

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matters of	)
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<b>Connect America Fund</b>	) WC Docket No. 10-90
	)
<b>Modernizing the FCC Form 477 Data Program</b>	) WC Docket No. 11-10
	)
<b>Establishing the Digital Opportunity Data Collection</b>	) WC Docket No. 19-195

**COMMENTS  
OF  
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) files its comments with respect to the Public Notice (*Broadband Task Force Seeks Comment on the Broadband Data Collection Challenge Processes*), WC Docket Nos. 11-10 and 19-195, DA 24-64, released January 19, 2024 (“*BDC Challenge Process Public Notice*”) as well as the Public Notice (*Wireline Competition Bureau Announces Guidance Regarding Locations and Broadband Coverage for Enhanced Alternative Connect America Model Mechanism*), WC Docket No. 10-90, DA 24-78, released January 25, 2024 (“*Enhanced A-CAM Eligible Locations True-Up Public Notice*”).

WTA is a national trade association that represents approximately 400 rural local exchange carriers (“RLECs”). Approximately 52 percent of WTA’s RLEC members have elected to participate in the new Enhanced Alternative Connect America Model (“Enhanced A-CAM”) high-cost support program and/or the prior model-based Universal Service Fund (“USF”) high-cost support mechanisms. The approximately 48 percent of remaining WTA RLEC members receive Connect America Fund – Broadband Loop Support (“CAF-BLS”) and/or High-Cost Loop Support (“HCLS”) or are Alaska Plan support recipients. All of WTA’s RLEC members are familiar with Broadband Data Collection (“BDC”) filings and the BDC and Fabric challenge processes.

WTA's primary concern in this proceeding is that the true-up of Enhanced A-CAM eligible locations that is scheduled to be completed by December 31, 2025 remain wholly consistent with the parameters specified by the Commission and the Wireline Competition Bureau ("Bureau") prior to the September 29, 2023 Enhanced A-CAM election deadline and which were materially and detrimentally relied upon by WTA members and other RLECs in the making of their Enhanced A-CAM elections. The most relevant and material of these parameters were: (1) that post-election adjustments for locations served by unsubsidized competitors were limited to locations already served by an unsubsidized carrier as of the August 30, 2023 Enhanced A-CAM offer date; (2) that post-election adjustments for locations subject to an enforceable commitment were limited to enforceable commitments for deploy 100/20 Mbps broadband that were already in effect as of the August 30, 2023 Enhanced A-CAM offer date; and (3) the Bureau and the Office of Economics and Analytics ("OEA") would ultimately rely on Version 3 of the Fabric and the National Broadband Map showing serviceable locations as of June 30, 2023 for these true-up adjustments. However, the January 25, 2024 *Enhanced A-CAM Eligible Locations True-Up Public Notice* departs from repeated Commission and Bureau pre-election statements and assurances to propose the use of subsequent post-election versions of the Fabric and National Broadband Map data as of December 31, 2023, and to raise serious concerns that the promised August 30, 2023 cut-off dates for unsubsidized competitor service and enforceable commitments may no longer be in effect.

WTA also requests that the Commission improve the BDC challenge processes by providing specific guidance and details regarding the nature and types of evidence that the Commission has found to be most relevant, useful, persuasive and effective in prosecuting and defending BDC availability challenges.

### **Enhanced A-CAM Post-Election Location True-Ups**

At paragraph 34 of its Report and Order adopting the Enhanced Alternative Connect America Cost Model (“Enhanced A-CAM Order”),<sup>1</sup> the Commission delegated to the Wireline Competition Bureau the task of determining the exact set of locations that must be served based on the Fabric, the Broadband Data Collection and further deduplication of enforceable commitments. The Commission explicitly specified:

. . . Although Enhanced A-CAM required locations in each study area will be identified at the time Enhanced A-CAM offers are made, the Bureau may make adjustments, by no later than the end of 2025, to identify: (1) locations in the Fabric when the Bureau sets final obligations; (2) locations that were already served by an unsubsidized competitor *at the time the offer was made* but this competitive service was not reflected in the Broadband Data Collection ; and (3) locations that were subject to an enforceable commitment for the deployment of broadband of 100/20 Mbps or greater *at the time the offer was made*. In making adjustments to the Enhanced A-CAM required locations, the Bureau will determine which vintage of National Broadband Map data best reflects serviceable locations and broadband coverage *at the time of the offer*. [emphasis added]

