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**Via email**

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**Subject:** *Connect America Fund: Performance Measurement Obligations*  
*WC Docket No. 10-90; OMB Control Numbers 3060-XXXX, 3060-1228*

Dear Mr. Fraiser and Ms. Ongele:

Hughes Network Systems, LLC ("Hughes") submits these comments in response to the Commission's *Notice and Request for Comments* published in the Federal Register on August 20, 2019 as part of the Commission's obligations under the Paperwork Reduction Act of 1995 ("*PRA Notice*").<sup>1</sup> In the *PRA Notice*, the Commission seeks comments concerning, among other things:

- Whether the proposed collection of information with respect to the Connect America Fund's ("CAF") performance metrics obligations "is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility";
- Whether the Commission's burden estimates pertaining to the information collection activities are accurate;
- Ways to enhance the quality, utility, and clarity of the information collected; and
- Ways to "minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology."

Hughes provides these comments to demonstrate that the Commission's *PRA Notice* is premature at best and gets ahead of where the agency's CAF performance metrics regulatory proceeding is currently at, especially as they apply, or do not apply, to high-latency bidders that are CAF auction winners. Soliciting comments on the practical utility of the proposed collection of information or on ways to enhance the quality of the information collected is not timely given the

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<sup>1</sup> *Information Collections Being Submitted for Review and Approval to the Office of Management and Budget*, WC Docket No. 10-90, OMB Control Nos. 3060-XXXX, 3060-1228, 84 Fed. Reg. 161, at 43130 (Aug. 20, 2019).

numerous open questions raised by stakeholders and petitions that are pending before the Commission.

These comments also describe Hughes' understanding that the burden associated with the proposed collection of information is significantly greater than what the Commission estimates, especially with respect to high-latency bidders and Mean Opinion Score ("MOS") testing. Finally, Hughes argues that the CAF performance metrics rules as adopted do not minimize the burden of collecting the information on respondents. This much is apparent in the record generated in WC Docket No. 10-90 and how stakeholders have described the unnecessarily difficult nature of the required testing procedures.

Hughes urges the FCC and OMB to delay action on this *PRA Notice* which would allow the FCC to revise the methodology to reduce the burden and provide a more accurate estimate. The Commission has the opportunity to do so in the context of the pending petitions for reconsideration.

**The Commission significantly underestimates the burden associated with conducting the speed and latency testing and MOS testing information collection.**

Under the Paperwork Reduction Act, the burden of information collecting on the respondents includes the "time, effort, or financial resources" used to "generate, maintain, or provide information to or for a Federal agency."<sup>2</sup> The Commission estimates that the speed and latency testing would take 45 hours per response for respondents and explains that this estimate includes "the time to install any necessary software or testing equipment at the customer premises, conduct the testing, gather the results, and submit the results."<sup>3</sup> Hughes respectfully disagrees with the Commission's estimates and calculates that the time required to measure, compile, and submit the speed and latency data would be on the order of 120 hours per 6-month testing period.

More problematic is the Commission's low estimate of 60 hours for MOS testing, including the time conducting the test and gathering and submitting the results.<sup>4</sup> The rules as adopted in the *Performance Measures Order*, as modified,<sup>5</sup> require the use of the conversation-opinion test for MOS testing, and that "in a conversation-opinion test, two participants actively participate in a conversation" and the "back-and-forth of conversations highlights delay, echo, and other issues caused by latency."<sup>6</sup> The *Order* specifies that "live interviews and surveys must be conducted by an independent agency or organization ... to determine the MOS" and that "[s]urvey forms, mail-in documentation, automated phone calls, or other non-interactive and non-person-to-person interviews are not permitted."<sup>7</sup> For high-latency bidders that have over 3,500 subscribers at CAF-supported locations, 370 MOS test locations must be conducted.<sup>8</sup>

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<sup>2</sup> Paperwork Reduction Act of 1995, 44 U.S.C. 3502.

<sup>3</sup> CAF Performance Testing Measures, Supporting Statement, OMB Control No. 3060-XXXX, at 8 (Aug. 20, 2019), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=94209900>.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Connect America Fund*, Order on Reconsideration, DA 19-911 (WCB WTB OET rel. Sept. 12, 2019) ("*Performance Measures Recon Order*").

