

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Telecommunications Carriers Eligible to Receive Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund – Alaska Plan)	WC Docket No. 16-271
)	
Expanding Broadband Through the ACAM Program)	RM-11868
)	

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

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EXECUTIVE SUMMARY

Inability to Determine Accurately the Presence and Extent of Would-Be Unsubsidized Competition. The Federal Communications Commission (the “Commission”) should reconsider how to validate information contained within the Broadband Data Collection and the National Broadband Map and other relevant information in determining whether a given entity in fact qualifies as an unsubsidized competitor, as such data will otherwise be lacking and preclude informed decision-making about the extent of such potential competition.

Rescission of Elections Where Enhanced Alternative Connect America Cost Model (“A-CAM”) Support Drops by a Material Amount Due to Subsequent Findings. The Commission should give a provider that has elected enhanced A-CAM support a limited opportunity to rescind its election if its support would decline by more than 20% as compared to the amount stated in its accepted offer due to after-the-fact support adjustments.

Obligations that Resemble, but do not Match, the Broadband Equity, Access, and Deployment Program (“BEAD”). To align with anticipated deployment timeframes under the BEAD program, the deployment schedule for enhanced A-CAM deployments should reflect: (a) interim milestones of 25% of required locations by the end of 2026, 50% by the end of 2027, and 75% by the end of 2028; (b) a final milestone of 100% by the end of 2029; and (c) a one-year “cure” period that would contemplate completion by the end of 2030. Modifications should also be made with respect to cybersecurity attestations to mirror what in fact is required under the BEAD program.

Ongoing Support for Grant-Funded Networks. Where a previously awarded grant will be used by a recipient of enhanced A-CAM support to upgrade locations after acceptance of the offer, the locations still to be built leveraging that grant should be viewed as “ILEC-Only Served” and eligible for support at that level, rather than being treated as ineligible for any ongoing support pending further action by the Commission in its Notice of Inquiry in these proceedings.

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Pursuant to Section 1.429¹ of the rules of the Federal Communications Commission (the “Commission”), NTCA–The Rural Broadband Association (“NTCA”)² hereby petitions for reconsideration and/or clarification, as applicable, of certain aspects of the Report and Order released July 24, 2023 in the above-captioned proceedings as described further herein.³

¹ 47 C.F.R. § 1.429.

² NTCA is an industry association composed of approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services. NTCA was an active participant in the above-captioned proceedings, and its members are directly affected by the order that is the subject of this Petition.

³ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (rel. July 24, 2023) (“*Enhanced A-CAM Order*”).

As a threshold matter, NTCA appreciates the work of the Commission and its staff in adopting and implementing an enhanced Alternative Connect America Cost Model (“A-CAM”) program. This mechanism should provide a meaningful opportunity for many community-based providers to commit to deliver 100/20 Mbps broadband or better to the entirety of their customer bases on a more affordable and sustainable basis. The enhanced A-CAM program will also offer an effective means of coordinating with efforts underway at other agencies to ensure rural Americans are connected at similar levels of performance on similar timelines without duplication. At the same time, as discussed herein, there are a few specific aspects of the *Enhanced A-CAM Order* that warrant reconsideration and/or clarification to promote the goals of these various initiatives and to fulfill the long-term statutory vision of universal service. While some of these are issues that might have been discussed in greater depth beforehand had the order been available for public viewing, they can only be discussed and addressed in this manner now given the process pursuant to which the item was adopted. Moreover, to be clear, NTCA does not submit or propose that any of the issues raised herein should either slow down or stop altogether the process for issuance and acceptance of offers contemplated in the order – although, with this being said, greater clarity and resolution as to several of them to the extent such guidance could be made available in the near term would certainly help promote informed election of the offers by a greater number of potential recipients. NTCA looks forward to working with the Commission to address each of the issues raised herein.

I. THE ORDER FAILS TO ESTABLISH PROCESSES NECESSARY TO DETERMINE ACCURATELY THE PRESENCE AND EXTENT OF WOULD-BE UNSUBSIDIZED COMPETITION.

In the *Enhanced A-CAM Order*, the Commission excluded from enhanced A-CAM offers any locations that are served only by an unsubsidized competitor that offers, via its own facilities, voice and 100/20 Mbps or faster broadband service using wireline or terrestrial fixed wireless technology.⁴ The order further reduces the annual level of support in enhanced A-CAM offers where a location is already served by both such an unsubsidized competitor and a support recipient.⁵ Finally the order indicates that determinations as to competitive overlap will be made by reference to coverage data from the National Broadband Map and other data sources.⁶

Although NTCA and other parties raised substantial concerns backed by record evidence regarding the capabilities of would-be competitors using unlicensed spectrum specifically,⁷ and despite the fact that the Commission itself noted that one of its primary goals in the order was to “maximize the Enhanced A-CAM program’s compatibility with the Infrastructure Act and [the Broadband Equity, Access, and Deployment or “BEAD”] Program,”⁸ the order surprisingly and based upon little more than a mantra of “technological neutrality” deviated from the BEAD Program’s determination that unlicensed fixed wireless services do not constitute “Reliable

⁴ *Enhanced A-CAM Order* at ¶¶ 40-41 and 44.

⁵ *Id.* at ¶ 75.

