

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

**In the Matter of** )  
 )  
**Connect America Fund** ) **WC Docket No. 10-90**  
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**COMMENTS OF  
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits these comments in support of the petition for partial reconsideration filed by the Micronesian Telecommunications Corporation (MTC) of the *Order* adopted by the Commission’s Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology establishing a uniform framework for measuring the speed and latency performance for recipients of high-cost universal service support to serve fixed locations.<sup>1</sup> Insofar as they address related issues, ITTA also comments here on applications for review of the *Order*.<sup>2</sup>

**I. THE COMMISSION SHOULD REDUCE THE NUMBER OF REQUIRED TEST SUBJECTS**

As the *Order* depicts, price cap carriers were required to test 50 randomly-selected customer locations within the census blocks for each state for which the provider is receiving

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<sup>1</sup> *Connect America Fund*, Order, DA 18-710 (WCB/WTB/OET July 6, 2018) (*Order*); Petition of MTC for Partial Reconsideration, WC Docket No. 10-90 (filed Sept. 19, 2018) (MTC Petition).

<sup>2</sup> Application for Review and Request for Clarification of NTCA-The Rural Broadband Association, WC Docket No. 10-90 (filed Sept. 19, 2018) (NTCA AFR); Application for Review of WTA – Advocates for Rural Broadband, WC Docket No. 10-90 (filed Sept. 19, 2018) (WTA AFR). ITTA recognizes that the applications for review of the *Order* were subject to different pleading cycles than the petitions for reconsideration of it. If regarded as procedurally necessary, the Commission should treat the instant Comments as permit-but-disclose *ex parte* submissions in this proceeding to the extent they address issues raised exclusively in the applications for review and not in the MTC Petition.

model-based support except for states where it receives such support for 2,000 or fewer lines, in which case the carrier was required to conduct measurements for 20 customer locations.<sup>3</sup> In place of these requirements, the *Order* adopted a scaled approach whereby carriers with over 500 subscribers at Connect America Fund (CAF)-supported locations per state and service tier combination are required to test 50 locations, carriers with 51-500 such subscribers must test 10 percent of such subscribers, and carriers with 50 or fewer such subscribers are required to test five.<sup>4</sup> According to the *Order*, this scaled approach “balances the need to test a reasonable number of subscriber locations within a state based on the total number of subscribers and performance tiers with minimizing the burden on smaller providers to find consumer locations to be tested.”<sup>5</sup> MTC argues that in light of the burdens of obtaining customer consent to serve as a test case, the Commission should reduce the number of subscribers required to be tested.<sup>6</sup> Though ITTA appreciates the scaled approach adopted in the *Order* as compared to the approaches on which comment previously had been sought,<sup>7</sup> ITTA supports a reduction in the number of subscribers required to be tested, as well as similar calls by NTCA and WTA for diminution of the required number of test subjects.<sup>8</sup>

In comments on the *2017 Performance Measures Public Notice*, ITTA asserted that cost considerations and substantial difficulties in finding the required number of test subjects militate towards reduction of the sample size threshold to the lesser of one percent of High Cost

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<sup>3</sup> See *Order* at 13, para. 34.

<sup>4</sup> See *id.* at 14, para. 36.

<sup>5</sup> *Id.* at 16, para. 39.

<sup>6</sup> See MTC Petition at 1.

<sup>7</sup> See *Order* at 13, para. 34 (citing, e.g., *Comment Sought on Performance Measures for Connect America High-Cost Universal Service Support Recipients*, Public Notice, 32 FCC Rcd 9321, 9323, 9324, paras. 6, 8 (WCB Nov. 6, 2017) (*2017 Performance Measures Public Notice*)).

<sup>8</sup> See NTCA AFR at 13-14; WTA AFR at 6-8.

Universal Service Broadband (HUBB) Portal locations or 20 subscribers in each state, and that the required number of test subjects in a state should represent a total number by state, not a minimum sample size per speed tier offered per state.<sup>9</sup> NTCA urges that the testing threshold should be the lesser of 50 locations per state or five percent of relevant locations with active subscribers – and that this total should be per state, rather than per tier<sup>10</sup> – and WTA proposes a sample size of 10-15 locations, or 2-3 percent of the subscribers on each CAF-required service tier.<sup>11</sup> Regardless of how the Commission lowers the required number of test subjects,<sup>12</sup> the grounds for doing so are manifest.

