

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)

**COMMENTS
of
NTCA–THE RURAL BROADBAND ASSOCIATION;
THE NATIONAL EXCHANGE CARRIER ASSOCIATION;
THE EASTERN RURAL TELECOM ASSOCIATION
and
WTA – ADVOCATES FOR RURAL BROADBAND**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”), the National Exchange Carrier Association, Inc. (“NECA”), the Eastern Rural Telecom Association (“ERTA”), and WTA – Advocates for Rural Broadband (“WTA”) (“the Rural Associations”) hereby submit these comments in response to the Public Notice¹ released by the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology (“the Bureaus”) in the above-captioned proceeding. The Public Notice seeks comment on whether the testing methodologies adopted for price cap carriers should be applied to other recipients of Connect America Fund (“CAF”) support, such as rate-of-return carriers.

The Rural Associations believe the testing options and parameters for rural, rate-of-return local exchange carriers (“RLECs”) should not at this time be based on the Measuring Broadband

¹ Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology (OET) Seek Comment on Proposed Methodology for Connect America Fund High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations, Public Notice, WC Docket No. 10-90, DA 14-1499 (rel. Oct. 16, 2014) (“Public Notice”).

America (“MBA”) performance testing regime created and thus far utilized only for price cap carriers and other larger operators. The proposed broadband performance testing and reporting requirements will require substantial resources, human and otherwise, to implement, during a period when the broadband infrastructure investment needs of RLECs and expectations of their consumers are increasing and critical high-cost support is limited. Just as significantly, the MBA regime as currently constituted requires significant modification even to be calibrated for use in price cap carrier service areas subject to the CAF Phase II mechanism. Thus, it should not and cannot be applied in its current form for measuring broadband performance characteristics in the sparsely-populated areas of the nation served by RLECs. The Rural Associations therefore recommend that the Bureaus complete necessary revisions to and implementation of a performance testing regime for price cap carrier service areas funded under CAF Phase II before adopting any specific testing regime to RLECs.

The MBA is further highly flawed in that it is only applicable to wireline providers. Any performance testing requirement that is ultimately adopted in connection with high-cost program support must be technologically and competitively neutral, applying with equal force to both high-cost recipients and would-be unsubsidized competitors of all kinds in making *initial* showings as to their respective performance capabilities. In addition, any costs of *ongoing* compliance by high-cost recipients should include a mechanism by which such costs can be recoverable as part of universal service support.

II. THE MEASURING BROADBAND AMERICA TESTING PROGRAM IS NOT APPROPRIATE FOR SMALL BROADBAND PROVIDERS AT THIS TIME

The Public Notice seeks comment on whether the MBA testing methodology used in the past to measure larger carrier operations should be used to measure the performance of recipients

of high-cost support, including RLECs.² The MBA testing program if applied directly and in current form to smaller broadband providers such as those represented by the Rural Associations will not be successful in measuring broadband performance characteristics in RLEC areas, and will impose unreasonable costs on providers, diverting resources that could be put to better use in improving the quality and reach of rural broadband networks. As discussed further below, the MBA testing regime is not yet calibrated for use even in the CAF Phase II program itself, much less to take account of the unique characteristics of smaller providers. Before the Commission moves forward with any testing regime for RLEC recipients of high-cost support,³ it needs to create a mechanism that is technologically neutral, minimally burdensome, and calibrated specifically to account for the operations and support systems utilized by smaller providers.

The Rural Associations are also concerned about the substantial increased costs that would arise out of the proposed broadband performance testing and reporting requirements. The Rural Associations estimate that the monitoring and testing equipment necessary to measure and report on the effective download speeds, upload speeds, latency, packet loss, packet corruption and/or jitter on small providers' networks could cost as much as the underlying data transmission

² *Id.*, ¶¶ 15-25.

³ It is somewhat incongruous to discuss broadband performance obligations even as much-needed updates to RLEC support mechanisms still remain pending and significant portions of the broadband network in high-cost, rural areas – *e.g.*, middle mile – receive no high-cost support whatsoever. As a result, the Rural Associations use this opportunity to renew their call for the Commission to move expeditiously on creating an updated universal service mechanism for RLECs that reorients the high-cost support program for consumer demands in a broadband world. The Rural Associations' proposal for a targeted, tailored set of high-cost program updates would better align that program with these performance obligations and would more equitably and efficiently distribute support amongst RLECs, thereby providing more carriers with the ability to respond to consumer demands for voice and broadband. *See*, Comments of NTCA, NECA, ERTA, and WTA, WC Docket No. 10-90, *et al.*, (fil. Aug. 8, 2014).

equipment deployed to provide the broadband service.⁴ The recurring costs of inspecting, maintaining, and recalibrating such monitoring equipment (*e.g.*, service contracts and/or monitoring services) constitute an additional substantial expense. RLEC-affiliated and other small Internet Service Providers have limited staffing resources and thus will likely need to hire additional, technically specialized staff or consultants to conduct and report upon such monitoring at additional and substantial expense. During a period when the broadband infrastructure investment needs of RLECs are increasing – while critical high-cost support is limited and intercarrier compensation (“ICC”) revenues are decreasing each year pursuant to regulatory mandate – the Commission should be mitigating, rather than increasing, regulatory and reporting costs of such smaller carriers to ensure that as much support as possible goes directly to improvement of intended facilities and services.