⁶ *Id.* at ¶¶ 42 and 44.

⁷ *See id.* at n. 150 (citing to multiple NTCA filings raising concerns about the capabilities of unlicensed fixed wireless services to deliver consistent and reliable levels of performance on a widespread basis in rural areas).

⁸ *Id.* at ¶ 37.

Broadband Service.”⁹ In dismissing concerns with respect to the fundamental lack of reliability in such services, the Commission acknowledged however that there could be places where “such coverage claims may be deficient” and asserted that “there have been and will be opportunities for carriers electing Enhanced A-CAM to challenge such claims through the [Broadband Data Collection or “BDC”] processes.”¹⁰ Unfortunately, a careful review of the BDC processes indicates that this assertion is incomplete at best and incorrect at worst – and a failure to correct it now by instituting meaningful procedures that go beyond the narrow BDC challenge and crowdsourcing processes to capture each of the elements of what constitutes an “unsubsidized competitor” will likely result in the denial of support and reliable broadband service for perhaps tens of thousands of rural Americans.

To understand how the BDC and existing challenge and crowdsourcing processes fall short in making a data-driven determination of what is or is not competitively served, it is important to assess three items: (1) how an unsubsidized competitor is defined; (2) what information the BDC contains on the elements of unsubsidized competition; and (3) what the BDC permits in terms of challenges and crowdsourcing claims regarding those elements.

With respect to the first item, the Commission’s rules define an unsubsidized competitor as “a facilities-based provider of residential fixed voice and broadband service that does not

⁹ U.S. Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (last visited August 31, 2023) (“*BEAD NOFO*”).

¹⁰ *Enhanced A-CAM Order*, at ¶ 44 (further denying a request by NTCA for certification or other evidence that would confirm broadband availability from a would-be competitor as “duplicative of BDC processes”).

receive high-cost support.”¹¹ For purposes of identifying what is unserved under the *Enhanced A-CAM Order*, the Commission in turn defined broadband as terrestrial service of 100/20 Mbps or faster with latency of 100 milliseconds or less as offered at specific “locations.”¹² Moreover, the Commission acknowledged in the order that universal service is only deemed available if services are offered “with usage allowances reasonably comparable to those available through comparable offerings in urban areas.”¹³ This means that to be deemed an unsubsidized competitor for purposes of enhanced A-CAM support, *with respect to each specific location at issue*, a provider must satisfy three elements: (a) use of its own facilities to deliver service to that location; (b) offering of *both voice and* broadband to that location meeting the requisite performance metrics;¹⁴ and (c) no use of high-cost universal service support in doing so.

This brings us then to the second and third parts of the inquiry – what the BDC provides in terms of information on these elements and what can be contested with respect to that information. Unfortunately, it is readily apparent upon review that the BDC was simply not built for this

¹¹ 47 C.F.R. § 54.5.

¹² *Enhanced A-CAM Order*, at ¶ 37.

¹³ *Id.* at ¶ 59; *see also id.* at n. 474 (noting the application of latency and usage measures in connection with the determination of unsubsidized competition in prior high-cost universal service programs) and *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90 (rel. Aug. 30, 2023) (“*Offer Public Notice*”), at 8 and n. 46 (indicating a minimum usage amount of 600 GB).

¹⁴ It is also worth noting that each of voice and broadband must be offered by the competitor *on a standalone basis*; as the Commission has rightly determined, a competitive offering cannot reasonably be considered a substitute for a supported service from a universal service perspective if the only way in which to buy that service from the competitor is in a bundle that compels the purchase of *both* services. *See, e.g., Offer Public Notice* at 8 (indicating challenges with respect to the failure of a would-be competitor to offer, among other things, “standalone voice” should be filed in WC Docket No. 10-90).

purpose. In particular: (i) the BDC fails to capture any data whatsoever as to most of these elements; (ii) the BDC provides limited opportunity to raise meaningful challenges or crowdsourcing feedback with respect to the one element of the definition it does address; and (iii) the BDC process fails to permit challenges of any other aspect of the elements of unsubsidized competition precisely because it does not capture data on such elements. Put another way, the BDC may be *informative* when it comes to identifying as a threshold matter where unsubsidized competition as defined in the order *might* exist, but it is hardly *dispositive* with respect to determining where such competition *does* exist – and treatment of the BDC data and processes as conclusive and exhaustive without any meaningful opportunity to show where any given element of the definition of unsubsidized competition has not been met is a material error that must be rectified to ensure universal service.

