



April 20, 2023

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:

On Tuesday, April 18, 2023, Catherine Moyer, Chief Executive Officer and General Manager of Pioneer Communications, Ryan Boone, Chief Executive Officer of Premier Communications, Roger Nishi, Vice President of Industry Relations for Waitsfield & Champlain Valley Telecom, and Denny Law, Chief Executive Officer of Golden West Telecommunications, and the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”), met with Danielle Thumann, legal advisor to Commissioner Brendan Carr, and Marco Peraza, wireline advisor to Commissioner Nathan Simington. On the same day, Ms. Moyer, Messrs. Boone and Nishi, and the undersigned also met with Justin Faulb, Chief of Staff and Legal Advisor for Wireline and National Security to Commissioner Geoffrey Starks, and Elizabeth Cuttner, legal advisor to Chairwoman Jessica Rosenworcel. In each meeting, we discussed the subject matter described below in relation to the above-referenced proceedings.

In the first instance, the provider representatives in these meetings described the areas they serve and their efforts to deliver broadband to consumers in these deeply rural areas leveraging Connect America Fund Broadband Loop Support (“CAF-BLS”), High-Cost Loop Support (“HCLS”), and support through the Alternative Connect America Cost Model (“ACAM”), as applicable. They also explained the additional work needed to complete delivery of 100/20 Mbps or better broadband throughout their serving areas, and they expressed support for moving forward with updates to these critical universal service mechanisms to enable doing so – and to sustain their ability to continue to offer high-quality services at affordable rates.

Following this overview, we discussed the need for meaningful updates to both CAF-BLS/HCLS and ACAM in a timely manner to achieve these service goals and ensure optimal coordination with upcoming grant program initiatives. These mechanisms provide support for investment and ongoing operations (and the maintenance of more affordable rates) in vast swaths of rural America, and we highlighted how leveraging these programs and enabling/requiring upgrades of existing networks

would complement the Broadband Equity, Access, and Deployment (“BEAD”) program in an effective manner. We observed that, unlike BEAD and other grant programs that permit curated self-selection of areas to be served, the proposed updates to the CAF-BLS, HCLS, and ACAM programs would be far more efficient in ensuring that providers cover customer locations across wider rural geographies. Indeed, NTCA estimates that CAF-BLS recipients’ study areas comprise 352,000 square miles, or just over 11% of the landmass of the contiguous 48 states. A map depicting these study areas is attached to this correspondence. Meanwhile, the ACAM Broadband Coalition recently filed a map and data indicating that ACAM territories comprise nearly 553,000 square miles, or almost 18% of the contiguous 48 landmass.¹ Thus, the need for 100/20 Mbps or better broadband for eligible locations in up to 29% of the lower 48 U.S. landmass could in theory be addressed through the updates proposed in this proceeding, leaving BEAD funds then to flow to assist other unserved and underserved areas in greater need.²

In further support of this point, we discussed specific examples of how the networks of rural local exchange carriers are deployed today, with the locations remaining to receive 100/20 Mbps scattered and widely dispersed across the landscape often at the ends of copper networks farthest from fiber-fed terminals. We noted that the number of locations left to be served at this level have been shrinking steadily over time,³ as “edge-out” build strategies drive more robust capacity deeper into the network – but that, as an operational and financial matter, it nonetheless takes several years of staged construction efforts to reach all of them. We explained how it would be far more efficient to give existing providers the tools to finish upgrading of networks to these remaining locations leveraging the connectivity already in place, rather than expecting a new provider without any network proximate to these geographies to bid in BEAD to reach these isolated and dispersed locations by duplicating existing networks.

We further discussed why, as a matter of policy and procedure, the Commission should not defer updates to the CAF-BLS and HCLS mechanisms specifically, but should instead update ACAM as well as these mechanisms as soon as possible. While looming cuts due to the budget control mechanism (“BCM”) present an immediate concern that we greatly appreciate the Commission considering how to address, as discussed above, the reasons that necessitate moving forward with enhanced ACAM updates justify updating CAF-BLS and HCLS now as well. Moreover, there is ample procedural basis for adopting targeted CAF-BLS and HCLS updates now in lieu of delaying such measures even further – and potentially past the timeframe necessary for effective coordination with BEAD.

