

**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

**OPPOSITION OF
NTCA–THE RURAL BROADBAND ASSOCIATION
TO PETITIONS FOR RECONSIDERATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby files this Opposition to the Petitions for Reconsideration filed by: (1) the Coalition of RDOF Winners (the “RDOF Winners”); and (2) St. James Township and Peaine Township (collectively, the “Townships”) in the above-captioned proceedings.² Neither petition meets the standards for reconsideration of the decisions made within and the rules adopted pursuant to the *Report and Order* released by the Federal Communications Commission (the “Commission”) on July 24, 2023.³

¹ 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.

² Petition for Reconsideration of the Coalition of RDOF Winners, WC Docket Nos. 10-90, *et al* (filed Sept. 18, 2023); Petition for Reconsideration of St. James Township and Peaine Township, Beaver Island, MI, WC Docket Nos. 10-90, *et al*. (filed Sept. 18, 2023).

³ *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 10-90, *et al*. (re. July 23, 2023) (“*Report and Order*”).

I. THE RDOF WINNERS' RECONSIDERATION PETITION

The RDOF Winners' reconsideration petition identifies no material errors or omissions within the *Report and Order*, nor are there additional facts or arguments presented that were not known or did not exist until after the petitioners' last opportunity to present such matters.⁴ Rather, it is quite clear – and even the RDOF Winners themselves flag – that the instant petition is at its core nothing more than a collateral means of hand-waving with respect to *separate relief that the RDOF Winners are seeking in another previously-filed petition*.⁵ This transparent attempt to bootstrap public interest arguments regarding other relief that the RDOF Winners seek elsewhere by attacking the *Report and Order* is unavailing, however, as there is no logical tether between the *Report and Order* and the relief that the RDOF Winners ultimately want. Indeed, it is unclear whether even the other relief they seek through the *RDOF Winners' Other Petition* is itself ultimately in the public interest – and there is certainly no guarantee that a grant of *this petition* would necessarily result in the relief sought by *that other petition* such that the two should be linked in the manner suggested by the RDOF Winners.

Casting about for any possible argument regarding the public interest related to the *Report and Order*, the RDOF Winners raise vague assertions about “opportunity costs,” contending that providing universal service resources for enhanced Alternative Connect America Cost Model (“Enhanced A-CAM”) offers detracts from the Commission’s ability to consider the RDOF

⁴ See 47 C.F.R. § 1.429(b).

⁵ RDOF Winners' Petition, at 1-2. (“Reconsideration is necessary and in the public interest to account for additional funding needed to support the RDOF program, as explained in the RDOF Winners' pending Emergency Petition.”) (citing to Emergency Petition, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90 (filed Aug. 16, 2023) (“*RDOF Winners' Other Petition*” or “*Other Petition*”).

Winners' request for additional funding to carry out their obligations under that program.⁶ This posturing of a false dichotomy, however, is nonsensical; effectively, the RDOF Winners contend that the Commission should not have made certain decisions in the *Report and Order* simply because the RDOF Winners believe the Commission should grant them their own relief in another context, and they provide no basis for the Commission to conclude that the public interest (or even their own interests) would be better served by reversing course altogether on the decisions made in the *Report and Order*. If anything, the public interest weighs far more in favor of the Enhanced A-CAM offers, which will materially increase the level of services that every consumer will receive across wide swaths of rural American geographies, than it does for a still-unidentified subset of "RDOF Winners" to receive more money to do what they already promised to do in hand-selected and unidentified rural census blocks due to ostensibly changed circumstances.⁷ More importantly, however, the Commission remains free to consider, and fully capable of considering, the merits of the *RDOF Winners' Other Petition* without the need to reconsider the Enhanced A-CAM program.

The decisions made in the *Report and Order* are in the public interest for the many unrefuted reasons stated therein. More specifically, in the *Report and Order*, the Commission found among other things that the decisions made and rules adopted would "align deployment with the requirements of the [Infrastructure Investment and Jobs Act], encourage the deployment of affordable broadband service, and allow [the Commission] to monitor compliance with the

⁶ *Id.* at 3.