Taking a closer look, what *does* the BDC provide in terms of information and permit in terms of challenges? In short, the *only* element of the *Enhanced A-CAM Order*'s definition of unsubsidized competition that is in fact captured by the BDC is purported broadband speed.¹⁵ Moreover, challenges to purported speed are limited under current BDC processes and must fit within certain parameters that impose significant structural hurdles to success. More specifically, the BDC establishes a series of “Challenge Codes,” but only two of these relating to purported speed can be pursued through a “bulk challenge process” – either a challenger must show that the would-be competitor does not in fact purport to offer the reported speed at the location or cannot deliver it within 10 business days even if advertised (Challenge Code 6) or that there is no signal

¹⁵ And, to be clear, BDC-reported speeds are merely *purported* because the BDC permits providers to report maximum advertised speed – rather than what customers can actually receive – and, as highlighted further below, to base these reports in certain cases on nothing more than “tweet-length” descriptions of the methodology used to determine what speeds to advertise.

available at the location (Challenge Code 8). By contrast, if a party wishes to use speed test data to challenge coverage (e.g., showing that the actual speed received is lower than what is asserted), that challenge appears to fall under “Challenge Code 7” and cannot be submitted through a bulk process; such information must instead be submitted via crowdsourced data submissions that are more akin to consumer complaints and are not adjudicated like bulk challenges.¹⁶ To complicate matters further, there is limited information available to conduct a meaningful assessment of whether Challenge Codes 6 or 8 apply in any given case, even in circumstances that on their face seem to present material overstatements of coverage. And, even if crowdsourcing may provide some option in theory, it is difficult to see how it provides a viable means for contesting coverage claims where a provider claiming such coverage has few, if any, customers at all – and certainly, the crowdsourcing mechanisms are not designed well for the purpose of another provider to register claims that the would-be unsubsidized competitor either does not offer service at all in an area or does not offer service at the purported speed.¹⁷

¹⁶ See *How to Submit a Successful Fixed Availability Challenge* (available at: <https://help.bdc.fcc.gov/hc/en-us/articles/12000296843291-How-to-Submit-a-Successful-Fixed-Availability-Challenge>) (last visited Aug. 31, 2023).

¹⁷ For example, it is hardly a simple exercise for a challenger to “prove a negative” when a provider that purports to have service available in an area on BDC reports simply does not in fact have service available in that area. One cannot conduct speed tests and flag negative outcomes by crowdsourcing when no service even exists to test, and one cannot prove the lack of ability to deliver service over a given network configuration when no information is available whatsoever as to how the network is configured or the propagation assumptions that went into BDC reporting. Moreover, it is not easy for one provider to “test” another provider’s service even where it exists, as this involves enlisting customers to subscribe to the substandard service for purposes of proving it is substandard. In short, crowdsourcing may be a useful tool for customers to register concerns regarding quality of service, but it does not offer a readily viable path for other providers to show that a would-be competitor’s claims overreach.

The National Broadband Map and associated “supporting” data publicly available in the BDC system provide a number of examples of how difficult it is to lodge meaningful challenges in the face of sweeping coverage claims. As just some examples extracted from this public data:

- LTD Broadband, LLC (“LTD”) purports to offer at least 250 Mbps symmetrical broadband service using unlicensed fixed wireless spectrum to over 275,000 locations across a geography composed of what appears to be more than one-third of each of Minnesota and Iowa and sizeable portions as well of Nebraska and South Dakota.¹⁸
- Wisper ISP, Inc. (“Wisper”) purports to offer at least 100/20 Mbps broadband service using unlicensed fixed wireless spectrum to over 256,000 locations across significant portions of southern Missouri and scattered areas within Kansas, Oklahoma, Arkansas, Kentucky, Illinois, and Indiana.
- AMG Technology Investment Group, LLC (also known as “Nextlink”) purports to offer at least 100/20 Mbps broadband service using unlicensed fixed wireless spectrum to nearly 498,000 locations across a geography composed of what appears to be approximately a quarter of each of Iowa and Illinois, most of eastern and central Texas, and substantial portions of Nebraska, Kansas, and Oklahoma.
- Resound Networks (“Resound”) purports to offer at least 100/20 Mbps broadband service using unlicensed fixed wireless spectrum to over 203,000 locations across significant portions of northern Texas and other scattered areas throughout the state.

Meanwhile, none of these providers appears to have submitted a propagation model or reasonably detailed explanations of how they determined that *each and every* customer in the claimed coverage areas could in fact receive such speeds if *all* of them (or even a sizeable majority of them) were to subscribe – which, of course, is the very notion of “universal” service. Indeed, a few examples highlight in vivid lack of detail the questionable underpinnings of these coverage claims. In describing its modeling efforts, LTD’s entire explanation in the “supporting data” is that it determined these extensive coverage claims at such high levels of speed were appropriate simply

¹⁸ By contrast, LTD interestingly reports offering 150/50 Mbps service to seven locations and 35/7 Mbps broadband service to another two locations using unlicensed fixed wireless technology.

because “*we wrote propagation software and used conservative parameters.*”¹⁹ Similarly, Resound’s entire technical explanation as reflected in the BDC’s supporting data of its coverage estimates is: “*Propagation model performed and homes passed extrapolated from coverage area.*” Wisper and Nextlink by relative contrast have provided at least somewhat greater amounts of detail in their BDC filings, although the models themselves were of course not submitted and critical factors such as oversubscription are omitted from the several-sentence descriptions given.

