

May 30, 2025

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

Re: WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868

Dear Ms. Dortch:

The undersigned greatly appreciate the Commission's commitment to the E-ACAM Program given that it will help ensure that consumers in the highest cost, hardest to reach places in the country have access to reliable, next generation broadband. The issue of how locations should be defined for purposes of determining whether and how E-ACAM Program support adjustments will be made by the Wireline Competition Bureau ("Bureau") is of critical importance to the ultimate success of the E-ACAM Program and the achievement and sustainability of universal service for consumers in rural areas throughout the country. For all the reasons outlined below, the ACAM Broadband Coalition, NTCA-The Rural Broadband Association, WTA-Advocates for Rural Broadband, and USTelecom-The Broadband Association (referred to herein collectively as the "E-ACAM Broadband Providers") urge the Bureau to confirm that Obligated Locations will be used to assess whether the 5% *de minimis* threshold has been met and whether and how modifications to E-ACAM Program support levels should be made.¹ This result is consistent with the *Order*, Commission precedent, and sound public policy.

Obligated Locations are all locations in an E-ACAM provider's study area where the E-ACAM provider has a service obligation, whether served or unserved at a minimum of 100/20 Mbps by the E-ACAM provider at the time of the E-ACAM Program offers, whether supported or unsupported. Obligated Locations exclude locations that an unsubsidized competitor

¹ The *E-ACAM Order* directs the Bureau and the Office of Economics and Analytics (OEA) to establish a process for updating E-ACAM providers' deployment obligations "due to improvements in information related to locations, broadband coverage, and federal and state funding." *Connect America Fund: Expanding Broadband Service Through the ACAM Program, et al.*, WC Docket Nos. 10-90, et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 38 FCC Rcd 7040, 7072-73, ¶ 77 (2023) ("*E-ACAM Order*" or "*Order*"). The *Order* sets a *de minimis* threshold of 5% and states that if the updated number of locations are at least 95% of the obligated locations reflected in the E-ACAM offers, "no further adjustments to support will be required." *Id.* (footnote omitted). Where the updated number of locations is less than 95% but greater than 85% of the obligated locations in the offers, the *Order* directs the Bureau to provide a methodology to gradually reduce support. And where the updated number of locations is less than 85% of the obligated locations in the offers, the *Order* states that support will be recalculated. *Id.*

exclusively served, or was under an enforceable commitment to serve, at 100/20 Mbps at the time of the E-ACAM Program offers (i.e. “Competitor Locations”).

Using Obligated Locations is consistent with the full breadth of what a provider participating in the E-ACAM Program must do for the term of the program, i.e. to serve all locations throughout a study area at a minimum of 100/20 Mbps regardless whether built or unbuilt, supported or unsupported, other than Competitor Locations.² The Commission’s requirement that E-ACAM providers serve every location in a study area at 100/20 Mbps or faster except Competitor Locations was expressly designed “to maximize the Enhanced A-CAM program’s compatibility with the Infrastructure Act and BEAD program.” The BEAD Program requires deployment at a minimum of 100/20 Mbps to all locations within a funded project.³

In contrast, it would be patently inequitable to use so-called Required Locations in assessing whether the 5% *de minimis* threshold has been met. Required Locations refers to a narrower group of locations – specifically, only those unserved locations to which the E-ACAM provider must newly offer service at 100/20 Mbps or faster. This methodology would exclude from consideration all of those locations that the Program requires E-ACAM providers to *continue to serve*, locations that the support provided by the Program was designed in part to help sustain service to.⁴ This result would be inconsistent with the Commission’s aim in the High-Cost Program to further its overarching goal of “ensuring all consumers, even those living in the costliest areas in the nation, have access to affordable and reliable broadband service so that they can work, learn, engage, and obtain essential services no matter where they live.”⁵

The use of Obligated Locations in making support adjustments is consistent with the text of the *Order*. The specific provisions regarding support adjustments should be interpreted in concert with other language in the *Order* defining E-ACAM obligations. E-ACAM providers’ obligations are defined in a section headed “Enhanced Deployment and Service Obligations.”⁶ Paragraph 40 of that section explains that E-ACAM providers are obligated to provide 100/20 Mbps service to all “required” locations within their study area **and** continue to serve those locations that already have 100/20 Mbps service, with exclusions for locations served (or to be

² See *E-ACAM Order*, 38 FCC Rcd at 7058-59, ¶ 40.