⁷ To the extent that an individual RDOF Winner believes it would be unable to perform in the absence of additional funding because of such changed circumstances – which admittedly could present a legitimate concern – it can always present that argument and the facts to buttress a request for such relief in the form of a waiver petition.

program rules.”⁸ Moreover, the Commission concluded that new Enhanced A-CAM offers were in the public interest and efficient because they would: (1) “establish a federal enforceable commitment and alleviate[] the need for [Broadband Equity, Access, and Deployment (“BEAD”)] and other broadband funding for these areas, allowing those funds to be used for other means like extending networks further or funding other broadband initiatives;”⁹ (2) “obligat[e] one provider with an existing supported network to serve 100% of unserved locations across its study area,” thereby avoiding the potential that providers might “cherry pick” portions of such areas to serve and result in “certain locations remain[ing] stranded with no or inferior service;”¹⁰ and (3) include “requirements and safeguards” to ensure timely and ongoing delivery of service, including alignment of the deployment timeline with BEAD obligations and performance testing.¹¹

Nothing in the RDOF Winners’ reconsideration petition here contradicts these conclusions or even attempts to raise meaningful arguments as to them. Instead, as noted above, the current petition is focused upon arguments about why the *RDOF Winners’ Other Petition* should be granted, with the grant of the instant petition then in theory permitting potential redirection of resources to the RDOF Winners – should the Commission in turn find that the *RDOF Winners’ Other Petition* is itself in the public interest. In short, the RDOF Winners’ attempt to reargue the need for a grant of the *Other Petition* in this context presents no new or changed facts or arguments with respect to the public interest that would justify reconsideration of the *Report and Order*.

⁸ *Report and Order*, at ¶ 19.

⁹ *Id.* at ¶ 32.

¹⁰ *Id.* at ¶¶ 33 and 35.

¹¹ *Id.* at ¶ 36.

II. THE TOWNSHIPS' RECONSIDERATION PETITION

The Townships' reconsideration petition asserts that the Commission erred in extending Enhanced A-CAM offers because these could result in the deployment of networks in their communities that deliver 100/20 Mbps service via DSL technology rather than fiber.¹² The Townships further contend that the BEAD program would likely result in the deployment of fiber in their communities, and that the Enhanced A-CAM program precludes that possibility.¹³

Reconsideration is unwarranted for several reasons. First, the Townships' petition is based upon multiple levels of speculation, rather than fact. The Townships' reconsideration petition premises its arguments based upon what they "expect" of a provider.¹⁴ Speculation as to how a single entity *might* satisfy its obligations in one instance do not provide sufficient "facts" to warrant reconsideration of *an entire program nationwide*. As much as the BEAD program offers great promise to deliver fiber on a widespread basis across America, so too does the Enhanced A-CAM program. It should also be noted that NTCA is a substantial proponent of policies that promote the deployment of fiber and higher speeds generally.¹⁵

This being said, BEAD itself is unlikely to achieve truly universal fiber connectivity for several reasons, as much as NTCA, the State, the Townships, and many others all might wish otherwise – making this in effect a request for reconsideration premised upon what BEAD *might*

¹² Townships' Petition, at 3.

¹³ *Id.* at 9-10.

¹⁴ *Id.* at 2.

¹⁵ *See, e.g.*, Comments of NTCA to the National Telecommunications and Information Administration, Docket No. 220105-0002, RIN 0660-ZA33 (filed Feb. 4, 2022), at 8; Comments of NTCA to the Dept. of Treasury, RIN 1505-AC77, 31 CFR Part 35 (filed July 15, 2021), at 2.

bring in an area where the Enhanced A-CAM recipient *might* elect in the future to deliver BEAD-equivalent services through a non-fiber technology. Indeed, even the most passionate pro-fiber advocates who generally seek to have fiber reach as far possible have acknowledged that the BEAD program will likely not be able to deliver fiber everywhere nationwide given available resources.¹⁶ The Administration itself has articulated similar perspectives in talking about the aims and likely outcomes of BEAD.¹⁷ As much as the BEAD program focuses on “Internet for All” and aims above all else to ensure that every currently unserved location will be served, and as much as every community like the Townships will undoubtedly seek to leave no stone unturned in finding a provider to help make these connections happen, the BEAD program rules unmistakably contemplate that certain areas will likely receive only non-fiber proposals – or even no proposals at all – because the business case for service is so challenging,¹⁸ as it apparently is in the Townships.¹⁹

¹⁶ See, e.g., *The Importance of Spending Federal Funds to Build Broadband Right the First Time*, Fiber Broadband Association and NTCA (Oct. 16, 2023) (available at: <https://fiberbroadband.org/2023/10/16/the-importance-of-spending-federal-funds-to-build-broadband-right-the-first-time/>). (“We recognize that this is not an easy process, that there will be different Thresholds, and that there will of course be places that require alternatives to fiber to realize a mission of universal connectivity in the near-term.”)