The difficulty of lodging a meaningful contest to such claims in the face of such limited information – or the difficulty even for the Commission in discerning the validity of coverage claims based upon a few hundred characters or a handful of sentences describing propagation estimations – cannot be overstated. In the case of LTD, for example, what were the parameters that were conservative? How were they so? Who wrote the propagation software? How does it compare to industry standards? Without the answer to such questions, the degree of difficulty in trying to raise signal challenges under Challenge Code 8, for example, increases exponentially. NTCA supposes Challenge Code 6 might offer a slight degree of greater promise, especially when a provider like LTD indicates on its own website for example, despite its BDC reports, that its fixed wireless residential plans top out at 25 Mbps for “Ultra” and 35 Mbps for “Home Office.”²⁰

¹⁹ Inexplicably, the Commission’s rules provide fixed wireless providers the choice to submit either shapefiles and propagation models or a mere list of addresses purportedly served with scant detail as to propagation assumptions. See <https://www.fcc.gov/BroadbandData/filers> (last visited Aug. 31, 2023). Unsurprisingly, it appears that many fixed wireless providers reporting vast coverage claims have chosen the latter as a path of least resistance.

²⁰ See <https://ltdbroadband.com/plans> (last visited Aug. 31, 2023). Given that BDC reports turn upon what a provider purports to offer or advertise, it is difficult to fathom what would enable a provider to report 250 Mbps symmetrical offerings across hundreds of thousands of locations across several states through the BDC system while publishing far lower speed tiers as the highest-level offerings generally available on its website.

Nonetheless, depending on the competitor’s website and marketing materials, this effort could be substantial and essentially involve entering thousands of addresses into “check availability” systems only to obtain inconclusive answers as to actual coverage.

NTCA is hardly alone in registering concerns about “egregiously overstated” coverage claims. For example, a detailed report submitted by the Missouri Association of Councils of Government (“Missouri Governments”) highlighted substantial discrepancies between speed tests and BDC-reported coverage by providers using licensed spectrum to deliver fixed wireless services.²¹ While individual speed tests should not and cannot be relied upon by themselves as an indication of actual coverage at a single location, a material amalgamation of such tests can be used as a kind of “heat map” to discern where problems likely exist in BDC reports – and the Missouri filing certainly presents a compelling case in this regard and reinforces these data points with engineering analysis as to propagation and topographical challenges. Indeed, the engineering analysis included with this letter is far more detailed than anything in the BDC reports cited above.

Furthermore, even if it may be possible to challenge purported speeds based upon such limited information, the BDC itself offers no opportunity to establish that the other elements of unsubsidized competition have not been satisfied. For example, as part of its release of illustrative results, the Wireline Competition Bureau (the “Bureau”) identified potential voice offerings by would-be competitors – but those indicators were provided on a *state level* and do not enable a location-by-location determination that a competitor in fact offers voice service.²² By the

²¹ See *Ex Parte* Letter from Tom Reid, President, Reid Consulting Group (on behalf of the Missouri Governments), to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 19-195, *et al.* (filed Aug. 15, 2023).

²² See *Enhanced A-CAM Support Methodology and Data Sources*, at 2 (available at: <https://docs.fcc.gov/public/attachments/DOC-395739A1.pdf>) (last visited Aug. 31, 2023). It is also

Commission’s own edict, however, the definition of unsubsidized competition turns upon what is and is not available *at each location*; yet the BDC does not provide any process for a support recipient to highlight that voice service is not available to any given customer. Similarly, neither the BDC nor the order itself offer any means to challenge the potential loss of support where a competitor’s broadband service does not meet the applicable standards for usage or latency or even where it might be argued that the competitor is not facilities-based or even “unsubsidized.”²³

Having affirmatively chosen in the *Enhanced A-CAM Order* to tread down the path of a location-by-location assessment of competition and corresponding adjustments to support, the Commission cannot then take as gospel sweeping generalizations regarding the availability of services in an area in making such determinations and corresponding support adjustments – and then compound such errors by denying a meaningful opportunity to challenge such outcomes. It is precisely for reasons such as these that NTCA recommended previously that the Commission adopt a certification process whereby a would-be unsubsidized competitor would provide a reasonable amount of information to establish each of these elements.²⁴ Fortunately, because the order contemplates that support adjustments can be addressed through December 31, 2025, the

worth noting that a would-be competitor may offer voice, but not on a standalone basis and/or with access to emergency services.

²³ For example, there may be cases in which a recipient of Rural Digital Opportunity Fund support deploys antennas that not only provide service within the “price cap” area for which such support was awarded but also bleed over into areas that may be subject to enhanced A-CAM support. That competitor *does* use high-cost support in providing that service, and thus would not qualify as an unsubsidized competitor. Support recipients must be afforded an opportunity to challenge where the BDC ostensibly indicates “unsubsidized” competition on such facts.

²⁴ *Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed June 16, 2023), at 2-3.

Commission has now given itself the time to address these issues after all without delaying the process of making initial offers and obtaining acceptances.

The Commission should therefore reconsider its rejection of NTCA’s proposal for an efficient process by which a would-be competitor would confirm its capabilities to satisfy each of the elements of unsubsidized competition through a simple certification. If a competitor were to submit such a certification, this would supply a reasonable amount of information that could both possibly head off many challenges (by showing affirmatively that competition indeed exists) and provide greater detail for the Commission to adjudicate challenges where still deemed necessary. By contrast, if a competitor declined to supply such a certification, then the Commission would determine that there was no unsubsidized competition because, despite the *prima facie* indication of purported speed offerings on the BDC, no further information is available to confirm satisfaction of the remaining elements of this definition with respect to any given location. While the Commission concluded in the *Enhanced A-CAM Order* that the suggested certification process would “be duplicative of BDC processes,”²⁵ it is clear upon closer review that it is in fact *not* duplicative in nearly every respect given the broader set of elements of unsubsidized competition – and, as discussed above, even the BDC processes do not provide a comprehensive means of challenging purported speed in all cases.