³ Id. at 7057, ¶ 37.

⁴ Id. at 7067, ¶ 63 (“We estimate that Enhanced A-CAM offers may support deployment to approximately 1 million Enhanced A-CAM required locations, *as well as continuing support for locations to which A-CAM carriers have already deployed 100/20 Mbps service*”) (emphasis supplied).

⁵ Id. at 7041, ¶ 1.

⁶ Id. at 7057, ¶ 37.

served) exclusively by an unsubsidized competitor.⁷ Paragraphs 77 and 78 address support adjustments due to updated location counts. Paragraph 77 states that “if the number of locations to which a carrier is obligated to deploy service are *at least 95% of the obligated locations reflected in the authorization*, no further adjustment to support will be required.”⁸ Paragraph 77 also addresses situations “where the number of locations to which a carrier is obligated to deploy is less than 95% but *greater than 85% of the obligated locations in the authorization*.”⁹ Paragraph 78 addresses the converse, i.e. where locations are higher than in the offers.¹⁰ The use of “obligated locations reflected in the authorization” expressly points to the use of Obligated Locations in determining whether the 95% threshold is met, especially in light of the important policy reasons for using Obligated Locations described above.

This interpretation of the *Order* is further supported by implementation of its provisions to date. The August 2023 *E-ACAM Implementation Order* clarified that performance testing would include all obligated locations¹¹ and the Bureau required companies to report in the HUBB locations that were already served at the time of the offer.¹² In addition, Table 1.2 of the Bureau’s *E-ACAM Authorization Report* “summarizes the obligations of Enhanced A-CAM electing carriers” as the product of two categories of information: (1) Required Locations, which are locations within the carrier’s study area that are currently without 100/20 Mbps or faster service, or an enforceable commitment to deploy such service, to which the Enhanced A-CAM-electing carrier must deploy 100/20 Mbps or faster service, and (2) Carrier-Served Locations, which are locations to which the E-ACAM-electing carrier has reported providing 100/20 Mbps or faster service and to which the carrier must maintain or improve service.¹³ The *Authorization*

⁷ Id. at 70458-59, ¶ 40 (emphasis supplied).

⁸ Id. at 7072-73, ¶ 77 (emphasis supplied).

⁹ Id. (emphasis supplied).

¹⁰ Id. at 7073, ¶ 78.

¹¹ See *Connect America Fund; Expanding Broadband Service Through the ACAM Program et al.*, WC Docket Nos. 10-90 et al., Order, DA 23-778, ¶ 17 (rel. Aug. 30, 2023) (Performance testing is to include “all locations to which [E-ACAM companies] have deployed or will deploy 100/20 Mbps or faster broadband service within their Enhanced A-CAM service areas—not just the locations to which they must newly deploy 100/20 Mbps or faster broadband service, i.e., Enhanced A-CAM required locations.”).

¹² Id. at n. 44.

¹³ The Authorization Report was made available in connection with the Public Notice authorizing receipt of E-ACAM support. See *Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, DA 23-1025, at n. 2 (Rel. Oct. 20, 2023) (“*Authorization Public Notice*”).

Public Notice thus makes clear that “obligations” are the sum of Required Locations (presently unserved) and those locations where service must be maintained.

Further, this interpretation is consistent with more than a decade of precedent in the Commission’s administration of its High-Cost Universal Service Programs. For both the Connect America Fund (CAF) and the original A-CAM program, for example, the recipient’s obligation was to offer service with specified performance characteristics to the number of locations specified in the authorization, regardless of whether the locations were already served at the time of authorization.¹⁴

For more than a decade, the Commission has used the word “deployment” to refer to the service obligations of those receiving High-Cost support, not merely build-out obligations. In the last major Commission-level decision before the offer of CAF Phase II model-based support to price cap companies, the Commission adjusted the interim “deployment” obligations for a program that expressly allowed companies to count towards that milestone locations that were already served.¹⁵ The Commission adopted a requirement that companies annually report a list of locations “to which they have newly built facilities” and “those locations that a price cap carrier had already built out to with service meeting the Commission’s requirements before receiving Phase II support.”¹⁶