First, both NTCA and WTA evoke the potential absurd result of carriers offering service at multiple speed tiers having to test as many as 150 locations in a state.<sup>13</sup> This could effectively impose outsized burdens on a carrier subject to differing speed tier requirements based on the CAF program pursuant to which it receives funding,<sup>14</sup> as well as, especially, on rate-of-return carriers receiving Alternative Connect America Cost Model (A-CAM) support, who are subject to deployment obligations of three different speed tiers per state.<sup>15</sup> Second, a 50-location panel of testing locations is proportionally larger for a rural provider than one typically serving higher-

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<sup>9</sup> See Comments of ITTA, WC Docket No. 10-90, at 2-3 (Dec. 6, 2017) (ITTA 2017 Performance Measures Comments).

<sup>10</sup> See NTCA AFR at 14.

<sup>11</sup> See WTA AFR at 8.

<sup>12</sup> Should the Commission consider implementation of WTA's proposal, ITTA would add that it is essential the Commission adopt a "lesser of" approach, with a cap of 20 test subjects *per state*.

<sup>13</sup> See NTCA AFR at 13; WTA AFR at 6.

<sup>14</sup> For instance, a price cap carrier that receives model-based support for providing service at 10/1 Mbps in a state and is a CAF Phase II auction winner for service at 25/3 Mbps in that state could be required to test well over 50 locations in that state.

<sup>15</sup> See 47 CFR § 54.308(a)(1) (A-CAM deployment obligations of 25/3, 10/1, and 4/1 Mbps).

density locations.<sup>16</sup> As WTA elaborates:

Up to fifty locations per CAF-required speed tier is a large and cumbersome sample size for most RLECs, particularly when it likely requires numerous telephone calls and lengthy negotiations to obtain participation by reluctant or disinterested customers, and then entails rural truck rolls involving round trips of 20-to-100 miles to deliver, install and retrieve testing equipment to each location.<sup>17</sup>

Faced with these considerations, ITTA believes that the Commission must rebalance the need to test a reasonable number of subscriber locations with minimizing the burden on providers to find customer locations to be tested, adding additional weight to the latter half of the equation.<sup>18</sup> In that regard, ITTA concurs with NTCA that “overall confidence in test results would be sufficient in instances in which fewer locations of rural providers were tested.”<sup>19</sup> Therefore, the Commission should reduce the required number of test locations, commensurate with any one or combination of the proposals advanced by ITTA, NTCA, and/or WTA.

ITTA also supports WTA’s call for a longer duration of testing locations. The *Order* provides that test subjects “must be randomly selected every two years from among the

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<sup>16</sup> See NTCA AFR at 13. Cf. *Order* at 15, para. 37 (“Carriers serving fewer subscribers would . . . be unable to provide test results achieving the same margin of error and confidence level without testing a more proportionately burdensome percentage of their subscribers.”). Furthermore, even where a rural local exchange carrier (RLEC) does serve an area with relative location density, it should not be necessary to test multiple locations. See WTA AFR at 7 (“[M]any RLEC broadband networks are designed and built to serve population clusters, rings of households, or farms and ranches along a trunk line that runs next to a highway or through a valley. RLECs can test the speed and latency delivered to a population cluster or service ring, or along a trunk by testing a single location in the particular configuration.”).

<sup>17</sup> WTA AFR at 7.

<sup>18</sup> Below, ITTA discusses the current lack both of off-the-shelf testing equipment as well as modems with built-in testing capabilities. As the *Order* acknowledges, “[c]arriers that do not employ self-testing systems built into CPE . . . typically ask their customers to opt into allowing the carrier to conduct tests using additional equipment . . . [but] it may be difficult to find five such volunteers at CAF-supported locations.” *Order* at 14-15, para. 36 n.111.

