

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

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

ORDER

Adopted: January 3, 2022

Released: January 3, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) provides relief to carriers subject to the Commission’s performance testing requirements.1 We grant in part NTCA – The Rural Broadband Association’s (NTCA’s) petition for waiver 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 Plan carriers), and, sua sponte, extend similar relief to Alternative Connect America Cost Model II (A-CAM II), Connect America Fund Broadband Loop Support (CAF BLS), and Connect America Fund (CAF) II Auction carriers.2 Next, we deny NTCA’s requests to adopt a simplified waiver process and to extend the pre-testing period for A-CAM/RBE/Alaska Plan carriers. Finally, we grant a petition for waiver filed by Reserve Communications and Computer, L.L.C. (REV Broadband).3

II. BACKGROUND

2. As a condition of receiving high-cost universal service support, eligible telecommunications carriers must offer broadband service that meets certain basic performance requirements in their supported areas.4 Recipients of high-cost support must also test their broadband networks for compliance with speed and latency metrics and certify and report the results to the Universal Service Administrative Company (USAC), with those results subject to audit.5 This testing is necessary to protect ratepayers’ investment and ensure that carriers receiving high-cost support deploy networks that

1 The Commission adopted detailed performance measure requirements in a 2018 Order and 2019 Order on Reconsideration. 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 NTCA – The Rural Broadband Association, Petition for Waiver, WC Docket No. 10-90 (filed Dec. 3, 2021) (NTCA Petition).

3 Reserve Communications and Computer, L.L.C., Petition for Waiver, WC Docket No. 10-90 (filed Dec. 16, 2021) (REV Broadband Petition).

4 See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17705-06, para. 109 (2011) (USF/ICC Transformation Order and FNPRM), aff’d sub nom. In re FCC 11-161, 753 F.3d 1015 (10th Cir. 2014). As in the USF/ICC Transformation Order, we use the term high-cost support or high-cost funding to include all existing high-cost universal service mechanisms, as well as the Connect America Fund. See id. at 17695, para. 86, n.126.

5 USF/ICC Transformation Order, 26 FCC Rcd at 17705-06, para. 10.

meet the performance standards they promised to deliver to rural consumers.<sup>6</sup> Carriers conduct their testing of a random sample of subscriber locations determined by USAC's Performance Measures Module (PMM) system.<sup>7</sup> Carriers that fail to meet the required performance standards will have universal service support withheld based on the level of non-compliance.<sup>8</sup>

3. To allow carriers to become accustomed to performance testing, the Commission implemented a pre-testing period that would occur prior to the commencement of each carrier's testing start date.<sup>9</sup> During the pre-testing period, carriers must test the speed and latency of their networks quarterly for a week-long period and submit the results within one week of the end of each quarter of pre-testing. However, no support reductions are assessed during the pre-testing period as long as carriers perform the pre-testing and report their results.<sup>10</sup> Carriers that fail to conduct pre-testing and submit results in a timely fashion have five percent of their monthly support payments withheld until they come into compliance.<sup>11</sup> During testing, carriers whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.<sup>12</sup> A-CAM I carriers are in pre-testing until the end of 2021.<sup>13</sup>

4. In April 2020, in response to the COVID-19 pandemic, the Bureau waived certain network performance pre-testing requirements for recipients of CAF Phase II Model-based support.<sup>14</sup> Then, in December 2020, because of the continued challenges of the COVID-19 pandemic and related supply chain issues, the Bureau *sua sponte* granted a waiver modifying the requirement that A-CAM/RBE/Alaska Plan carriers pre-test 100% of USAC-selected samples through December 2021.<sup>15</sup> Specifically, under the *December 2020 Waiver Order*, A-CAM/RBE/Alaska Plan carriers must pre-test only 70% of their USAC-selected samples, instead of 100% as required by the rule.<sup>16</sup> Next, in September 2021, in response to the damage caused by Hurricane Ida, the Bureau waived the requirement to test the speed and latency performance of supported networks in the third and fourth quarters of 2021 for CAF II Model-based support recipients with eligible locations in the Affected Disaster Areas.<sup>17</sup> And, for recipients of A-CAM I support with eligible locations in the Affected Disaster Areas, the Bureau waived the requirement to pre-test the speed and latency performance of supported networks in the third and fourth quarters of 2021.<sup>18</sup>

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<sup>6</sup> *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10110, para. 2.