<sup>6</sup> *Performance Measures Order*, 33 FCC Rcd at 6525 ¶ 44; see also *Performance Measures Recon Order* at ¶ 12.

<sup>7</sup> *Id.* at 6526 ¶ 45.

<sup>8</sup> *Id.* at 6526 ¶ 46. See also *Performance Measures Recon Order* at ¶ 3 (number of locations to be tested not modified).

By Hughes' estimates, one test call in compliance with the above requirements would last approximately 10 minutes. Testing 370 locations would add up to approximately 62 hours on just conducting the actual test phone calls; this estimate would not account for the additional hours to plan, recruit subjects for, execute, and evaluate those test calls. Hughes estimates the additional time to set up, execute, and then evaluate the tests to be in the ballpark of around 400 hours.

Hughes respectfully urges the Commission to revise and reassess its estimated burden with respect to performance metrics testing and information collecting.

**The rules adopted in the *Performance Measures Order* do not minimize the burden of information collection on respondents.**

The rules for measuring speed and latency as adopted in the *Performance Measures Order* do not minimize the burden of the proposed information collection by respondents nor promote administrative or economic efficiency.

As mentioned above, the *Performance Measures Order* requires that the MOS testing be conducted using the conversation-opinion test and that "live interviews and surveys must be conducted by an independent agency or organization ... to determine the MOS" and forbids the use of "[s]urvey forms, mail-in documentation, automated phone calls, or other non-interactive and non-person-to-person interviews."<sup>9</sup> Automated collection techniques are expressly disallowed by the current rules, and given that the *Performance Measures Order* requires that "testing must be conducted for one week during each quarter of the year,"<sup>10</sup> presents a serious burden to high-latency CAF recipients.

In fact, the record is replete with evidence that the testing procedures required by the *Performance Measures Order* are unnecessarily difficult. For example, the *Order* specifies that "[speed and latency] testing must be performed between the hours of 6:00 pm to 12:00 am local time each day," that "[f]or latency testing, a provider must conduct a minimum of one test per minute – sixty tests per hours – for each testing hour," and that "[f]or speed testing, a provider must conduct a minimum of one test per testing hour in each direction."<sup>11</sup>

Numerous commenters in the record bring up the question of how to deal with unintended network congestion that may result from how the rules require all tests be conducted in the same window of time and with such frequency. For example, NTCA has commented that "[i]t is common practice for all local service providers and their backhaul providers to actively monitor the traffic trends on their backhaul connections ... [and] purchase 'insurance' in the form of burst clauses in their contracts with middle mile and other networks through which data transit."<sup>12</sup> This "burst clause" would allow a service provider to exceed contracted speeds for short durations at no additional cost. However, the set time for testing the performance metrics and the number of simultaneous tests being run would likely result in local service providers exceeding the short duration of their "burst clauses" and triggering penalty clauses due to the excess testing.<sup>13</sup> Similarly, WTA—Advocates for Rural Broadband has cautioned that the current testing procedures

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<sup>9</sup> *Id.* at 6526 ¶ 45.

<sup>10</sup> *Id.* at 6520 ¶ 29.

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

<sup>12</sup> Letter from Joshua Seidemann, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Feb. 28, 2019).

<sup>13</sup> *Id.*

“could result in congestion at the IXP that could have impacts similar to a distributed denial of service attack if several hundred recipients were to send test packets to the same IXP at the same time.”<sup>14</sup> Finally, USTelecom has pointed out that the frequency of latency testing that is necessary to comply with the once-per-minute latency testing requirement is not necessary to determine compliance with CAF rules, and suggests that once-per-hour testing may be sufficient for the performance metrics purposes.<sup>15</sup>

## **Conclusion**

In light of these concerns, Hughes urges the FCC and OMB to delay action on this *PRA Notice*, and require the FCC to revise the testing methodology to reduce undue burdens.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/ Jennifer A. Manner

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<sup>14</sup> Letter from Derrick B. Owens and Gerard J. Duffy, WTA, to Marlene H. Dortch, WC Docket No. 10-90 (filed Apr. 17, 2019).

<sup>15</sup> Letter from Mike Saperstein, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed June 20, 2019).