<sup>19</sup> NTCA AFR at 14.

provider's active subscribers in each service tier in each state."<sup>20</sup> WTA maintains that, rather than two-year test subject turnover requirements, RLECs should be able to continue testing locations for as long as five years.<sup>21</sup> ITTA agrees. As WTA contends, the difficulty in securing the required number of test subjects is exacerbated considerably if carriers' testing locations must be changed every two years.<sup>22</sup> The *Order* provides no justification for why test subjects should be changed every two years.

## **II. A DELAYED IMPLEMENTATION PERIOD IS NECESSARY TO REALIZE THE *ORDER*'S APPROPRIATELY FLEXIBLE APPROACH TO CHOOSING TESTING METHODS**

ITTA welcomes the *Order*'s provision to carriers required to perform speed and latency testing flexibility in choosing solutions to conduct such testing.<sup>23</sup> The *Order* permits carriers to employ any combination of MBA testing, off-the-shelf testing, or self-testing.<sup>24</sup> Such flexibility was designed to "ensure that there is a cost-effective method for conducting testing for providers of different sizes and technological sophistication," and to "allow the provider to align required performance testing with their established network management systems and operations, making it as easy as possible for carriers to implement the required testing while establishing rigorous testing parameters and standards, based on real-world data."<sup>25</sup>

While all of these sentiments are wonderful in theory, they currently suffer pragmatically. As WTA observes, "much of the equipment necessary for testing appears to be still in the development stage or not yet adapted and approved for the contemplated FCC testing purposes,

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<sup>20</sup> *Order* at 16, para. 40.

<sup>21</sup> *See* WTA AFR at 8-9.

<sup>22</sup> *See id.* at 7.

<sup>23</sup> *See Order* at 5, para. 9; ITTA 2017 Performance Measures Comments at 3-4 (advocating flexibility in testing methodologies).

<sup>24</sup> *See Order* at 5, para. 9.

<sup>25</sup> *Id.* at para. 10.

and it is not clear at this time when the equipment will be available . . . or how much it will cost.”<sup>26</sup> NTCA corroborates that neither self-testing nor off-the-shelf testing equipment are widely available currently, and adds that carriers may already be in the midst of or completed deployments that cannot quickly or easily be “retrofitted” to accommodate the *Order*’s testing designs.<sup>27</sup>

Accordingly, both WTA and NTCA request postponement of the scheduled commencement of performance testing in the Third Quarter of 2019. ITTA supports WTA’s suggestion that “a reasonable delay (for example, of two years or so)” would be appropriate to permit such equipment to become more available and affordable.<sup>28</sup> As NTCA explains, “the avenue that appears to provide the most cost-effective route to compliance is currently foreclosed because the necessary equipment is neither fully developed nor widely available.”<sup>29</sup> Moreover, the relief requested by it, WTA and WISPA would recognize that the *Order*’s intent to provide regulatory latitude simply cannot be fulfilled if two of the envisioned avenues constructively have yet to be created.<sup>30</sup> Therefore, a “temporary delay of obligations that allow the market to ‘catch up’ to the requirements by developing equipment that enables economically and administratively efficient compliance is consistent with” the Commission’s goals of promoting

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<sup>26</sup> WTA AFR at 10.

<sup>27</sup> See NTCA AFR at 9.

<sup>28</sup> WTA AFR at 12. Similarly, NTCA urges suspension or waiver of the performance measurement obligations until “a reasonable time following the widespread introduction of modems with built-in testing capability to the rural market.” NTCA AFR at 10; see Comments of Wireless Internet Service Providers Association on Applications for Review, WC Docket No. 10-90, at 2 (Oct. 4, 2018) (supporting such a delay because even when such equipment is widely available, providers then need to identify suppliers, test equipment, negotiate pricing, and scale the devices into use).

<sup>29</sup> NTCA AFR at 10.

