

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

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

ORDER

Adopted: February 3, 2020

Released: February 3, 2020

By the Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a limited waiver of the random sample requirements for speed and latency and timing only for pre-testing for recipients of Connect America Fund (CAF) Phase II model-based support.<sup>1</sup> The Bureau will allow CAF Phase II carriers to extend the period during which carriers can conduct first-quarter pre-testing until April 30, 2020 and, if necessary, use a non-random, carrier-generated sample of subscribers for that pre-testing period. CAF Phase II carriers must still complete two separate quarters of pre-testing in 2020 and comply with the adopted requirements for third and fourth quarter 2020 testing with a random sample of subscribers generated through the Universal Service Administrative Company’s (USAC) randomization tool.<sup>2</sup> This waiver will provide CAF Phase II carriers flexibility in conducting the required testing during the pre-test period to accommodate USAC system upgrades.

2. *Background.* In the Performance Measures orders, the Commission adopted requirements that recipients of high-cost support test their broadband networks for compliance with the appropriate speed and latency metrics and report and certify the results. The testing is necessary to protect taxpayers’ investment and ensure that carriers receiving this support deploy networks that meet the performance standards they promised to deliver to rural consumers.<sup>3</sup> Carriers failing to meet the required standards will be subject to withholding of universal service support, based on the level of non-compliance.<sup>4</sup>

3. To ensure carriers are familiar with the required testing and how to properly measure the speed and latency of their networks, and to allow carriers an opportunity to adjust to the new regime, the Commission adopted pre-testing periods in which no support reductions will occur for failing to meet the required standards.<sup>5</sup> The Commission required CAF Phase II carriers to conduct two quarters of pre-

<sup>1</sup> 47 CFR § 54.313(j). See 47 CFR § 1.3 (Commission may waive its rules on its own motion). The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. See *Connect America Fund*, Order, WC Docket No. 10-90, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*) and *Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). These pre-testing requirements do not apply at this time to recipients of CAF Phase II auction support.

<sup>2</sup> See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, paras. 81-82.

<sup>3</sup> *Id.* at 10110, para. 2.

<sup>4</sup> *Id.* at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67.

<sup>5</sup> *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

testing, i.e. the first and second quarters of 2020, with testing beginning in the third quarter of 2020.<sup>6</sup> Carriers must conduct pre-testing and testing using a randomly-selected sample of subscriber locations.<sup>7</sup> The population of subscribers from which the sample will be generated is the carrier-provided data for deployed locations in USAC's High Cost Universal Service Broadband portal (HUBB).<sup>8</sup> The size of the sample is based on the number of subscribers in a particular area.<sup>9</sup>

4. *Discussion.* On its own motion, the Bureau grants a waiver for CAF Phase II carriers from the pre-testing timing requirements and the requirement to use a randomly-selected sample for pre-testing. Generally, the Commission's rules may be waived for good cause shown.<sup>10</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>11</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>12</sup> Waiver of a filing deadline in the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>13</sup>

5. With respect to timing, USAC recently implemented a bulk upload mechanism that allows the CAF Phase II carriers to do corrections of multiple deployed locations within the HUBB at one time.<sup>14</sup> Modifications and deletions for pre-existing HUBB data are not due, however, until March 1, 2020.<sup>15</sup> We therefore grant a limited waiver to allow CAF Phase II carriers to conduct first-quarter pre-testing through April 30, 2020. Second-quarter pre-testing must still be completed by June 30, 2020.<sup>16</sup>

6. In addition, USAC's randomizer function to create the pre-testing/testing sample will not be available until the beginning of February. Accordingly, we also waive the randomly-selected sample requirement for CAF Phase II pre-testing and allow CAF Phase II carriers, if necessary, to use either a randomly-selected sample from the USAC Performance Measurement (PMM) system or to use a carrier-selected sample of subscribers (self-selected sample). If the carrier chooses to use a self-selected sample, it must select the sample from any subscribers of at least 10 Mbps upstream/1 Mbps downstream services in the appropriate service area. However, we note that the requirements for use of a randomly-selected sample and quarterly testing will remain unchanged for CAF Phase II testing, which begins in the third quarter of 2020.

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<sup>6</sup> *Id.* at 10140, para. 81.

<sup>7</sup> *Id.* at 10139, para. 78.

<sup>8</sup> *First Performance Measures Order*, 33 FCC Rcd at 6522, para. 36.

<sup>9</sup> *Id.* at 6522-24, paras. 36-40; *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10125-28, paras. 43-49.

<sup>10</sup> 47 CFR § 1.3.

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> See <https://www.usac.org/high-cost/resources/announcements/>, November 18, 2019, "New HUBB Edit and Delete Functionality Now Available".

<sup>15</sup> See 45 CFR § 54.316(b)(1). See also <https://www.usac.org/high-cost/resources/upcoming-dates/>, "HUBB Filing Deadline".

<sup>16</sup> In the *Performance Measures Reconsideration Order*, we noted that USAC's interface for accept performance testing data may not be available in time to accept pre-testing data. USAC will provide information on alternative submission methods and/or the date when the interface will be available by the end of the second quarter of 2020. *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, para. 78, n.201.

7. Allowing this flexibility for pre-testing will provide CAF Phase II carriers with sufficient time to use the bulk upload procedure to correct any pre-existing HUBB data. This in turn will ensure that the randomly-selected sample of subscribers used for testing consists of accurate subscriber locations. Further, because those carriers ready to use a randomly-selected sample cannot receive that sample until February, extending the first-quarter pre-testing period will provide additional time, if needed, to install any necessary hardware and/or software at customer locations.

8. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the CAF Phase II pre-testing requirements ARE WAIVED to the extent described above.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau