



By way of background, a location is eligible for Enhanced ACAM support if it was not served only by an unsubsidized competitor delivering 100/20 Mbps or better broadband as of the date of the offer of such support and as long as there was no enforceable commitment as of the date of the offer to deliver such service to that location. Because such information was not available as of the initial date of the offers, however, the Bureau was directed to make adjustments to the offered support amounts based upon updated information by no later than the end of 2025.

<sup>4</sup> The Bureau in turn determined that it would use Broadband Data Collection (“BDC”) availability data as of June 30, 2023 to identify the status of service at such locations as of the date of the offers,<sup>5</sup> and then proceeded to process challenges to availability and Fabric data and to gather information related to pre-existing third party enforceable commitments with the aim of finalizing Enhanced ACAM support adjustments by December 31, 2025.

The status of a location as either “served” as of June 30, 2023 or subject to a pre-existing enforceable commitment as of that date is material in this adjustment process because the *Enhanced ACAM Order* defined differing levels of support based upon these parameters. Specifically, the order (as clarified by a subsequent implementation order)<sup>6</sup> indicated that support would be available in the following manner based upon such classifications:

Unserved by ILEC or Unsubsidized Competitor	100% of model-determined support
Served by ILEC Only	60% of model-determined support
Served by ILEC and Unsubsidized Competitor	33% of model-determined support
Served by Unsubsidized Competitor Only or Subject to Pre-Existing Third Party Enforceable Commitment	No support

<sup>4</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, (“*Enhanced ACAM Order*”), at ¶ 34.

<sup>5</sup> *Wireline Competition Bureau Updates Guidance Regarding Locations and Broadband Coverage for Enhanced Alternative Connect America Model Mechanism*, WC Docket No. 10-90, Public Notice, DA 24-423 (rel. May 3, 2024).

<sup>6</sup> *See Enhanced ACAM Order*, at ¶¶ 69-75; *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order (rel. Aug. 30, 2023), at ¶ 9.

A final piece of background relevant to the Petition is that, in the *Enhanced ACAM Order*, the Commission indicated that support adjustments would vary depending on the percentage change in the number of “obligated” locations. If a carrier’s obligated locations were reduced by 5% or less, then the carrier would see no adjustment to support, while a carrier whose obligated locations were less than 95% but greater than 85% of the authorization would be subject to “a methodology to gradually reduce support” – and a carrier whose obligated locations were ultimately less than 85% of those identified in its authorization would have support recalculated.<sup>7</sup>

Against this backdrop, the Petition raises questions regarding the specific classification of locations in the study area served by OCS and the corresponding final adjustments to its Enhanced ACAM support. As Hilliary explains, *both* OCS (as the incumbent) *and* Southern Plains Cable (as a competitor) offered 100/20 Mbps or better broadband to a number of common locations as reflected in BDC availability data as of June 30, 2023.<sup>8</sup> By the plain terms of the *Enhanced ACAM Order*, these locations should have been viewed as “obligated” for OCS as the incumbent (because OCS was already serving them and was required to continue to do so), but subject to a reduction in support (to 33% of model-based support) given that they were *also* served by Southern Plains Cable. The final list of eligible locations however, disregarded the service offered by OCS as the incumbent and instead treated these locations as *only* served by Southern Plains Cable – such that no support would be provided for them. Moreover, in doing so, the Bureau reduced the number of obligated locations beyond 5% from the original authorization, triggering unwarranted support adjustments that otherwise would not have applied because the locations in question were (and still are) served by the incumbent.

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<sup>7</sup> *Enhanced ACAM Order*, at ¶ 77.

<sup>8</sup> Petition, at 5.

Nothing in the *Enhanced ACAM Order* justifies disregarding the irrefutable fact that, as reflected in the Federal Communications Commission’s own records, these locations were served by both an incumbent and a competitor as of the relevant date previously selected by the Bureau for making such a determination. While a transaction several years later – which closed only after the date of the Bureau’s publication of the final eligible locations list – may have led to the incumbent acquiring the competitor, this provides no basis to disregard *the incumbent’s* service as of the date for such determinations previously chosen by the Bureau and eliminate all support for these locations. Indeed, if anything, one could just as easily determine that *the competitor’s* service should be disregarded as there is no competitor now. In the end, however, the *Enhanced ACAM Order* provides no basis for disregarding either operator’s service, and Hilliary has not asked to do so. To the contrary, all that the Petition asks is that the Bureau apply the facts as they stood on June 30, 2023 consistent with the *Enhanced ACAM Order* and to adjust support based upon those facts consistent with that order – either by reconsidering the previously unarticulated policy that enabled deviation from the general rule in this instance or by waiving this policy in the alternative given the unique circumstances of this case.

For the foregoing reasons, consistent with the *Enhanced ACAM Order*, NTCA supports grant of the relief sought by Hilliary.

Respectfully submitted,

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