The Commission’s limitation of future Enhanced A-CAM location adjustments to locations served by unsubsidized competitors at the time of the offer and to locations subject to enforceable commitments at the time of the offer was plainly intended to enable eligible carriers to make informed E-ACAM election decisions on the basis of conditions in their study areas at the time of their E-ACAM offer. Paragraph 34 of the *Enhanced A-CAM Report and Order* continued to state:

. . . Because Enhanced A-CAM carriers are the incumbent provider in their service areas, we expect that they are in the best position to know the number of locations in their study areas and the availability of competitive broadband alternatives. Therefore, we find that Enhanced A-CAM carriers are well positioned to know the maximum number of locations they may have to serve and based on their knowledge of their study areas determine whether they should accept Enhanced A-CAM funding.

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<sup>1</sup> Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (*Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*), WC Docket Nos. 10-90, 14-58, 09-197 and 16-271 and RM-11868, FCC 23-60, released July 24, 2023 (“*Enhanced A-CAM Report and Order*”).

The Commission reiterated the promise and condition that the subsequent 2025 true-up would be limited to and reflect the number and eligibility status of locations as of the time that the Enhanced A-CAM offers were made in paragraph 43 of the *Enhanced A-CAM Report and Order* when it stated:

Complete information on federal commitments will likely not be available in the National Broadband Funding Map at the time Enhanced A-CAM offers are made or elected; and the Map is not expected to include information regarding commitments made using state funds. Accordingly, we direct the Bureau and Office of Economics and Analytics to adjust carriers' lists of required deployment locations as more complete data becomes available [footnote omitted]. These adjustments specifically shall reflect locations and broadband deployment that *existed at the time 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 Enhanced A-CAM offers* but were not included in the National Broadband Funding Map [footnote 146]. . . . We anticipate that the Bureau will make all adjustments to the required deployment locations no later than December 31, 2025[emphasis added].

Footnote 146 of this *Enhanced A-CAM Report and Order* stated:

We thus expect that the Bureau and Office of Economics and Analytics will ultimately rely on Fabric v.3 and the National Broadband Map showing broadband serviceable locations as of June 30, 2023 for these adjustments. This is likely to be the most recent Map update prior to the October 1, 2023 deadline for offer acceptance.

The Commission reiterated yet a third time in Note 223 of the *Enhanced A-CAM Report and Order* that the cut-off date for all adjustments to the supported Enhanced A-CAM locations was the date of the Enhanced A-CAM offers when it stated:

As discussed above, the Bureau will 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* [emphasis added].

The Commission incorporated these statements and promises in Section 54.308(a)(3)(i) of its Rules where it stated:

. . . The Wireline Competition Bureau shall provide a list of Enhanced A-CAM required locations for each carrier concurrently with the Enhanced A-CAM offer pursuant to section 54.311(a), and will update such list to reflect any additional information related [to]

locations, broadband coverage, or enforceable commitments *determined to have existed at the time of the offer* [emphasis added].

By Public Notice (*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, DA 23-779, released August 30, 2023, the Wireline Competition Bureau made its Enhanced A-CAM support offers to existing A-CAM carriers and other carriers that were still receiving legacy support [Connect America Fund – Broadband Loop Support (“CAF-BLS”) and/or High Cost Loop Support (“HCLS”)], and gave them until Friday, September 29, 2023 to notify the Commission whether they elected, on a state-by-state basis, to accept their offers of Enhanced A-CAM support. At footnote 6 of this August 30, 2023 Enhanced A-CAM offer, the Bureau reiterated that:

. . . As more complete data on federal and state commitments become available, the Bureau and the Office of Economics and Analytics will also adjust carriers’ list of required locations, with all adjustments to be completed no later than December 31, 2025. [citation to Paragraph 43 of the *Enhanced A-CAM Report and Order*] The Bureau and the Office of Economics and Analytics will ultimately rely on Fabric v.3 and the National Broadband Map showing serviceable locations as of June 30, 2023 for these adjustments. [citation to Footnote 146 of the *Enhanced A-CAM Report and Order*]

In its *Enhanced A-CAM Implementation Order*<sup>2</sup> released on the same August 30, 2023 date as the Enhanced A-CAM offers, the Bureau reiterated in Paragraph 14 that:

In the *Enhanced A-CAM Order*, the Commission directed the Bureau to make adjustments, no later than the end of 2025, to ensure that Enhanced A-CAM carriers’ deployment obligations properly reflect broadband serviceable locations identified by the Fabric, locations that were already served by an unsubsidized competitor *at the time of the offers* but were not yet reflected in the Broadband Data Collection, and locations that were subject to an enforceable commitment to deploy 100/20 Mbps or faster broadband service *at the time of the offers*. [footnote citing to Paragraphs 34 and 43 of the *E-ACAM Report and Order*] [emphasis added].