¹⁷ See, e.g., Lindsay McKenzie, *States can use BEAD funding for more than fiber*, NTIA administrator says, StateScoop (May 24, 2023) (available at: <https://statescoop.com/states-bead-funding-fiber-alan-davidson/>). (“There will be some areas where you will be able to connect everybody with fiber with the funding that’s given to states that choose to do that, other states will have a mix.”)

¹⁸ See BEAD Program Notice of Funding Opportunity (May 13, 2022), at 38 (discussing the need for inducements and alternative selection processes, including individualized negotiations, if a State should fail to receive any proposals to serve a group of unserved locations).

¹⁹ See Townships’ Petition, at n. 1. (“Beaver Island . . . is the most remote island in the Great Lakes with a full-time, locally sustained community.”)

Similarly, while the State of Michigan has articulated a goal to “maximize fiber adoption through the State”²⁰ and “a strong preference towards end-to-end fiber solutions,”²¹ and even if it may have professed in certain remarks to have sufficient funding to connect all locations to fiber, the actual text of its own proposed BEAD rules contemplates otherwise. The State’s initial proposal would explicitly identify certain areas and locations as potential “Outliers” that might only be served via the use of “alternative technologies” if they cost more than a “predefined [and still-to-be-defined] multiple of the average cost to serve.”²² Especially if there are compelling bids elsewhere in the State that “score better,” consume available BEAD funding resources, and make this area appear to be an “Outlier,” these provisions in the State’s proposal indicate that there may be insufficient funding left in the BEAD program to fund fiber deployments and that alternative technologies would be used instead. Put another way, the BEAD program is no different than the Enhanced A-CAM program in recognizing there may be limited areas where fiber cannot be delivered despite the best intentions of program design and the best efforts of would-be program participants.

It was precisely these kinds of considerations that prompted the Commission to extend Enhanced A-CAM offers, hoping again to minimize the potential for stranding of locations without any assurance that the BEAD program will find a way to serve them and thereby to leave BEAD with greater resources to serve remaining locations not cared for by the Enhanced A-CAM

²⁰ Michigan Dept. of Labor & Economic Opportunity, Michigan High-Speed Internet Office, BEAD Program, Five-Year Action Plan (Aug. 2023), at 98.

²¹ Michigan Dept. of Labor & Economic Opportunity, Michigan High-Speed Internet Office, BEAD Program, Initial Proposal Vol. II (Oct. 2023), at 13.

²² *Id.* at 13-14.

program.²³ Moreover, while it may be unclear as of now how the minimum service obligation under the Enhanced A-CAM program might be fulfilled in the Townships' specific circumstances, it would again vastly overreach to reconsider and reverse course on an entire program simply because of speculation that *some* locations under that program that are still to be identified *might* in the future receive the requisite level of service via a non-fiber technology.

Relatedly, it must be noted that NTCA members and providers like them generally have a substantial and long-standing track record of *exceeding* program-required levels of performance. For example, even as many of the prior universal service programs provided funding only to enable deployment of 25/3 Mbps broadband service, these smaller providers have tended to outperform these obligations. As NTCA's 2022 member survey showed, even operating under such relatively lower deployment obligations in areas where the average density is approximately six subscribers per mile, approximately 84% of locations on average were already connected by fiber and could receive *upstream* service of greater than 100 Mbps.²⁴ While there is certainly more work to do in some areas and certain areas may present particularly difficult challenges to serve, the Enhanced A-CAM program is poised to build upon – and sustain – the tremendous work already underway to establish better connections deeper into rural America, and it should not be reconsidered based merely upon arguments that certain providers may need to find alternative ways in limited instances to fulfill programmatic obligations.

²³ *Enhanced A-CAM Order*, at ¶¶ 33 and 35.

²⁴ NTCA Broadband/Internet Availability Survey Report (Dec. 2023), at 2 (available at: <https://www.ntca.org/sites/default/files/documents/2023-12/2023%20Broadband%20Survey%20Report%20FINAL.pdf>).

III. CONCLUSION

For the foregoing reasons, the Commission should deny the petitions for reconsideration submitted by the RDOF Winners and the Townships.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael Romano, hereby certify that on this 12th day of December, 2023, I caused a copy of this filing to be served, via email, on the following:

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