The parties explained that certain of the conditions that informed the Commission’s prior rulings are yet extant, and moreover new conditions affecting the ability of all carriers to test have emerged.

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<sup>1</sup> *Connect America Fund: Order on Reconsideration*, Docket No. 10-90, FCC 19-104, at para. 77 (2019).

<sup>2</sup> *Connect America Fund: Order*, Docket No. 10-90, DA 20-1512, at para. 6 (2020)

<sup>3</sup> *Connect America Fund: Order*, Docket No. 10-90, DA 20-1512, at fn. 18 (2020).

Accordingly, NTCA suggested an extension of the 70% threshold requirement beyond the current pretesting term.

By way of background, the parties explained that the industry has engaged both equipment vendors and customers to place devices and commence network testing pursuant to Commission rules. However, the prevalence of circumstances that are beyond the control of many carriers leads to the recommendation that a comprehensive, temporary extension of the 70% threshold requirement would be a more effective approach than requiring individual company requests for relief. The factors potentially affecting carrier compliance include persisting supply chain disruptions, customer or other interference with testing devices, and refined results reporting.

In the first instance, supply chain disruptions persist throughout the telecom industry, not unlike conditions currently affecting many markets. Recent reports predict that supply chain disruptions will continue into at least 2Q22.<sup>4</sup> The parties shared that rural ISPs are not immune to these conditions. By way of example, rural providers report: ordering equipment and receiving a confirmation of the order but being informed subsequently that the equipment is not available; asking vendors for a list of ISP that have received equipment, and then calling those other ISPs to ask if they have spare devices that they can lend; carriers switching equipment providers late in the game because their previously selected vendor is short on equipment. One company predicted that it would be able to comply with the 70% threshold but was concerned about being able to source sufficient equipment to meet the 100% test-locations requirement.

Even where equipment is deployed, carriers report that customer interference and power outages, including “blue sky” events, can cause a failure to record a test. Several examples of customer interference have been reported, including customers powering down when leaving for an extended period of time (as may be the case in vacation properties); customers disconnecting modems during “homework hours” or to discourage children’s ability to use the Internet without supervision; customers receiving but not installing testing-compliance modems, the latter of increased likelihood when both technicians and customers may be avoiding in-person interactions until the COVID-19 pandemic abates. The parties and Staff discussed proper reporting status for these events, specifically, that a non-responsive modem should be reported as “Status 3 – modem down.” The parties noted, however, that certain instances of “Status 3” events are being portrayed as a test that was not conducted (*i.e.*, rather than a completed test whose results did not meet performance requirements, or a test that was conducted but which did not receive a corresponding “handshake” from the customer side), leading to potential penalties. These conditions, too, however, support the usefulness of an extension of the 70% requirement in order to provide industry, USAC, and participating vendors with sufficient opportunity to conform their practices to the performance measurement testing protocols.

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<sup>4</sup> Lydia O’Neal, “When Will the Supply-Chain Strains Finally Ease?” Wall Street Journal (Nov. 5, 2021) (<https://www.wsj.com/articles/when-will-the-supply-chain-strains-finally-ease-11636106400>) (visited Nov. 11, 2021).

Finally, and in these regards, the parties and Staff discussed the usefulness of continuing and timely USAC engagement with industry to clarify and address ongoing questions regarding the performance testing processes.

As articulated by the Commission in 2019, the Commission seeks to “balance[] the Commission’s responsibility to ensure that consumers are receiving the promised levels of service in a timely manner with the ability of all carriers to undertake the required performance testing.”<sup>5</sup> The Commission has twice responded to industry and marketplace conditions – in 2019 by implementing the pre-test period, and in 2020 by relaxing pre-test obligations and providing an efficient path to request relief when testing requirements cannot be met. NTCA submits that the circumstances that informed those Commission actions yet persist - vendors, carriers, and customers are still navigating a learning curve of deploying equipment and reporting results, and COVID-19 impacts to supply chains are compounding efforts to deploy equipment that is not consistently desired by customers. For these reasons, an extension of the 70% threshold requirement and pretesting standards for ACAM and Alaska Plan companies to permit improvement in the data reporting and device deployment would serve the needs of both the Commission and the industry.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Respectfully submitted,

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<sup>5</sup> *Connect America Fund: Order on Reconsideration*, Docket 10-90, FCC 19-104, at para. 77 (2019).