<sup>7</sup> *See id.* at 10140, paras. 81-82.

<sup>8</sup> *Id.* at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67.

<sup>9</sup> *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

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

<sup>11</sup> *Id.*

<sup>12</sup> *See First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

<sup>13</sup> *See Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, para. 81.

<sup>14</sup> *Connect America Fund*, Order, WC Docket No. 10-90, 35 FCC Rcd 3015 (WCB 2020) (*COVID-19 Waiver Order*).

<sup>15</sup> *Connect America Fund*, Order, WC Docket No. 10-90, 35 FCC Rcd 14668 (WCB 2020) (*December 2020 Waiver Order*).

<sup>16</sup> *Id.* at 14669, para. 4.

<sup>17</sup> *Schools and Libraries Universal Support Mechanism et al.*, CC Docket No. 02-6, WC Docket Nos. 02-60 et al., Order, DA 21-1107 (WCB 2021) (*Hurricane Ida Relief Order*).

<sup>18</sup> *Id.*

5. Earlier this month, NTCA and REV Broadband filed petitions for waiver requesting that the Commission extend the relief provided in, respectively, the *December 2020 Waiver Order* and the *Hurricane Ida Relief Order*.<sup>19</sup> NTCA, an industry organization representing rural incumbent local exchange companies, explained in its petition that A-CAM/RBE/Alaska Plan carriers continue to face challenges stemming from the COVID-19 pandemic, including supply chain delays.<sup>20</sup> NTCA requests that the Commission: (1) continue to allow A-CAM/RBE/Alaska Plan carriers to only pre-test 70% of the USAC-selected sampled locations that would otherwise be required for the first two quarters of 2022; (2) extend the form of a “simple” waiver request for A-CAM/RBE/Alaska Plan carriers; and (3) extend the pre-testing period for A-CAM/RBE/Alaska Plan carriers.<sup>21</sup> Similarly, REV Broadband, an organization with CAF BLS subsidiaries in areas affected by Hurricane Ida, asserts in its petition that the lingering effects of Hurricane Ida have delayed their efforts to rebuild, repair, and restore services to affected customers.<sup>22</sup> REV Broadband requests that the Commission waive the performance testing requirements for its CAF BLS subsidiaries, which were located in areas affected by Hurricane Ida, through the first quarter of 2022.<sup>23</sup>

### III. DISCUSSION

6. As explained below, we find good cause to grant in part NTCA’s request for an extension of the waiver of the performance testing requirements for A-CAM/RBE/Alaska Plan carriers.<sup>24</sup> We also find good cause to grant the petition for waiver filed by REV Broadband.<sup>25</sup>

7. Generally, the Commission’s rules may be waived for good cause shown.<sup>26</sup> The Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>27</sup> In addition, the Bureau may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>28</sup> 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.<sup>29</sup>

8. First, we find good cause to extend our waiver regarding sample size such that A-CAM/RBE/Alaska Plan carriers must only test 70% of their USAC-selected samples during the first two quarters of 2022. NTCA explained that A-CAM/RBE/Alaska Plan carriers continue to encounter supply chain disruptions that are creating challenges to deploying testing-compatible equipment at user locations.<sup>30</sup> NTCA highlighted that multiple carriers have filed comments with the Commission asserting that supply chain delays have interfered with their abilities to source and purchase equipment and are expected to persist well into 2022.<sup>31</sup> We agree that the global semiconductor shortage has caused delays

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<sup>19</sup> NTCA Petition at 1; REV Broadband Petition at 4.

<sup>20</sup> See, e.g., NTCA Petition at 1.

<sup>21</sup> *Id.* at 1, 8-9.

<sup>22</sup> REV Broadband Petition at 3.

<sup>23</sup> *Id.*

<sup>24</sup> See NTCA Petition.

<sup>25</sup> See REV Broadband Petition.

<sup>26</sup> 47 CFR § 1.3.

<sup>27</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>28</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>29</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>30</sup> NTCA Petition at 2-4.

<sup>31</sup> *Id.* at 3-4.

in both the manufacture and the delivery of equipment.<sup>32</sup> We continue to find these issues constitute good cause justifying a waiver of the sample size of the performance testing requirements. Nonetheless, we encourage carriers to move as swiftly as possible to test their full sample size.