Moreover, while NTCA appreciates the indication in the *Offer Public Notice* that challenges with respect to various elements of the definition of “unsubsidized competition” can be filed as comments in WC Docket No. 10-90,²⁶ the determination of where support is or is not needed in fact would be aided by a well-structured and well-defined supplemental process “beyond

²⁵ See *Enhanced A-CAM Order* at n. 151.

²⁶ *Offer Public Notice* at 8.

the BDC” that allow for meaningful presentation of information and data-driven adjudication of challenges with respect to each element of the definition of unsubsidized competition (*e.g.*, the competitor does not in fact offer voice to certain locations) that is not captured by BDC processes now. NTCA therefore asks that the Commission reconsider the rejection of a simple certification form from the would-be unsubsidized competitor to confirm that it meets the elements of that definition, to ensure that the mandate of universal service is not undermined at locations where a “false positive” of competitive presence is not borne out by facts on the ground. Alternatively, and at a minimum, the Commission should ensure through other reasonable processes that strict limitations within BDC systems and procedures that were not built for the kinds of concerns raised in identifying would-be unsubsidized competition will not frustrate the mission of universal service and deny potentially tens or even hundreds of thousands of consumers access to sufficient and sustainable broadband based upon nothing more than technicalities as to challenge code categorizations or the like.²⁷

²⁷ Relatedly, the Commission should confirm that the September 15 BDC filings, which will report broadband coverage data as of June 30, 2023, will be the final submissions used in ascertaining would-be competitive coverage and served locations (subject to challenges). In the *Enhanced A-CAM Order*, the Commission stated that it expected final support amounts to “ultimately rely on [Broadband Serviceable Location Fabric or “Fabric”] v.3 and the National Broadband Map showing locations as of June 30, 2023 for these adjustments.” It would be inconsistent with this clear decision to rely upon version 3 of the Fabric as of June 30, 2023 – and it would create the potential for substantial confusion in mismatches of service reports and underlying locations – to accept any data with respect to purported coverage beyond the June 30 date. In the end, because June 30, 2023 “is likely to be the most recent Map update prior to the October 1, 2023 deadline for offer acceptance,” the June 30 date rightly serves for all purposes as the relevant date for identification of would-be competitive coverage and application of support adjustments related specifically thereto (as compared to adjustments related to enforceable commitments through the date of the offers, which may be identified thereafter). *Enhanced A-CAM Order* at ¶ 43 and n. 146.

II. THE COMMISSION SHOULD PROVIDE THE ABILITY TO RESCIND AN ELECTION WHERE SUBSEQUENT ADJUSTMENTS WOULD RESULT IN ENHANCED A-CAM SUPPORT BEING REDUCED BY MORE THAN 20%.

As noted in the preceding section, the Commission indicated in the *Enhanced A-CAM Order* that, while acceptances of enhanced A-CAM support offers will be binding, the actual amount of support received could be adjusted through December 31, 2025 depending upon corrections to the location Fabric or coverage claims as of the date of the offers.²⁸ More specifically, with respect to any *reductions* in required locations for deployment, the Commission indicated that as long as “the number of locations to which a carrier is obligated to deploy are at least 95% of the obligated locations reflected in the [accepted offer],” there would be no adjustment to support. However, where adjustments result in a count of required locations that is less than 95% but greater than 85% of those specified in the offer, the Bureau established a methodology to step down support over two years to the decreased amount with an ensuing true-up over the entire term to reflect the reduced level – with support being recalculated altogether in cases of greater reductions in deployment obligations.²⁹ By contrast, where deployment obligations *increase*, the Commission indicated that additional support would only be provided to the extent that it would not cause the Enhanced A-CAM program to exceed the available program budget.³⁰

NTCA appreciates the efforts made by the Commission and the Bureau to attempt to mitigate the impacts of support variability based upon this process, and NTCA recognizes the

²⁸ See *Enhanced A-CAM Order* at ¶¶ 43-44.

²⁹ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Bureau Order (rel. Aug. 30, 2023), at ¶¶ 14-16; see also *Enhanced A-CAM Order* at ¶ 77.

³⁰ *Enhanced A-CAM Order* at ¶ 78. The order further indicates that, if demand exceeds the available reserve for the program, amounts will be allocated on a *pro rata* basis to those providers with increased obligations.

balance the Commission was trying to strike in providing some level of stability even in the face of the subsequent discovery of facts and circumstances relevant to the date of the offers. However, there could come a tipping point where potential support reductions could become so significant and material that a provider's ability to perform is in serious question. This is exacerbated by the fact that some of the relevant broadband coverage data through the date of the offers are still to be published, and further still by the fact that – as noted earlier in this petition – there is no straightforward pathway as of the date when offers will need to be accepted to challenge in every respect the status of would-be unsubsidized competitors in an efficient and comprehensive manner.

