

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

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

ORDER

Adopted: April 10, 2020

Released: April 10, 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 requirements for filing speed and latency testing results for recipients of Connect America Fund (CAF) Phase II model-based support.¹ Specifically, the Bureau will allow CAF Phase II carriers to make reasonable assumptions to determine certain information for the Universal Service Administrative Company's (USAC) Speed and Latency Testing Templates, provided such assumptions do not change the carriers' speed and latency testing results. This waiver will allow CAF Phase II carriers to use their existing performance testing systems, which, because they have had only limited time to prepare for testing, may not provide all the information required by the USAC Templates. However, we expect that all carriers testing for other high-cost programs will be able to collect all of the information required by the USAC Templates because these carriers will have time to build and/or adjust their systems before pre-testing and testing commence for those programs.

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.² Carriers failing to meet the required standards will be subject to withholding of universal service support, based on the level of non-compliance.³

3. To ensure carriers are familiar with the required testing and how to properly measure the speed and latency of their networks, the Commission adopted pre-testing periods in which no support reductions will occur for failing to meet the required standards.⁴ The Commission required CAF Phase II carriers to conduct two quarters of pre-testing, i.e., the first and second quarters of 2020, with testing beginning in the third quarter of 2020.⁵ For both pre-testing and testing, the Commission required that

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 *Id.* at 10110, para. 2.

³ *Id.* at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67.

⁴ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

⁵ *Id.* at 10140, para. 81.

carriers submit speed and latency test results, as well as an annual certification, in a format determined by the Bureau.⁶ Speed and Latency Testing Templates showing the required information and format are posted on USAC's website.⁷ The information required to complete the Templates allows USAC to do the necessary calculations to determine whether carriers are in compliance with our performance requirements.⁸

4. *Discussion.* On its own motion, the Bureau grants a waiver allowing CAF Phase II carriers to use reasonable assumptions to determine elements required in Speed and Latency Testing Templates based on the actual speed and latency measured by the carriers. Generally, the Commission's rules may be waived for good cause shown.⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission 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. CAF Phase II carriers are the first group of providers to begin pre-testing and testing their broadband offerings. Although the Speed and Latency Testing Templates were made publicly available last year, some carriers, based on the Commission's Performance Testing Orders, had developed their own internal testing systems prior to the Testing Templates being made available. As a result, in some cases, carrier systems are unable to collect all of the information required to complete the Templates, although the systems collect the most critical information, including the time the test occurred and the relevant speed and latency. However, carriers can use the information they do collect, along with certain assumptions, to reverse engineer all of the information required in the Templates. For example, some carriers may collect only the time a speed test is conducted, rather than the starting time and ending time of the test. Using a reasonable assumption based on a carrier's particular testing software, for example that a speed test takes approximately 30 seconds to complete, the carrier can estimate the ending time of the test.

6. To accommodate the circumstances noted above, we will allow carriers to make assumptions to complete certain information in the Templates, which ensures the accuracy of the speed and latency results, as well as the fact that the test occurred during the appropriate timeframe. We require that carriers review their assumptions and calculations with Bureau staff prior to submitting their pre-testing and testing results. Provided the speed and latency test results are not changed and the assumptions and calculations carriers used are reviewed with the Bureau prior to submission of testing results, the use of such assumptions and calculations are consistent with the certification that carriers must make concurrent with submitting their testing results.

7. Allowing CAF Phase II carriers to use assumptions to complete the information in the Templates, provided such assumptions do not change the carriers' speed and latency testing results, ensures that the Commission receives timely speed and latency data while avoiding penalizing those carriers that started building their testing systems early in anticipation of the Commission's testing

⁶ *First Performance Measures Order*, 33 FCC Rcd at 6533, para. 67.

⁷ Universal Service Administrative Co., Performance Measures Testing available at <https://www.usac.org/high-cost/annual-requirements/performance-measures-testing/>.

⁸ *First Performance Measures Order*, 33 FCC Rcd at 6533, para. 67.

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.

requirements. However, we expect that if CAF Phase II carriers participate in future high-cost programs that require speed and latency testing, they will adjust their systems to provide all of the information required to complete the Templates without using any assumptions.

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 Speed and Latency Testing Template 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