

**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

**REPLY OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”) hereby submits this Reply to filings made in response to its Petition for Reconsideration and/or Clarification in the above-captioned proceedings.¹ NTCA’s *Petition* sought reconsideration or clarification of several aspects of the *Report and Order* released by the Federal Communications Commission (the “Commission”) on July 24, 2023;² specifically, NTCA requested that the Commission further consider or clarify, as applicable: (1) the processes necessary to determine accurately the presence and extent of would-be unsubsidized competition; (2) the ability of a provider to rescind its enhanced Alternative Connect America Cost Model (“Enhanced A-CAM”) election should subsequent adjustments

¹ Petition for Reconsideration and/or Clarification of NTCA, WC Docket Nos. 10-90, *et al* (filed Sept. 15, 2023) (“*Petition*”).

² *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*”).

result in support being reduced by more than 20% from the initial offer; (3) the failure of certain Enhanced A-CAM obligations to mirror obligations applicable under the Broadband Equity, Access, and Deployment (“BEAD”) program; and (4) the need for reasonable ongoing support of services delivered over networks that are deployed to locations *after* Enhanced A-CAM elections pursuant to grant awards received *prior to* such elections.

Nearly all of the filings submitted in response to NTCA’s petition express strong support for various aspects of these requests and, as discussed below, the sole opposition to its petition misses the mark in tackling the single issue it addresses. For these reasons, the Commission should grant NTCA’s *Petition*.

I. THE RECORD SUPPORTS NTCA’S REQUEST TO RECONSIDER THE PROCESS BY WHICH UNSUBSIDIZED COMPETITION WILL BE IDENTIFIED FOR PURPOSES OF ADJUSTING ENHANCED A-CAM SUPPORT.

The Commission’s rules define an unsubsidized competitor as “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.”³ To identify what is unserved under the *Report and Order*, the Commission defined broadband as terrestrial service of 100/20 Mbps or faster with latency of 100 milliseconds or less as offered at specific locations.⁴ Moreover, the Commission acknowledged that universal service is only deemed available if services are offered “with usage allowances reasonably comparable to those available through comparable offerings in urban areas” and if voice and broadband are offered to a given location *on a standalone basis*.⁵

³ 47 C.F.R. § 54.5.

⁴ *Report and Order*, at ¶ 37.

⁵ *Id.* at ¶ 59; *see also id.* at n. 474 (noting the application of latency and usage measures in connection with the determination of unsubsidized competition in prior high-cost universal service programs) and *Wireline Competition Bureau Announces Enhanced Alternative Connect America*

As NTCA highlighted in its *Petition*, taken altogether, this means that for purposes of Enhanced A-CAM support, a would-be competitor must satisfy each of three elements: (a) use of its own facilities to deliver service to that location; (b) offering of *each of voice and* broadband on a standalone basis to that location meeting the requisite performance metrics; and (c) no use of high-cost universal service support in doing so.⁶ To make these determinations, NTCA had recommended previously an efficient process whereby a would-be competitor could confirm its capabilities to satisfy each of these elements at each claimed location through a simple certification.⁷ The Commission rejected this proposal in the *Report and Order*, however, asserting that such a process would “be duplicative of [Broadband Data Collection (“BDC”) processes.”⁸ In its Opposition to NTCA’s *Petition*, WISPA – *Broadband Without Boundaries* (“WISPA”) expresses support for this conclusion, waving away any concerns with respect to overstated competitive coverage by re-emphasizing “the multi-step, data-driven process the Commission employs with respect to the BDC process.”⁹

Unfortunately, in opposing NTCA’s proposed certification, WISPA falls into the same trap as the *Report and Order* by focusing upon *only selected parts* of the more comprehensive definition of unsubsidized competition. To put a finer point on this issue – even if it were true that

Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband, WC Docket No. 10-90 (rel. Aug. 30, 2023) (“*Offer Public Notice*”), at 8 and n. 46.

⁶ *Petition*, at 5.

⁷ *Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed June 16, 2023), at 2-3.

⁸ *See Report and Order*, at n. 151.

⁹ Partial Opposition of WISPA, WC Docket No. 10-90, *et al.* (filed Dec. 12, 2023), at 3.

the BDC by itself provides a conclusive determination as to the broadband speeds delivered to any given location by a provider (a proposition that appears doubtful based upon the examples supplied within NTCA’s Petition¹⁰), this still would address only: (a) the use of a competitor’s own facilities to deliver service; and (b) the theoretical offering of broadband to a location at a certain advertised speed. What this misses, and what BDC processes do *not* capture, is: (1) the offering of voice to a given location; (2) the offering of *each of voice and broadband on a standalone basis* to that location; (3) the satisfaction of other *required* performance measures like usage and latency; and (4) confirmation that no high-cost universal service support is being used in the provision of service to that location.