¹ . *Ex Parte* Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”), WC Docket No. 10-90, *et al.* (filed Mar. 7, 2023).

² Of course, the exact percentage of landmass that would be addressed through these updates would turn upon a variety of factors, including the determination of which areas are eligible for support and whether and to what degree individual providers elect to serve 100% of eligible locations.

³ Compare NTCA Broadband/Internet Availability Survey Report (Dec. 2019) and NTCA Broadband/Internet Availability Survey Report (Dec. 2022). (reflecting a 20%-plus increase in the availability of 100 Mbps-plus broadband over three years).

The following timeline was highlighted generally in the meetings to confirm that the proposals for targeted CAF-BLS and HCLS updates have been thoroughly reviewed and are ripe for adoption:

- April 2022 – In seven meetings during this month with Commission representatives, NTCA staff and members: (1) urged the opening of a rulemaking to enhance and extend ACAM support; (2) noted that “a mix of increased investment and greater customer adoption of standalone broadband services has led to demand for support in excess of what was projected four years ago” for CAF-BLS/HCLS support; (3) requested a waiver of the BCM for the 2022-2023 period; and (4) suggested that “these recurring budget control issues should prompt a more comprehensive review and resolution in addition to being addressed in the near-term through another waiver” and “that it would be prudent and advisable for the Commission to undertake such a holistic approach now, given that service level commitments set in 2018 will come due next year and there will be a need to reset such commitments moving forward.”⁴
- May 2022 – In anticipation of a notice of proposed rulemaking regarding critical universal service updates, NTCA expressed support in a series of meetings with Commission representatives for seeking comment on the extension and enhancement of ACAM and suggested specific modifications to the draft notice to reflect the need for ongoing operational support under ACAM and to seek better alignment of ACAM and CAF-BLS service level commitments and the levels of support necessary under those programs to achieve such objectives.⁵
- May 2022 – The Commission released an order waiving the BCM for the 2022-2023 period; in this item, it specifically called out the need to begin consideration of updates to CAF-BLS to reflect increased deployment commitments: “[W]e note that providers receiving CAF BLS support are subject to mandatory buildout obligations to deploy broadband service of at least 25/3 Mbps to a carrier-specific number of locations by the end of 2023. We plan to consider CAF BLS deployment obligations in light of changing speed needs and funding necessary to support deployment that will apply beginning in 2024.”⁶
- May 2022 – The Commission released its notice seeking comment on enhancement and extension of ACAM, and expressly requested comment on potential CAF-BLS updates as well: “We seek comment now on whether and how we should align the deployment obligations and required timeframes for deployment for CAF BLS carriers with any Enhanced A-CAM plan adopted by the Commission. We note that such alignment would ensure similar deployment in areas served by carriers receiving support from an Enhanced A-CAM Plan and those receiving support from CAF BLS. In addition, such alignment

⁴ See, e.g., *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed April 11, 2022).

⁵ See, e.g., *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed May 11, 2022).

⁶ *Connect America Fund*, WC Docket No. 10-90, Order (rel. May 10, 2022), at ¶ 12.

would ease administration of the programs by minimizing the number of interim and final milestones in high-cost programs.”⁷

- July 2022 – Following issuance of the notice in the above-referenced proceedings, NTCA filed comments setting forth a detailed set of proposals for universal service reform that addressed five specific points:
 1. *Offer all recipients of ACAM support, as well as interested CAF-BLS recipients, the opportunity to elect “enhanced” support, which would consist of receiving support pursuant to the revised formula and extended support term proposed by the ACAM Broadband Coalition.*
 2. *In exchange for this enhanced and extended support, require each electing ACAM recipient to deliver materially higher 100/20 Mbps broadband speeds to at least 90% of eligible locations as recommended by the coalition.*
 3. *Address concerns arising in recent years with respect to the CAF-BLS and HCLS support budget by recalibrating the BCM at the current level of demand as a new baseline for support, restore the \$200 per-line cap to \$250 per month, and apply a forward-looking inflationary factor consistent with the Commission’s observation in its most recent budget waiver order.*
 4. *In exchange for such support, require each CAF-BLS recipient to deliver higher 100/20 Mbps broadband speeds to at least 90% of locations in its study area. Given the magnitude of this leap in service level commitments, the Commission should also consider deferring application of the budget control for several years so that providers can ramp investments to fulfill these materially increased obligations on a study area-wide basis.*
 5. *Release a Further Notice of Proposed Rulemaking seeking comment on other voluntary paths to fixed support for CAF-BLS recipients.*⁸