9. Second, we *sua sponte* provide similar relief to A-CAM II, CAF BLS, and CAF II Auction carriers. Specifically, we find good cause to waive the subscriber sampling requirements for these carriers as they are likely to suffer from the same difficulties obtaining equipment as A-CAM/RBE/Alaska Plan carriers.<sup>33</sup> Accordingly, we modify the pre-testing requirement such that these carriers are only required to pre-test 70% of their required sample size for the first two quarters of 2022. Nonetheless, we urge these carriers to work to pre-test 100% of their sample as quickly as possible.

10. Third, we deny NTCA's request that we extend the form of a "simple" waiver request for A-CAM/RBE/Alaska Plan carriers.<sup>34</sup> We note that no modification of the Commission's waiver process was granted in the *December 2020 Waiver Order*.<sup>35</sup> The Bureau simply provided guidance that carriers seeking additional relief should file a waiver request that included specific evidence of the supply chain issues they were encountering.<sup>36</sup> The Bureau suggested that carriers that are affected by supply chain issues such that they cannot test 70% of their USAC-selected sample 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). The suggestions regarding what evidence would be most effective in supporting a waiver petition are still relevant and apply equally to any further waiver requests based on supply chain constraints.

11. Next, we deny NTCA's request to extend the pre-testing period for A-CAM/RBE/Alaska Plan carriers. NTCA has not demonstrated that the challenges presented by the COVID-19 pandemic or the supply chain issues are affecting the performance of the networks that have already been deployed. Pre-testing data demonstrate that over 95% of the pre-testing carriers certifying data are meeting the performance requirements. We are aware that supply chain delays have hampered carrier efforts to obtain testing equipment such as new modems for customers, but there has been no showing that these delays are impacting network performance or otherwise presenting special circumstances that would warrant extending the pre-testing period. Nor does NTCA's assertion of "ongoing efforts to clarify reporting" justify an extension.<sup>37</sup> The vast majority of A-CAM/RBE/Alaska Plan carriers are successfully reporting and certifying pre-testing results. Furthermore, extending the pre-testing period would relieve A-CAM/RBE/Alaska Plan carriers from the consequences of failing to meet performance requirements, which do not apply in pre-testing. No special circumstances that would justify relieving carriers from network performance requirements exist here.

12. Finally, we address the petition for waiver filed by REV Broadband. Given the substantial service disruptions and outages caused by Hurricane Ida, earlier this year the Commission waived the testing and pre-testing requirements for the third and fourth quarter of 2021 for carriers in

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<sup>32</sup> *Id.* at 2-4, 6-8.

<sup>33</sup> *COVID-19 Waiver Order*, 35 FCC Rcd at 3016-17, paras. 3-5. While not in its petition, NTCA subsequently specified the "relief be granted to carriers covered by the December 2020 Order as well as those that will commence pre-testing in January 2022." See Letter from Joshua Seidemann, Vice President, Policy, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 22, 2021) (NTCA Dec. 22 Ex Parte Letter).

<sup>34</sup> NTCA Petition at 8-9.

<sup>35</sup> *December 2020 Waiver Order*, 35 FCC Rcd at 14669-70, para. 6, n.18

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

<sup>37</sup> NTCA Petition at 8. NTCA Dec. 22 Ex Parte Letter at 2.

affected areas, recognizing that the ability of affected providers to conduct performance testing is extremely difficult and burdensome, if not impossible, given the destruction caused by Hurricane Ida.<sup>38</sup> REV Broadband requests that the Bureau provide it relief from the pre-testing requirements for the first quarter of 2022 so that it can focus its efforts on service restoration.<sup>39</sup> Based on REV Broadband's assertions concerning the lingering effects of Hurricane Ida, we find it is in the public interest to waive the pre-testing requirements for the first quarter of 2022 to allow REV Broadband to deploy resources to better meet its customers' needs during storm recovery.

#### IV. ORDERING CLAUSES

13. 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 pre-testing and testing sample size requirements ARE WAIVED to the extent described above and pre-testing requirements for REV Broadband are waived for the first quarter of 2022. All other requested relief is DENIED.

14. 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

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<sup>38</sup> *Id.*

<sup>39</sup> REV Broadband Petition at 3.