



USTELECOM | THE BROADBAND ASSOCIATION



February 26, 2024

Ex Parte Notice

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: *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 Service Through the A-CAM Program, RM-11868*

Dear Ms. Dortch:

In the Order creating the Enhanced Alternative Connect America Cost Model (“A-CAM”) program, the Federal Communications Commission (the “Commission”) indicated that data with respect to the status of broadband availability and broadband serviceable locations (“BSLs”) as of the date of Enhanced A-CAM offers would be used to determine Enhanced A-CAM deployment obligations and support levels. Specifically, the Order made clear that initial offer amounts would be adjusted to “reflect locations and broadband deployment that existed at the time the Enhanced A-CAM offers were made, but were not reflected in the Fabric or the National Broadband Map, and locations for which an enforceable commitment to deploy had been made prior to the Enhanced A-CAM offers but were not included in the National Broadband Funding Map.”¹ The Order further stated that the Commission expected the Bureau and Office of Economics and Analytics would ultimately rely upon version 3 of the Fabric (which had just been released several weeks earlier) and data being filed thereafter on September 15, 2023 reflecting coverage as of June 30, 2023 to make any support adjustments.²

¹ See *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) (“Order”), at ¶ 43; see also *id.* at n. 223 (directing the Wireline Competition Bureau (“Bureau”) to “make a final determination regarding the requirement to serve specific locations prior to the end of 2025, using the data that best reflects location and broadband deployment at the time of the offer.”).

² *Id.* at n. 146.

Enhanced A-CAM offers were extended on August 30, 2023. These offers were based upon version 2 of the Fabric and availability data as of December 31, 2022, because availability reports reflecting more current data were not yet due; this is precisely why the Commission directed the Bureau to implement support adjustments. In a Public Notice released last month, the Bureau issued guidance on a process by which it intended to adjust support ostensibly to reflect data as of the date of those offers. This Public Notice, however, goes beyond incorporating the BDC filings and version of the Fabric that the Commission (and electing parties) expected, and instead refers to version 4 of the Fabric and data to be filed on March 1, 2024, reflecting coverage as of December 31, 2023 for this purpose.³

NTCA–The Rural Broadband Association, USTelecom–The Broadband Association, and WTA–Advocates for Rural Broadband (collectively, the “Associations”) do not believe the change in the datasets to finalize support adjustments contemplated in the Public Notice is consistent with the express terms of the Order or would reasonably reflect the universe of deployment “at the time the Enhanced A-CAM offers were made.” Using version 4 of the Fabric and December 31, 2023 availability data will be over-inclusive, reflecting deployments made for four months *after* the date of the offers, resulting in “false positives” of coverage by providers of all kinds that do not capture the state of broadband availability as of August 30, 2023. It will also penalize responsible providers that started quickly on their deployment obligations.

The Associations believe that the Bureau therefore should start from version 3 of the Fabric and the June 30, 2023 availability data, with modification as may be necessary only to address pending BSL and availability challenges and limited updates to accommodate new locations that were not reflected in that data but were in place as of August 30, 2023. Starting from the datasets that the Commission expressly stated in the Order would streamline the process of identifying and finalizing support adjustments, tie data more closely to the actual “time the Enhanced A-CAM offers were made,” and mitigate potential upward and downward volatility in the offers. Doing so will also align with provider expectations when offers were carefully considered and accepted. To the extent that limited updates to the data are necessary, the Associations look forward to working with the Commission in coming days to identify a streamlined means of doing so in a way that builds upon the Public Notice.

Beyond the proper vintage of data to measure service availability “at the time of the offer,” the Associations suggest one further separate clarification to the process that will be used to determine support adjustments. Specifically, although the Public Notice referred to March 8, 2024 as the last day to file BSL Fabric challenges for application to Enhanced A-CAM obligations and support, there is no need for such a firm near-term line to be drawn. We understand that this date is tied to the ordinary cadence of BDC challenge processes generally. But, given that these changes will be applied to a finite and defined dataset of locations that will be used only for Enhanced A-CAM purposes, it is unnecessary to implement such a short-term tether. Rather, there would appear to be no reason that a BSL Fabric challenge lodged against this fixed and distinct dataset over the next several months

³ *Wireline Competition Bureau Announces Guidance Regarding Locations and Broadband Coverage for Enhanced Alternative Connect America Cost Model Mechanism*, WC Docket No. 10-90, DA 24-78, Public Notice (rel. Jan. 25, 2024).

Marlene H. Dortch
February 26, 2024
Page 3 of 3

could not be resolved like any other such challenge and incorporated into a provider's final Enhanced A-CAM obligations and support adjustments.

Indeed, since final Enhanced A-CAM obligations and support will not be determined until May 15, 2025 under the schedule articulated in the Public Notice (and the Commission contemplated that such adjustments could be finalized until the end of 2025), there is no need for location challenges to be rushed by March 8, 2024 – especially when, until release of the Public Notice less than four weeks ago, it was generally “expected” by the Commission itself and electing providers that version 3 of the Fabric was going to be the relevant dataset. In short, the Bureau should take the time needed to get the best possible picture of the lay of the land with respect to broadband availability as of the date of the offers, rather than compelling parties to do so in such short order.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael Romano

Michael Romano
Executive Vice President
NTCA–The Rural Broadband Association
4121 Wilson Blvd
Arlington, VA 22203

/s/ Diana Eisner

Diana Eisner
Vice President, Policy and Advocacy

B. Lynn Follansbee
Vice President, Strategic Initiatives and
Partnerships

USTelecom – The Broadband Association
601 New Jersey Avenue, N.W.
Suite 600
Washington, D.C. 20001

/s/ Derrick Owens

Derrick Owens
Senior Vice President of
Government & Industry Affairs
WTA – Advocates for Rural Broadband
400 Seventh Street, NW
Suite 406
Washington, DC 20004

cc: Elizabeth Cuttner
Lauren Garry
Justin Faulb
Marco Peraza
Hayley Steffen
Suzanne Yelen
Ted Burmeister