Thus, WISPA’s citation of the “multi-step, data-driven process” through the BDC is inapposite and provides no basis to deny NTCA’s request to use a competitor certification to confirm qualification as an unsubsidized competitor. *At most*, WISPA’s argument might inform how NTCA’s suggested certification should be crafted to minimize potential duplication with the BDC.¹¹ But it remains clear in the wake of WISPA’s opposition that the BDC provides insufficient

¹⁰ See *Petition*, at 8-9 (providing examples of far-ranging claims of coverage at speeds of 100/20 Mbps to 250 Mbps symmetrical across hundreds of thousands of locations in rural areas with scant evidence or explanation as to the basis for such claims). The South Dakota Telecommunications Association (“SDTA”) buttresses these concerns in its comments, observing the significant amounts of time that providers have devoted to “ferret out inaccurate data” and the impacts that such inaccuracies would have upon the long-term availability and affordability of service. See Comments of SDTA, WC Docket No. 10-90, *et al.* (filed Dec. 12, 2023), at 4-6.

¹¹ Even WISPA’s arguments with respect to the ability of the BDC process to discern broadband coverage accurately and dispose of challenges effectively run headfirst, however, into the practical realities of the BDC system. As NTCA explained in its *Petition*, the nature of BDC reporting (which does not, for example, require detailed explanations as to propagation assumptions or models) paired with the structural limitations of BDC challenges (which ultimately treat concerns regarding advertised speeds as questions for crowdsourcing) make it such that the BDC processes still may not yield accurate depictions of what is *actually* available to consumers even while denying universal service support that would *actually* ensure delivery of that level of service or better to consumers. See *Petition*, at 6-9.

basis standing alone to adjudicate *all* of the elements of unsubsidized competition as the Commission has defined it. To the contrary, in the absence of the kinds of information suggested by NTCA’s certification, the Commission lacks sufficient information to determine conclusively that *any* entity is an “unsubsidized competitor” for any given location as the Commission’s rules explicitly define that term. Moreover (and even worse), as SDTA rightly highlights, the current framework puts Enhanced A-CAM recipients in the untenable position of having to “prove a negative” with respect to the status of would-be competitors, even while lacking access to essential information such as whether purported wireless service is attributable to “bleed-over” signal coverage from networks in other areas that were funded through the Connect America Fund Phase II or Rural Digital Opportunity Fund auctions.¹²

In the end, WISPA’s opposition is appropriately entitled as “partial” in nature, in that to the extent that there is any merit to the arguments it makes, it applies at most only to a portion of the certification process that NTCA has asked the Commission to reconsider. For these reasons, NTCA renews its request that the Commission implement a simple certification process to gather *all of* the data needed (and presently lacking) to confirm *each* element of the definition of “unsubsidized competition” adopted in the *Report and Order*.

II. THERE IS NOTHING OTHER THAN SUPPORT IN THE RECORD FOR THE OTHER ASPECTS OF NTCA’S PETITION.

With respect to the three remaining issues raised by NTCA’s *Petition*, the record reflects only support for the Commission to act on each of them. First, regarding the need for a one-time opportunity to rescind Enhanced A-CAM elections in certain limited cases, both SDTA and the ACAM Broadband Coalition concur that if unforeseeable changes in the Broadband Serviceable

¹² SDTA Comments, at 6-9.

Location Fabric or coverage claims result in subsequent support reductions of more than 20% as compared to the initial offer, this could put at risk the ability of electing providers to fulfill their obligations and advance the goals of universal service.¹³ Although it is hoped and anticipated that such relief would be required in very few cases, if any, as the ACAM Broadband Coalition observes, “[a]doption of a one-time opportunity for an [Enhanced A-CAM] carrier to rescind its acceptance where its support level differs materially from initial expectation is a reasonable way to address such situations.”¹⁴

Similarly, the record reflects nothing other than support for NTCA’s request to align Enhanced A-CAM obligations more precisely with those applicable under the BEAD program.¹⁵ For example, the ACAM Broadband Coalition encourages the Commission to adjust the Enhanced A-CAM deployment timelines to correspond with those in fact likely to apply under the BEAD program, concurring that the full extent of BEAD funds are highly unlikely to be disbursed through subgrants on a widespread basis until 2025 at the earliest such that final construction under the program will likely not be completed until 2030.¹⁶ Separately, CTIA supports modification of the cybersecurity and supply chain risk management (“C-SCRM”) planning requirements in the *Report and Order*. As NTCA observed in its *Petition*, while the Commission cited consistency with the BEAD program in requiring the filing of C-SCRM plans, the *Report and Order* went

¹³ See *id.* at 11-12; Response of the ACAM Broadband Coalition, WC Docket No. 10-90, *et al.* (filed Dec. 12, 2023), at 6-7.