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Notice of Proposed Rulemaking (rel. May 20, 2022), at ¶ 58. Moreover, the Commission clearly anticipated the need for consideration of such future updates even in reforming these mechanisms in 2018. *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, (rel. Dec. 13, 2018), at ¶¶ 97, 108, 200-202 (discussing the potential need to revisit the CAF-BLS/HCLS budget by 2024, establishing deployment obligations that would need to be revisited by the end of 2023, and seeking comment on how to address concerns that growth in standalone broadband demand may create budgetary concerns).

⁸ Comments of NTCA, WC Docket No. 10-90, *et al.* (filed July 18, 2022).

- August 2022 – In reply comments and other filings in these proceedings, although a few parties urged the Commission delay universal service reform altogether,⁹ the vast majority of parties supported updates to *both* ACAM *and* CAF-BLS/HCLS¹⁰ – and no party opposed the specific CAF-BLS/HCLS updates recommended in NTCA’s initial comments.
- October 2022 – NTCA submitted an update to its July 2022 reform proposals based upon further discussion and feedback, specifically revising the proposed deployment commitments for CAF-BLS/HCLS recipients to include an option for the committed delivery of 100/20 Mbps to 100% or 97% of the locations in study areas in exchange for relief from the BCM for periods of time. (The only change to the original July 2022 proposal by NTCA in response to the notice is shown in bold and underlined text below.)
 1. *Offer all recipients of ACAM support, as well as interested CAF-BLS recipients, the opportunity to elect “enhanced” support, which would consist of receiving support pursuant to the revised formula and extended support term proposed by the ACAM Broadband Coalition.*
 2. *In exchange for this enhanced and extended support, require each electing ACAM recipient to deliver 100/20 Mbps broadband speeds to at least 90% of eligible locations as recommended by the coalition.*
 3. *Address concerns arising in recent years with respect to the CAF-BLS and HCLS support budget by recalibrating the BCM at the current level of demand as a new baseline for support, restore the \$200 per-line cap to \$250 per month, and apply a forward-looking inflationary factor consistent with the Commission’s observation in its most recent budget waiver order.*
 4. ***In exchange for such support, recalculate the existing deployment obligation formulas at 100/20 Mbps, but also offer each CAF-BLS recipient the option to deliver 100/20 Mbps broadband to 100% or 97% of locations in its study area in exchange for relief from potential BCM impacts for five or three years, respectively.***
 5. *Release a Further Notice of Proposed Rulemaking seeking comment on other voluntary paths to fixed support for CAF-BLS recipients.*¹¹

⁹ See, e.g., Reply Comments of WISPA, WC Docket No. 10-90, *et al.* (filed Aug. 1, 2022); *Ex Parte* Letter from Paul St. Clair, Director, Federal Government Affairs, Windstream, to Marlene H. Dortch, Secretary, Commission (filed Aug. 1, 2022).

¹⁰ See, e.g., Reply Comments of Southeastern Rural Broadband Alliance, WC Docket No. 10-90, *et al.* (filed Aug. 1, 2022); Reply Comments of TCA, WC Docket No. 10-90, *et al.* (filed Aug. 1, 2022); Reply Comments of the Minnesota Telecom Alliance, South Dakota Telecommunications Association, Broadband Association of North Dakota, and Iowa Communications Alliance, WC Docket No. 10-90, *et al.* (filed Aug. 1, 2022).

¹¹ *Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Oct. 14, 2022) (“October NTCA Letter”). Approximately two weeks later, the ACAM Broadband Coalition filed a similarly updated proposal for ACAM deployment obligations to reach 100% or 98% of eligible locations. *Ex Parte* Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch,

- October 2022 to April 2023 – Over the course of 22 *ex parte* communications as reflected in ECFS (including the one captured by this letter), NTCA and its members discussed the need for and scope of updates to ACAM, CAF-BLS, and HCLS with various Commission offices.