<sup>30</sup> See *id.* at 11.

provider accountability through testing while at the same time doing so in a cost-effective manner.<sup>31</sup> ITTA agrees.<sup>32</sup>

### III. OTHER REFINEMENTS TO THE *ORDER* ARE WARRANTED

The *Order* recounts how price cap carriers receiving CAF II model-based support have been required to conduct latency testing during peak periods defined as weeknights between 7:00 pm and 11:00 pm local time, and how comment previously had been sought on adopting a similar requirement for all high-cost support recipients serving fixed locations to conduct required testing once hourly during those same peak periods daily.<sup>33</sup> The *Order*, however, expands the test period and requires carriers to conduct tests between 6:00 pm and 12:00 am, including on weekends.<sup>34</sup> ITTA supports WTA’s challenge of the expanded test period.<sup>35</sup>

As WTA depicts, RLECs generally make due with small technical staffs that work regular 40-hour weeks and are “on call” at other times if emergencies arise, and evening and weekend test hours require RLECs to re-schedule one or more technicians from their regular daytime maintenance and installation duties and pay them premium or overtime wages. Thus, pulling these technicians away from their regular work for the *Order*’s specified four weeks of evening testing per year “poses a substantial staffing and financial hardship for many RLECs,

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<sup>31</sup> *See id.* at 12.

<sup>32</sup> NTCA observes that while appearing to provide flexibility in the use of any combination of three testing methods, the *Order* also “note[s] that the MBA testing must occur in areas and for the locations supported by CAF, e.g., in CAF Phase II eligible areas for price cap carriers and for specific built-out locations for RBE . . . [A-CAM], and legacy rate-of-return support recipients.” NTCA AFR at 22-23 (quoting *Order* at 5, para. 9). NTCA requests that the Commission clarify that although that language specifies certain previously-promulgated MBA testing requirements, carriers covered by the *Order* may avail themselves of all three testing options. *See* NTCA AFR at 23; *see also* WTA AFR at 11 n.3. ITTA supports the requested clarification out of abundance of caution.

<sup>33</sup> *See Order* at 9, para. 22.

<sup>34</sup> *See id.* at 12, para. 30.

<sup>35</sup> *See* WTA AFR at 9-10.

and is likely to result in significant delays in responding to and resolving concrete problems with respect to actual customer services.”<sup>36</sup> It follows that a modified definition of peak period would partially mitigate these effects. The *Order* pledges “to revisit this requirement periodically to determine whether peak Internet usage times have changed substantially.”<sup>37</sup> ITTA urges the Commission to do so now.

Acknowledging that some subscribers purchase Internet service offerings with advertised speeds below the CAF-required speeds at CAF-eligible locations, the *Order* nevertheless provides that where an insufficient number of customers subscribe to a service level that must be tested – even if they opt to purchase Internet services at lower advertised speeds – carriers “may still find it necessary to upgrade individual subscriber locations, at least temporarily, to conduct speed testing.”<sup>38</sup> NTCA contends that 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 temporary increase and then decrease in service,” and “could also interfere with the company’s general marketing strategies and promotional efforts.”<sup>39</sup> ITTA shares these concerns. Therefore, ITTA supports NTCA’s call for the requirement to be set aside.<sup>40</sup>

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<sup>36</sup> *Id.* at 10.

<sup>37</sup> *Order* at 12, para. 30.

<sup>38</sup> *Id.* at 20, para. 51.

<sup>39</sup> NTCA AFR at 18.

<sup>40</sup> *See id.*



#### IV. CONCLUSION

ITTA supports the *Order*'s aim "to maximize the benefits consumers reap from [the Commission's] high-cost universal service programs in even the hardest-to-reach areas."<sup>41</sup> While the *Order*'s framework for achieving this aim is a good start, several elements of the *Order* paradoxically threaten to foist upon carriers testing requirements whose burdens will unnecessarily divert capital and personnel from efforts to further expand broadband to locations in the hardest-to-reach areas. To mitigate these effects, the Commission should reduce the required number of test subjects, delay implementation of the testing regime for two years or at least until a reasonable time after cost-effective testing solutions actually are widely available in the market, curtail the breadth of the peak testing period, and remove the requirement that carriers temporarily increase service speeds solely for purposes of testing.

Respectfully submitted,

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<sup>41</sup> *Order* at 1, para. 2.

## Certificate of Service

I, Michael J. Jacobs, hereby certify that on this 7<sup>th</sup> day of November 2018, I have caused a copy of the foregoing Comments to be served by electronic mail upon:

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