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<sup>2</sup> Order (*Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*), WC Docket Nos. 10-90, 14-58, 09-197 and 16-271 and RM-11868, DA 23-778, released August 30, 2023 (“*Enhanced A-CAM Implementation Order*”).

In a Public Notice (*Wireline Competition Bureau Announces Corrected Enhanced Alternative Connect America Cost Model Support for 82 Companies*), WC Docket No. 10-90, DA 23-835, released September 21, 2023, the Bureau announced corrected Enhanced A-CAM offers for 82 companies, including changes in annual support amounts, the total number of supported locations, and required locations. Coming as they did twenty-two (22) days after the August 30, 2023 offer date and eight (8) days prior to the September 29, 2023 election deadline, these corrections clearly reflected the actual status of the affected locations at the time of the August 30, 2023 offers to the eighty-two (82) companies. Nothing in this Public Notice changed the August 30, 2023 Enhanced A-CAM offer date as the specified cut-off date by which unsubsidized competitor 100/20 Mbps services and enforceable 100/20 Mbps commitments had to exist in order to be considered in connection with the location adjustments required to be completed by December 31, 2025, or changed the multiple declarations that the Bureau and OEA would rely on Version 3 of the Fabric and the National Broadband Map showing serviceable locations as of June 30, 2023 for these adjustments.

Yet, notwithstanding the repeated representations and assurances relied upon by WTA members and other RLECs in making their Enhanced A-CAM elections on or before September 29, 2023, the Bureau announced substantial and materially adverse changes to its post-election Enhanced A-CAM required deployment location adjustment procedures almost five (5) months after the election deadline in its January 25, 2024 *Enhanced A-CAM Eligible Locations True-Up Public Notice*. Specifically, the Bureau announced that it plans to use Version 4 of the Fabric that was generated between July and December 2023 and released December 27, 2023, as well as BDC availability data as of December 31, 2023 which is due by March 1, 2024. The Public Notice contains no explanations why the Bureau is proposing to use Version 4 of the Fabric rather than

the oft-promised Version 3, why it is proposing to use BDC availability data as of December 31, 2023 rather than the repeatedly promised June 30, 2023 National Broadband Map and data, or what impact these changes will have upon the multiple and unqualified assurances that its post-election adjustments of supported Enhanced A-CAM locations will not be affected by unsubsidized competitor services or enforceable commitments that were not in place as of the August 30, 2023 offer date.

The difference between an August 30, 2023 cut-off date and a December 31, 2023 date is substantial and material. During the four months between August 30 and December 31, 2023, it is likely that some fixed wireless service providers have constructed and/or deployed service from new, modified or relocated towers and/or transmitters that allow them to claim to provide 100/20 Mbps broadband service to numerous locations in Enhanced A-CAM study areas that they did not serve as of the August 30, 2023 offer and cut-off date. Likewise, during the same four-month period, it is possible that some federal, state, local or Tribal agencies completed and entered into enforceable commitments with service providers to deploy 100/20 Mbps or better service to locations in Enhanced A-CAM study areas that were not subject to such enforceable commitments as of August 30, 2023.

Moreover, the post-election change in the Fabric and BDC data that the Commission and Bureau promised to rely upon makes it much more difficult for Enhanced A-CAM recipients and the Commission's staff to determine whether an alleged unsubsidized competitor actually began to provide 100/20 Mbps service to specific challenged locations before or after the August 30, 2023 offer date.<sup>3</sup> Version 4 of the Fabric was generated between July and December 2023 – a period during which four of the six months (*i.e.*, two-thirds) came after the August 30, 2023 cut-

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<sup>3</sup> With respect to enforceable commitments, there are likely to be signed official documents and press releases indicating the exact date on which an enforceable commitment became effective and the specific area it included.