Against this backdrop of notices of proposed rulemaking, observations by the Commission in waiver orders, comments and reply comments filed, and subsequent *ex parte* communications by NTCA and numerous other parties, the record in these proceedings is well-developed over the past thirteen months and justifies Commission action on *both* ACAM *and* CAF-BLS/HCLS updates as soon as possible. Moreover, the proposed updates to CAF-BLS are straightforward – the proposals for adoption right now are simply to: (1) recalibrate the BCM at the current level of demand; (2) recalculate the formulas for CAF-BLS deployment at 100/20 Mbps as will be necessary at some point this year; and (3) offer CAF-BLS recipients the voluntary opportunity to elect to deliver at least 100/20 Mbps broadband to every serviceable location in their study areas on a time frame comparable to BEAD commitments in exchange for relief from the BCM for five years.¹² While additional measures such as how to care for special concerns in serving tribal areas and consideration of various “incentive regulation” options for CAF-BLS recipients as proposed by NTCA warrant study through a further notice of proposed rulemaking, there are very few “moving parts” with respect to these three specific proposals for near-term CAF-BLS/HCLS updates. Acting upon these now by order would ensure appropriate and necessary alignment with ACAM updates and more effective coordination with BEAD. NTCA therefore renews its request that the Commission act upon these items specifically as part of any order in this proceeding in the coming weeks or months.

Following this discussion of why the Commission should act in the near-term to update ACAM and CAF-BLS/HCLS, we turned to the question of how to identify locations and areas eligible for such support. Specifically, NTCA urged the Commission to ensure that any depiction of competition is as accurate as possible in the context of these mechanisms. If the Broadband Data Collection (“BDC”) map will be used, this resource should be seen as a *starting point* and not a *finish line* given what the data do and do not represent. While a BDC filing may be indicative of a provider’s ability to serve *anyone* in a given area, this does not translate to a provider’s ability to serve *everyone* there – which is of course the objective of universal service. It would represent a failure of the statutory mandate for universal service to eliminate support in an area simply because another provider claims the ability to serve anyone who resides there without any confirmation whatsoever that the provider claiming such coverage can in fact serve *every single location at the required level of performance if every one of those locations were to order and make use of the service subject to reasonable and well-grounded capacity and oversubscription assumptions*. Therefore, even if the Commission were to start from the BDC map to determine eligible areas for support, the mission of universal service dictates greater scrutiny as to the capability to perform consistently and reliably

Secretary, Commission, WC Docket No. 10-90, *et al.* (filed Oct. 27, 2022). NTCA has since supported these updates proposed by the ACAM Broadband Coalition as well.

¹² For purposes of clarification, as previously explained and to ensure that non-electing providers are not harmed by the elections made, the BCM should be calculated going forward in a manner that does not result in those still subject to the BCM absorbing any impacts of those that have temporary relief from it. *See* October NTCA Letter, at 3.

Marlene H. Dortch

April 20, 2023

Page 7 of 7

on a more widespread basis. To accomplish this, NTCA recommends that the Commission adopt standards for area eligibility like those used in other funding programs and consider further streamlined processes to confirm qualifying competition and area eligibility.¹³

Finally, NTCA reaffirmed its support for proposals in the record that would determine impacts upon ACAM and CAF-BLS/HCLS distributions where qualifying competition is confirmed to exist. Specifically, NTCA urged adoption of the ACAM Broadband Coalition proposal to adjust support using a two-pronged analysis comparable to the BEAD program's assessment of unserved and underserved areas,¹⁴ and reinstatement of the disaggregation options previously adopted by the Commission in 2016 for CAF-BLS/HCLS.¹⁵

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

Enclosure

cc: Elizabeth Cuttner
Danielle Thumann
Justin Faulb
Marco Peraza

¹³ See, e.g., *Guidance for the Coronavirus Capital Projects Fund for States, Territories, & Freely Associated States*, U.S. Department of Treasury, at 4 (prioritizing projects that will provide service "to households and businesses not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed"). Engineering standards considering realistic capacity limitations may also be necessary depending on how qualifying competition is defined.

¹⁴ *Ex Parte* Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed Nov. 10, 2022), at 4.

¹⁵ October NTCA Letter, at 4.