When the Commission adopted the A-CAM Program in 2016, it used the same terminology and approach. It adopted a “voluntary path for rate-of-return carriers to elect to receive model-based support in exchange for deploying broadband-capable networks to a pre-determined number of eligible locations” even though those companies were permitted to count already served locations towards that obligation.¹⁷ In subsequent paragraphs, the Commission made clear that the public interest obligation was to maintain existing voice and broadband service and to offer service meeting requisite characteristics to a defined number of locations.¹⁸ The Bureau’s Public Notice announcing the offer of A-CAM support repeatedly refers to

¹⁴ See *Connect America Fund et al.*, WC Docket Nos 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 156 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (recognizing that recipients of Connect America Fund Phase II model-based support would both extend broadband to unserved locations and sustain existing voice and broadband services); *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 31 FCC Rcd 3087 (2016) (“A-CAM Order”).

¹⁵ See *Connect America Fund et al.*, WC Docket Nos 10-90 et al., Report and Order, 29 FCC Rcd 15644, ¶¶ 36-37 (2014) (“*Connect America Fund Model-Support Order*”).

¹⁶ *Id.* at ¶ 125.

¹⁷ *A-CAM Order* at ¶ 20.

¹⁸ *Id.* at ¶¶ 25, 29-31.

broadband “deployment” obligations when in fact the compliance obligation was (and remains) to offer service meeting certain performance characteristics.¹⁹

In sum, there is more than a decade of precedent for the use by the Commission of the words “deploy” and “deployment” to refer to obligations to offer service to particular locations and to count locations that were served at the time of funding authorization towards fulfillment of providers’ compliance obligations. Simply put, the Commission has routinely used the word “deploy” to encompass the totality of the compliance obligation.

From a practical standpoint, the failure to use Obligated Locations to determine compliance with the *de minimis* threshold would have perverse consequences and could create significant shocks that impede providers’ ability to fulfill the aims of the program. For E-ACAM providers with small numbers of Required Locations a small decrease in the number of Required Locations could translate into a dramatic percentage decrease which would trigger a support recalculation. For example, one E-ACAM provider with a location decrease of only 11 would experience a 55% decrease in Required Locations and a possible significant reduction in support, potentially calling into question the provider’s ongoing ability to serve its existing locations. If Required Locations were employed to calculate *de minimis* threshold compliance, the Bureau could face numerous requests to devise a fix to address these unintended adverse situations. This could negate the intended purpose of including a *de minimis* threshold to avoid entangling the Commission (and providers) in case-by-case evaluations of the appropriate level of support.

The *E-ACAM Order* states the Commission’s expectation that “in most cases” the change in location counts from the offers “will be *de minimis* and therefore will not require an amendment to the amount of Enhanced A-CAM authorized by the Commission.”²⁰ This is largely a correct assessment if Obligated Locations were used to calculate *de minimis* threshold compliance but that would not be the case if Required Locations were used. We estimate that approximately 77% of E-ACAM providers would exceed the 5% threshold if Required Locations were used compared to 28% of E-ACAM providers if Obligated Locations were used. The

¹⁹ *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, Public Notice, DA 16-689 (rel. Aug. 16, 2016). In a December 2016 Public Notice providing guidance regarding reporting broadband locations to USAC, the Bureau made clear that recipients of CAF Phase II support and A-CAM support “may count towards their respective deployment obligations any location where service meeting the requisite requirements is available, including ‘pre-existing’ locations where service was available before funding authorization.” *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligation*, Public Notice, DA 16-1363 (Rel. Dec. 8, 2016) (emphasis in original).

²⁰ *Id.* at 7073, ¶ 77.

dramatically higher percentage of companies that would exceed the threshold if Required Locations were used would not only contradict the Commission's expectations, but it would also necessitate the devotion of a much greater level of Bureau time and resources than would be required if Obligated Locations were employed to assess threshold compliance.

It bears noting that the question of how "locations" should be defined for purposes of assessing compliance with the *de minimis* threshold is not about whether to increase E-ACAM Program support. Instead, it is about how to determine whether support reductions for some E-ACAM providers are appropriate.

For all the foregoing reasons, the E-ACAM Broadband Providers urge the Bureau to use Obligated Locations to assess whether the 5% *de minimis* threshold has been met and whether and how modifications to E-ACAM Program support levels should be made. We look forward to continuing to work with the Bureau to ensure full and equitable implementation of the E-ACAM Program, a program that is bringing substantial benefits to unserved and underserved consumers in high cost rural areas throughout the country.

Respectfully submitted,

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