off date. Likewise, the proposed use of BDC availability data as of December 31, 2023 that is due to be filed by March 1, 2024 entails the use of data that overlaps the August 30, 2023 cut-off date and includes four months that came after it. Enhanced A-CAM recipients with access only to Version 4 of the Fabric and the December 31, 2023 BDC availability data have no way to determine whether alleged unsubsidized competitors were actually providing 100/20 Mbps services to locations within their study areas as of the August 30, 2023 offer date. More important, they have no way to use the December 31, 2023 Fabric and BDC data to produce challenge evidence, much less to meet a challenge burden of proof, that the alleged unsubsidized competitor was not providing actual service as of the August 30, 2023 offer date. In stark contrast, if the Bureau uses the Version 3 Fabric and the June 30, 2023 National Broadband Map and data as repeatedly promised, an alleged unsubsidized competitor that was not shown as providing 100/20 Mbps service in a study area as of June 30, 2023 would be required to file a challenge identifying the specific areas and locations in the subject study area where it actually provided 100/20 Mbps service as of August 30, 2023, plus billing or other substantive evidence demonstrating such pre-August 30, 2023 service. This more detailed service commencement information would permit Enhanced A-CAM recipients to identify the areas and locations that the alleged unsubsidized competitor was claiming to serve and the dates when it was claiming to have commenced actual service, and then be able to investigate such claims and prepare an appropriate response.

The key here is that the December 2025 Enhanced A-CAM location true-ups reflect the actual service conditions, unsubsidized competitor situation and enforceable commitments that were in effect as of the August 30, 2023 Enhanced A-CAM offer date. WTA members and other RLECs that were considering Enhanced A-CAM offers during the August 30-September 29, 2023 period understood that the Commission did not have complete service and location information



available at that time, and that a true-up would be necessary. However, they relied upon the Commission's and the Bureau's repeated assurances that their Enhanced A-CAM service obligations and supported locations would not increase or decrease due to changes in certain specific conditions affecting eligible locations if such changes occurred after the August 30, 2023 offer date. The Commission and Bureau assurances regarding preservation of the August 30, 2023 cut-off date were materially and detrimentally relied upon by WTA members and other RLECs electing Enhanced A-CAM support. Many would have changed their election decisions if they had been subjected to the uncertainty that events occurring after August 30, 2023 could significantly increase or decrease the number of their supported locations and adversely impact their Enhanced A-CAM support.<sup>4</sup>

WTA urges the Bureau and OEA to use the repeatedly promised Version 3 of the Fabric and the National Broadband Map showing serviceable locations as of June 30, 2023 in making the location adjustments for the December 2025 true-up because these data sources make it much easier to challenge and determine accurately the actual number of eligible Enhanced A-CAM locations as of the August 30, 2023 offer date. Whatever data the Bureau and OEA use, it is essential that they honor the repeated Commission assurances that the number of eligible locations served by an Enhanced A-CAM recipient will not be changed by unsubsidized competitor, enforceable commitment or other conditions that occur after the August 30, 2023 Enhanced A-CAM offer date.

### **Guidance Regarding BDC Availability Challenges**

WTA also requests that the Commission improve the BDC challenge processes by providing specific guidance and details regarding the nature and types of evidence that the

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<sup>4</sup> WTA members are aware that decreases in the number of eligible locations is likely to decrease Enhanced A-CAM support but that increases do not guarantee increased support.

Commission has found to be most relevant, useful, persuasive and effective in prosecuting and defending BDC location challenges. By now, the Commission's staff has had the opportunity to review and decide numerous Fabric, BDC and other challenges regarding broadband service, location and coverage issues. WTA members that have prosecuted and/or defended challenges have won and lost various challenges, but often have little or no idea what evidence was useful or persuasive to the Commission and its staff when reviewing, analyzing and resolving such challenges.

WTA recommends that the Broadband Task Force or Bureau issue detailed guidance – perhaps in the form of Frequently Asked Questions (“FAQs”) – regarding the nature and types of evidence that staff experience has found to be most relevant, useful, persuasive and effective in the review, analysis and resolution of various types of challenges. WTA members also need guidance regarding how to challenge and correct continuing situations where the Artificial Intelligence (“AI”) and aerial imagery used by CostQuest erroneously identify barns and hay bales as residential locations. Finally, WTA members request guidance regarding how to more efficiently and effectively deal with situations where pending Fabric or BDC availability challenges remain unresolved by the Commission while a state agency prepares to make federal or state broadband grants with respect to areas subject to such pending challenges.

Respectfully submitted,  
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