To remedy such concerns, the Commission should give a provider that has elected enhanced A-CAM support a limited opportunity to rescind its election if its support would decline by more than 20% as compared to the amount stated in its accepted offer due to after-the-fact support adjustments. NTCA understands the desire for offers to be irrevocable to promote more effective coordination with the BEAD program. But some degree of reasonableness is necessary to bound this otherwise open-ended commitment, and NTCA is not asking that parties be able to rescind their election freely at any time based upon any change in circumstances. Moreover, NTCA anticipates that the relief requested here would be invoked rarely, if at all, as providers accepting enhanced A-CAM are highly likely to be motivated to remain in the program because of the opportunity and stability it represents. Nonetheless, the Commission should provide a reasonable bound pursuant to which a provider could rescind its acceptance if the level of support differs so dramatically and materially from initial expectations. No one – consumers, the Commission, or the provider – will benefit from a circumstance where it is readily apparent that a

provider becomes unlikely to deliver on the promise of a program several years from now due to unforeseen and unforeseeable material adverse changes in support in the interim.³¹

III. THE ORDER ERRED IN ADOPTING OBLIGATIONS THAT DO NOT IN FACT MIRROR OR ALIGN WITH THE BEAD PROGRAM.

The Commission generally sought in the *Enhanced A-CAM Order* to mirror the structure and objectives of the BEAD program to a significant degree, with the obvious goal being to ensure that all customers will receive a similar level of broadband service within a similar timeframe regardless of the funding program supporting such efforts.³² In most respects, the Commission succeeded in doing so, with the Enhanced A-CAM program poised to deliver broadband that is equal to or better than much of what will be deployed under the BEAD program to wide swaths of rural America. In a few respects, however, the Commission deviated from the BEAD structure, presenting potential challenges in coordination and alignment. The first deviation, as discussed above, arises in the Commission’s decision to disregard the BEAD program’s perspective with respect to unlicensed fixed wireless service and to treat this technology as reliable in all cases in

³¹ Predictability is a statutory requirement for universal service. Thus, at a minimum, if the Commission will not provide the relief requested here, it should revisit the levels and timeframes for application of support adjustments so that projects remain sustainable after acceptance even in the face of potentially significant changes in circumstances. Similarly, in the interest of promoting predictability, the continued application of the annual inflationary factor to the CAF-BLS and HCLS budget going forward remains important, consistent with the proposals cited in the order with respect to recalibration of that budget and to avoid the prospect pending any further reforms for rapid recurrence of the issues that prompted waiver orders in recent years. *See Enhanced A-CAM Order* at ¶¶ 106-108 and n. 303 (noting that recalibration was intended to be “consistent with” NTCA’s request in the underlying record); *see also, e.g., Ex Parte* Letters from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 10-90, *et al.* (filed April 3, 2023, and May 26, 2023) (stating that the proposals and estimates of impacts include the fact that “an inflationary factor would continue to apply to the recalibrated CAF-BLS budget as it does today”).

³² *Enhanced A-CAM Order* at ¶ 32 (noting the Commission’s objective “to ensure alignment with the BEAD Program timeline” and “to complement and bolster congressionally appropriated programs, like the BEAD Program”).

delivering robust levels of broadband. The second aspect of the *Enhanced A-CAM Order* that deviates from the approach adopted in the BEAD program is the timeline for deployment of networks that will deliver better broadband to consumers. This aspect of the order warrants reconsideration. While as a superficial matter, both programs aim for delivery of services within approximate four-year timeframes, a careful review of the BEAD program and the administration’s own statements as to its hopes for this program indicate that the timeline for BEAD deployments will be longer under any reasonable estimate.

In the *Enhanced A-CAM Order*, the Commission specifically cited the BEAD program in designing the interim and final deployment milestones for those that accept enhanced A-CAM support. These enhanced A-CAM milestones require delivery of 100/20 Mbps to 50% of required locations by the end of 2026, to 75% of such locations by the end of 2027, and to all required locations by the end of 2028. There is a “cure” period available under the Commission’s rules that would afford recipients an additional year to complete work on the final milestone if needed, and the Commission also indicated that the Bureau may consider whether “common circumstances” that affect the timeline for BEAD-funded deployments might warrant modification of the initial and/or final milestones under enhanced A-CAM support as well.³³

These enhanced A-CAM program timeframes materially outpace those anticipated under the BEAD program. The Biden Administration itself has indicated that it does not expect BEAD-funded deployments to be complete until 2030 – two years after the final milestone here, and 12 months after even the “cure” period applicable under the enhanced A-CAM program.³⁴ The 2030

³³ *Id.* at ¶¶ 45-48; *see also* 47 C.F.R. § 54.320(d).

³⁴ *See Fact Sheet: Biden-Harris Administration Announces Over \$40 Billion to Connect Everyone in America to Affordable, Reliable, High-Speed Internet* (available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden->

estimate makes sense when one considers what a “four-year timeline” under the BEAD program really means.³⁵ With initial proposals still to file, mapping challenge processes still to conduct, numerous approvals from the National Telecommunications and Information Administration still to be obtained, and final selections of subgrantees still to be made, it is clear that even the most ambitious and well-prepared States will not award subgrants until the middle of next year – and most industry observers’ expectations are that funds will not be distributed on a widespread basis for deployment until 2025 or even 2026.³⁶

Moreover, the BEAD program itself will likely provide an additional year for completion of deployment in most cases, with extensions of the four-year timeframe readily available from a State if: “(1) the subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (2) the construction project is underway; *or* (3) extenuating circumstances require an extension of time to allow the project to be completed.”³⁷ It is hard to see a case in which this one-year extension for BEAD project completion would *not* be available – *e.g.*, under what circumstances would a project *not* be

[harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/](#)) (“With these allocations and other Biden administration investments, all 50 states, DC, and the territories now have the resources to connect every resident and small business to reliable, affordable high-speed internet by 2030.”) (last visited Aug. 31, 2023).

