

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

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

ORDER

Adopted: December 21, 2020

Released: December 21, 2020

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a limited waiver of the performance testing requirements for recipients of Alternative Connect America Cost Model I (A-CAM I) support, Rural Broadband Experiment support, and Alaska Plan support (together, A-CAM/RBE/Alaska carriers).¹ Specifically, the Bureau waives certain sampling requirements for these carriers, as explained below. According to NTCA, an industry organization representing rural incumbent local exchange companies, these companies are encountering issues access customer premises to install equipment because of COVID-19 and problems obtaining necessary testing equipment.² Because of the continuing challenges posed by the COVID-19 pandemic and possible supply-chain issues, we find there is good cause to modify the sample size for pre-testing throughout 2021, while maintaining the current testing and pre-testing schedule.

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. Testing must be conducted with a random sample of subscribers generated through the Universal Service Administrative Company's (USAC) randomization tool.³ 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.⁴ Carriers failing to meet the required standards will be subject to withholding of universal service support, based on the level of non-compliance.⁵

3. To ensure carriers are familiar with the required testing and how to properly measure the speed and latency of their networks in accordance with Commission rules, the Commission adopted pre-testing periods in which no support reductions will occur for failing to meet the required standards.⁶ For

¹ 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*).

² Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 17, 2020) (NTCA Letter).

³ *See Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, paras. 81-82.

⁴ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10110, para. 2.

⁵ *Id.* at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67.

⁶ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

both pre-testing and testing, the Commission required that carriers submit speed and latency test results, as well as an annual certification, in a format determined by the Bureau.⁷

4. *Discussion.* On its own motion, the Bureau grants a waiver allowing A-CAM/RBE/Alaska carriers to pre-test only 70% of their USAC-selected samples during the four quarters of pre-testing in 2021.⁸ Generally, the Commission's rules may be waived for good cause shown.⁹ The Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Bureau may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Waiver of 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.¹²

5. In the *Performance Measures Reconsideration Order*, the Commission included one year of pre-testing for A-CAM/RBE/Alaska carriers.¹³ However, the Bureau has already recognized that installing testing equipment in subscriber homes has been made more difficult by the COVID-19 pandemic.¹⁴ A primary purpose of pre-testing is to allow carriers to gain experience with the testing requirements and procedures so that they can be fully prepared for testing before carriers are subject to the withholding of support for failure to meet the required performance standards.¹⁵ This purpose cannot be achieved if carriers are not pre-testing any subscribers or are testing only a very small number of subscribers.

6. For pre-testing for carriers receiving Connect America Fund (CAF) Phase II model funding, the Bureau waived certain subscriber sampling requirements to minimize unnecessary person-to-person contact through installation of equipment needed for testing in subscriber homes and diversion of resources needed to address the increased network demands as a result of the COVID-19 pandemic.¹⁶ In a recent survey of its members, NTCA found that many of its members are experiencing difficulties obtaining equipment, including the type of consumer premises equipment needed for performance testing.¹⁷ To take into account the difficulties posed by the COVID-19 pandemic as well as possible supply-chain issues, while still ensuring that A-CAM/RBE/Alaska carriers are ready to begin testing in 2022, we require these carriers to pre-test and file results for at least 70% of their USAC-selected random sample for each required speed tier. For example, if a carrier is required to have 50 subscribers in a state at a particular speed tier, it must pre-test at least 35 USAC-selected subscribers for that speed tier to be in

⁷ *First Performance Measures Order*, 33 FCC Rcd at 6533, para. 67.

⁸ As explained below, this relief is similar to that already granted to Connect America Fund CAF Phase II model carriers. See *Connect America Fund*, Order, WC Docket No. 10-90, 35 FCC Rcd 163 (WCB 2020) (*70% Subscriber Waiver Order*).

⁹ 47 CFR § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹² *Northeast Cellular*, 897 F.2d at 1166.

¹³ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, para. 81.

¹⁴ *Connect America Fund*, Order, WC Docket No. 10-90, 35 FCC Rcd 3015 (WCB 2020) (*Subscriber Waiver Order*).

¹⁵ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139-40, para. 79-80.

¹⁶ *Subscriber Waiver Order; 70% Subscriber Waiver Order*.

¹⁷ *NTCA Letter* at 2.

compliance with our rules.¹⁸ However, we expect all A-CAM/RBE/Alaska carriers to work diligently to obtain any necessary equipment and expand the number of tested subscribers in the USAC-selected sample throughout the pre-testing period. These efforts should ensure that all A-CAM/RBE/Alaska carriers are prepared to begin testing all of the subscribers in the USAC-selected random sample in the first quarter of 2022, consistent with the schedule adopted by the Commission in 2019.¹⁹

7. 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 performance testing sample size requirements ARE WAIVED to the extent described above.

8. 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

¹⁸ It is possible that some carriers may not be able to reach even 70% of their USAC-selected for testing because they are unable to obtain sufficient amounts of testing equipment. Any such carrier should file a request for waiver with the Commission that includes the following: (1) an affidavit signed by a company official explaining that the carrier does not have sufficient testing equipment, the reason(s) therefor, and when the company anticipates having sufficient equipment and (2) evidence, such as an order form, showing when the order for testing equipment was placed (confidential information, such as price and quantity of the equipment ordered, may be redacted).

¹⁹ See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, para. 81.