The Rural Associations therefore urge the Bureaus to “take a step back” and work through a number of threshold issues before adopting and imposing any specific testing regime on smaller operators. The MBA regime was created and first used for price cap carriers and other large providers serving significant portions of the nation’s geography and 80 percent of all U.S. wireline broadband connections, and this system relies substantially upon participation by volunteer panelists. This alone justifies a “pause” in any effort to apply the MBA to smaller

⁴ As WTA pointed out in comments filed in the Open Internet proceeding, one commercially available broadband monitoring system that gathers usage and congestion information for smaller ISPs costs approximately \$150,000. This equipment cost estimate is minor compared to the additional staff and administrative expense estimates. Comments of WTA, GN Docket No. 14-28 (fil. Jul 17, 2014), p. 8. Cost estimates provided in the Public Notice note that the FCC itself has estimated costs to include (1) \$100 for each whitebox (2) administrative costs for deployed whiteboxes of approximately \$500,000 per year (3) costs that include test nodes (servers at the designated Internet Exchange Points) of \$2,000 per node for initial installation plus additional costs per year for replacement, upgrade, or update costs and (4) test node annual support costs of approximately \$36,000 per node per year (this includes system administration and the significant data center bandwidth charges). Public Notice, ¶ 22 and fn. 21.

companies serving small customer bases in discrete rural geographies. In such areas, the potential pool of volunteers necessary to conduct the MBA testing is much smaller. Moreover, participating in the MBA program is a time-intensive undertaking for volunteers,⁵ creating a large attrition rate as volunteers can drop out at one of several points in the process. Carriers operating in densely populated areas at least have a sizeable pool of candidates from which to draw. By contrast, RLECs will in all likelihood find it difficult, if not impossible, to find sufficient volunteers to meet and sustain compliance with MBA testing requirements.

Indeed, while used in the past in connection with larger company operations, the MBA testing regime is not even calibrated for carriers receiving support from the as-yet-implemented CAF Phase II mechanism. For example, the MBA as it stands now has not been adjusted to account for application to individual census blocks as will be necessary in price cap carrier service areas. The CAF Phase II challenge process and other features of CAF II and the rural broadband experiments will remove potentially large numbers of census blocks from eligibility for support before offers of support are made to incumbent price cap providers. Those census blocks eligible for support in areas where the incumbent provider chooses not to exercise the “right of first refusal” will then be put up for competitive bidding. The MBA testing regime will then need to be calibrated to account for the disaggregation of these price cap service areas. It makes sense to work through these issues first with larger providers who have experience already with the MBA system, and to then use the experience gained from those initial efforts as a baseline for further steps and any extension of a testing regime into other areas with providers who have not participated in anything resembling the MBA regime in the past.

⁵ Measuring Broadband America 2014 Report, Technical Appendix, pp. 9-13.

As one example of issues that must be worked through, while the MBA testing previously chose volunteers from four geographic regions with the requirement that each volunteer subscribe to a specific tier of broadband speed,⁶ the testing would now “require a minimum of 50 randomly selected customer locations to be tested within the geographic area being funded within a given state.”⁷ In other words, the process of selecting volunteers discussed above will now need to be performed in a large number of disparate, discreet, and highly localized service areas. In short, it will involve starting with a smaller pool of volunteers and winnowing it down to those able to complete the process for each highly localized service area. The challenge of finding a statistically valid pool of volunteers in these areas is significant, and underscores the even greater difficulty perhaps of finding such a pool in the sparsely populated study areas served by the typical RLEC.

The MBA is also highly flawed and impermissibly limited in that it is only able to test wireline broadband providers. Any performance testing regime that is eventually adopted must be technologically and competitively neutral, and in particular must account for wireless providers as well to the extent that those entities may be either recipients of high-cost support in the future via competitive bidding or considered as potential “unsubsidized competitors” for purposes of disqualifying or reducing high-cost support in a given area. Indeed, the concepts of competitive and technological neutrality as well as the interests of consumers demand that all providers regardless of technology be able to demonstrate their compliance with all of the same performance metrics as supported carriers and that these performance metrics and the testing of

⁶ *Id.*, p. 6.

⁷ Public Notice, ¶ 9.

compliance with those metrics not be watered down to “give slack” for the limitations inherent in any particular technology.

The Associations therefore urge the Commission to address each of these issues before applying the MBA or any other testing regime to RLEC high-cost support recipients and other smaller operators. Addressing and implementing testing in such a staged manner in connection first with CAF Phase II should provide the Bureaus with valuable insight into how to address these issues in RLEC service areas. The Bureaus should therefore apply any lessons learned in the process of adapting and implementing a testing regime in price cap areas in CAF Phase II as a baseline from which to create a testing regime tailored for the unique characteristics faced by smaller carriers such as RLECs and the areas they serve. Finally, any performance testing regime must account for the substantial ongoing costs that would be imposed specifically and only on RLECs and other high-cost support recipients. These costs will be incurred at a time when RLECs are investing substantial resources in meeting the Commission’s performance metrics and doing so in a time of limited high-cost support, declining ICC revenues, and still recovering national economy that has limited their access capital. Imposing additional, substantial ongoing costs will only divert resources that are needed to improve the quality of RLECs’ networks and to extend such networks to additional rural consumers. Thus, any ongoing costs imposed specifically and only on high-cost support recipients by the testing regime ultimately adopted should be recoverable from the USF.

III. CONCLUSION

The Associations urge the Bureaus to “take a step back” and work through a number of threshold issues with respect to implementation of any testing regime before adopting and imposing such a testing regime on smaller operators. The MBA testing regime is not yet

calibrated for use even in the CAF Phase II program, much less is able take account of the unique characteristics of smaller providers. Before the Commission moves forward with any testing regime that would apply in RLEC areas, it needs to create a mechanism that is technologically neutral, minimally burdensome, and calibrated specifically to account for the operations and support systems utilized by smaller providers.

Respectfully Submitted

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