¹⁴ ACAM Broadband Coalition Response, at 7.

¹⁵ *Petition*, at 17-20.

¹⁶ ACAM Broadband Coalition Response, at 4-6; see also *Petition for Reconsideration of the ACAM Broadband Coalition*, WC Docket No. 10-90, *et al.* (filed Sept. 18, 2023), at 2-4 (seeking a similar adjustment in the buildout schedule with 100% deployment to be achieved by 2030).

further by compelling reflection of certain “best practices” that are not mentioned in BEAD requirements.¹⁷ CTIA provides a detailed analysis of how the Commission’s approach goes far beyond “harmonization” with BEAD policies, and describes thoroughly the harms that will follow by extending requirements beyond reflection of the Framework for Improving Critical Infrastructure Cybersecurity developed by the National Institute of Standards and Technology.¹⁸ In light of this record, the Commission should modify both the deployment schedules and the C-SCRM requirements under the Enhanced A-CAM program as recommended by NTCA so that they correspond more directly to comparable obligations under the BEAD program.¹⁹

Finally, the record reflects the need for ongoing support for locations to which 100/20 Mbps or better service is deployed *after* the election of Enhanced A-CAM support using grant program funds that were awarded *prior to* such election. As NTCA’s *Petition* highlighted, the Enhanced A-CAM program already provides ongoing support (although at a reduced level) for locations where broadband was previously deployed, regardless of the source of capital funding used to connect them.²⁰ What is not as clear is whether *currently unserved* locations that are

¹⁷ *Petition*, at 21.

¹⁸ Comments of CTIA, WC Docket No. 10-90, *et al.* (filed Dec. 12, 2023), at 3-13.

¹⁹ Relatedly, NTCA renews its own prior request for clarification and supports the request for clarification submitted by the Blooston Rural Carriers, both of which relate to the timing for initial and subsequently updated implementation of C-SCRM plans. *See Petition*, at n. 45 and *Petition for Reconsideration and/or Clarification of the Blooston Rural Carriers*, WC Docket No. 10-90, *et al.* (field Sept. 18, 2023), at 5; *see also* CTIA Comments at 13-15.

²⁰ *Petition*, at 23 (citing *Connect America Fund*, WC Docket No. 10-90, *et al.*, Order (Wireline Comp. Bureau Aug. 30, 2023), at n. 30 (“[I]n the context of calculating support associated with ILEC-only served locations, we agree that such grants are not duplicative of Enhanced A-CAM support”)).

connected subsequently at 100/20 Mbps service by an enhanced A-CAM recipient leveraging the assistance of a previously awarded grant are eligible for such support.

As the Commission rightly noted in the *Report and Order*, fulfillment of statutory universal service mandates involves not only the deployment of networks where they are not yet built, but such policy also contemplates that “consumers served with 100/20 Mbps or faster service by the [incumbent local exchange carrier or “ILEC”] only and not by an unsubsidized competitor will remain dependent on the Enhanced A-CAM carrier to maintain at least their current level of service.” Ongoing support is therefore warranted because the provider will “continue to experience ongoing operational and depreciation costs associated with these already-constructed locations.”²¹ SDTA expresses support for NTCA’s requested clarification, noting there is no logical basis to differentiate in terms of ongoing support to locations deployed by the same Enhanced A-CAM recipient (even pursuant to the same grant award potentially) based upon nothing more than the timing of such deployment.²² For these reasons, as SDTA states, “ongoing support should be available for such locations in an amount equivalent to what other ‘ILEC-only served’ locations in the same study area will receive under the Enhanced A-CAM offer.”²³

²¹ *Report and Order*, at ¶ 74.

²² SDTA Comments, at 10.

²³ *Id.* at 11 (citing *Report and Order*, at ¶¶ 73-74).

III. CONCLUSION

For the foregoing reasons, NTCA renews its requests for reconsideration and/or clarification as set forth in the *Petition*.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael Romano, hereby certify that on this 22nd day of December, 2023, I caused a copy of this filing to be served, via email, on the following:

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