³⁵ *BEAD NOFO* at 18; *see also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) at § 60101(h)(4)(C).

³⁶ *See, e.g., Maryland broadband chief: ISPs won’t get BEAD money until 2025*, Fierce Telecom (Jul. 10, 2023) (available at: <https://www.fiercetelecom.com/broadband/maryland-broadband-chief-isps-wont-get-bead-money-until-2025>) (last visited Aug. 31, 2023); *Biden announces \$42.5B in broadband funds from BEAD program*, StateScoop (June 26, 2023) (available at: <https://statescoop.com/biden-bead-broadband-grants-white-house-40-billion/>) (last visited Aug. 31, 2023).

³⁷ *BEAD NOFO* at 18.

underway several years after the subgrant has been received? Finally, even as BEAD aims to ensure that *every* unserved location in the United States is served, there will undoubtedly be locations and entire areas for which no BEAD applications are received; in these cases, States will need effectively to “go back to the drawing board” and “find providers willing to expand their existing or proposed service areas” through “inducements” or other strategies.³⁸ With all of this work still to be started and these many stages still to be completed, it is understandable and appropriate that the Administration articulated a 2030 timeline for achievement of BEAD deployments in lieu of simply calculating four years from a 2024 date when some States might be in position to make some early awards.

In light of the foregoing, NTCA urges the Commission to reconsider what it means to “align” its enhanced A-CAM deployment milestones with those under the BEAD program. Simply declaring “four years for performance” to be the same under both programs is not alignment. Rather, alignment between BEAD and enhanced-ACAM should be based upon a realistic look at the practical effects for consumers – the likely dates by which locations under each program will receive the required levels of service. Based upon what is anticipated for BEAD, this should translate to a framework for enhanced A-CAM deployments of: (a) interim milestones of 25% of required locations by the end of 2026, 50% by the end of 2027, and 75% by the end of 2028; (b) a final milestone of 100% by the end of 2029; and (c) a one-year “cure” period that would contemplate completion by the end of 2030. Such timeframes – which amount to the addition of one interim milestone and one more year overall to what is presently defined in the *Enhanced A-CAM Order* – are particularly appropriate when one considers that enhanced A-CAM recipients will be competing for access to supplies and trained workers amid perhaps the single

³⁸ *Id.* at 37-38.

largest glut of broadband deployment activity in the nation’s history.³⁹ The direction in the order to the Bureau to continue to monitor the progress of BEAD deployments and to consider further adjustments, such as an additional one-year extension of enhanced A-CAM final deployment milestones, should also remain in effect.⁴⁰

This is not to say that recipients of enhanced A-CAM support are likely to wait for these milestones to complete the work that is necessary at each stage. The track record to date of NTCA members and other smaller recipients of high-cost universal service support demonstrates a consistent commitment to exceeding expectations and requirements overall. Past practice and precedent would therefore indicate that services for many required locations are likely to be made available on a faster timeframe and at higher levels of performance than the enhanced A-CAM program requires. Nonetheless, given that the overarching goal is to align the enhanced A-CAM program with the BEAD program, given the present and persistent challenges that providers face in obtaining timely access to supplies and a trained workforce at a time of unprecedented investment in broadband deployment efforts, and given that the work to reach 100% of locations across widespread study areas through enhanced A-CAM will be harder than connecting hand-picked proposed service areas under the BEAD program, it is appropriate for the Commission to reconsider the deployment milestones as recommended above for those that elect to receive enhanced A-CAM support.

³⁹ See, e.g., *After federal investment, supply chain jams and labor shortages still hinder tribal broadband access*, Marketplace (Apr. 6, 2023) (available at: <https://www.marketplace.org/2023/04/06/tribal-broadband-access-supply-chain-jams-labor-shortages/>) (last visited Aug. 31, 2023).

⁴⁰ *Enhanced A-CAM Order* at ¶ 46.

A third deviation from the BEAD Program—which also warrants reconsideration—is the Commission’s decision to require that enhanced A-CAM carriers’ cybersecurity risk management plans reflect certain “best practices.”⁴¹ Specifically, enhanced A-CAM carriers’ cybersecurity risk management plans must reflect “an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives or the Center for Internet Security Critical Security Controls.”⁴² This requirement is neither “align[ed]” nor “[c]onsistent with the BEAD Program,”⁴³ which makes no mention of these standards and instead requires that carriers’ plans reflect the NIST Framework for Improving Critical Infrastructure Cybersecurity (“CSF”) and Executive Order 14028.⁴⁴ To achieve alignment, the Commission should eliminate the “best practices” provision or, alternatively, make compliance with it optional.⁴⁵

⁴¹ 47 C.F.R. § 54.308(e)(4); *see also Enhanced A-CAM Order* at ¶¶ 109–14.

⁴² *Enhanced A-CAM Order* at Appendix A (47 C.F.R. § 54.308(e)(4)), ¶¶ 109–14.

⁴³ *Contra NPRM* at ¶¶ 57 and 111.

⁴⁴ *BEAD NOFO* at 70.

⁴⁵ In addition, given the requirement that cybersecurity risk management plans reflect the “latest” version of the NIST CSF, 47 C.F.R. § 54.308(e)(4), the Commission should also clarify that affected carriers will have a reasonable amount of time to update their plans when new versions of the CSF are released.

IV. A REASONABLE LEVEL OF ONGOING SUPPORT FOR OPERATING EXPENSES SHOULD BE PROVIDED WHERE AN ENHANCED A-CAM RECIPIENT USES PREVIOUSLY AWARDED GRANT FUNDS TO DEPLOY ITS NETWORK.

The *Enhanced A-CAM Order* precludes enhanced A-CAM recipients from seeking future grant awards for deployment of 100/20 Mbps or better service with respect to locations that receive such support.⁴⁶ The order is not as clear, however, as to whether *currently unserved* locations that will be *connected subsequently* at 100/20 Mbps service by an enhanced A-CAM recipient leveraging the assistance of a previously awarded grant are eligible for such support due to the “enforceable commitment.”⁴⁷ NTCA supports the need for coordination and avoidance of conflict or duplication among broadband funding and support programs. But the Commission should clarify, or reconsider to the extent necessary, this rule to ensure a reasonable level of ongoing support for operations and maintenance and to help ensure affordability of services for any locations that are built by an enhanced A-CAM recipient *after* the acceptance of such support leveraging grants that were awarded *prior to* such acceptance.

Such narrow clarification or reconsideration is warranted to promote universal service and would be consistent with how the *Enhanced A-CAM Order* otherwise generally handles the question of ongoing support requirements. Specifically, the Commission rightly notes in the order that universal service involves not only the deployment of networks where they are not yet built, but also that “consumers served with 100/20 Mbps or faster service by the [incumbent local exchange carrier or “ILEC”] only and not by an unsubsidized competitor will remain dependent

⁴⁶ *Enhanced A-CAM Order* at ¶ 53.

⁴⁷ Compare *id.* at ¶¶ 37 and 42 with *id.* at ¶ 74 and *Connect America Fund*, WC Docket No. 10-90, *et al.*, Order (Wireline Comp. Bureau Aug. 30, 2023) (“*Bureau Order*”), at n. 30

on the Enhanced A-CAM carrier to maintain at least their current level of service,” and that in doing so, the provider “will therefore continue to experience ongoing operational and depreciation costs associated with these already-constructed locations.”⁴⁸ This same logic holds true for those locations where the enhanced A-CAM recipient has received a grant to build previously but has not yet done so; service to these locations too will ultimately result in ongoing costs that are in need of recovery to ensure that networks are maintained and services remain affordable.

NTCA recognizes that the question of what level of ongoing support may be necessary and appropriate for grant-funded networks generally is presented for consideration in the Notice of Inquiry that accompanies the *Enhanced A-CAM Order*.⁴⁹ But the Commission should not await the outcome of that notice (and presumably an ensuing notice of proposed rulemaking) to address this question in the context of providing enhanced A-CAM support. Rather, based upon the same reasoning that rightly justified in the order the provision of ongoing support for existing “ILEC-only served” locations (which expressly include any locations *already served* by the ILEC as of the date of the offers leveraging prior grants⁵⁰), the Commission should provide a comparable level of support for those locations that *become served* by the ILEC in the future leveraging grants awarded prior to extension of enhanced A-CAM offers. In other words, even if such to-be-built locations might not be eligible for a higher level of support as if they were “unserved” (because an enforceable commitment will provide initial funding to cover at least a portion of the capital costs

⁴⁸ *Enhanced A-CAM Order* at ¶ 74.

⁴⁹ *See id.* at ¶¶ 159-160 (noting the potential need for “sustainability support” even where networks have been constructed leveraging grant funds).

⁵⁰ *See Bureau Order* at n. 30 (“[I]n the context of calculating support associated with ILEC-only served locations, we agree that such grants are not duplicative of Enhanced A-CAM support”),

of deployment), they should still be afforded ongoing support in an amount equivalent to what existing “ILEC-only served” locations in the same study area receive under the enhanced A-CAM model and offer.⁵¹ Indeed, failure to address this issue would give rise to an unjustifiable disparity in support between “ILEC-only served” locations based upon literally nothing more than a construction timing consideration, and to some degree would recreate the kind of concern seen between the first and second iterations of A-CAM where certain “already-served” locations were eligible for support while others were not.⁵² Given that the Commission has already explicitly recognized the importance of ongoing support in the *Enhanced A-CAM Order*, the order should be clarified, or reconsidered if necessary, to ensure ongoing support is provided at a reasonable level regardless of when those locations ultimately become served.

V. CONCLUSION

For the foregoing reasons, NTCA respectfully requests that the Commission act consistent with the recommendations set forth herein.

Respectfully submitted,

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⁵¹ *Enhanced A-CAM Order* at ¶¶ 73-74.

⁵² *See id.* at n. 211.