

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

In the Matter of

Connect America Fund: A National Broadband
Plan for Our Future High-Cost Universal Service
Support

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
ACAM Program

RM-11868

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

The Nebraska Public Service Commission (“NPSC”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“FNPRM”) adopted by the Federal Communications Commission (“FCC”) on May 19, 2022, and released on May 20, 2022 in the above-captioned dockets.¹ The NPSC wishes to provide some comments regarding the proposal set forth by the ACAM Broadband Coalition (“Coalition”) regarding the Alternative Connect America Model (“A-CAM”).

As a general matter, the NPSC wishes to emphasize that as the FCC moves forward with any adjustments to A-CAM, consideration of the most accurate location data available is critical.

¹ *In the Matter of Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, 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 ACAM Program*, RM-11868, Notice of Proposed Rulemaking (released May 20, 2022) (“NPRM”).

Furthermore, as more accurate location data becomes available, requirements for deployment should become more rigorous. Following these two principles will greatly improve access to broadband in areas that have historically been unserved or underserved.

I. Locations Eligible for Funding

As suggested by the Coalition, locations should be determined based upon the number of locations in eligible census blocks that result from the Broadband Serviceable Location Fabric broadband deployment data process, or “Fabric.”² The NPSC agrees that the set of eligible locations should be expanded to include any locations that do not have access to service meeting minimum performance standards, including those served at 10/1 Mbps broadband speeds as suggested in the NPRM.³ To the extent that Broadband Data Collection (“BDC”) challenges may affect the Fabric and availability maps,⁴ the NPSC suggests that A-CAM awards should reflect the best available data as much as possible. Maintaining a true-up mechanism each year that A-CAM support is distributed would allow the FCC to adjust awards on an ongoing basis, and prevent A-CAM support from being unevenly distributed. Such a true-up mechanism should take into account any challenge determinations made through the BDC challenge process.

II. Symmetrical Speeds

The NPSC also believes that service funded through A-CAM should provide symmetrical speeds. Nebraska has recognized the need for symmetrical speeds with respect to the levels of service required for receipt of Nebraska Universal Service Funds (“NUSF”) support as well as for

² NPRM at ¶ 25; Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM11868 and WC Docket No. 10-90, at 1 (filed Dec. 17, 2021) (Coalition Dec. 17, 2021 Letter).

³ NPRM at ¶ 25.

⁴ *Id.* at ¶ 29.

receipt of Nebraska Broadband Bridge Program (“NBBP”) funding.⁵ The NUSF determines support based on a cost model that is similar to the FCC’s current model for A-CAM support. Since both cost models base costs on fiber to the premise, the NPSC believes deployments supported through A-CAM should require service that is consistent with fiber to the premise – i.e., symmetrical speeds. Similarly, the NBBP provides funding for new broadband service to be built at speeds scalable to 100/100 Mbps.⁶ The NPSC therefore recommends requiring 100/100 Mbps to be deployed for companies electing Enhanced A-CAM. Such a requirement would put in place a network architecture that is best positioned to meet the needs of consumers well into the future.

The NPSC recognizes that a requirement to provide symmetrical speeds would differ from the speed requirements for Broadband Equity, Access, and Deployment (“BEAD”) funding. However, to the extent possible, the NPSC recommends coordination with available BEAD funding and requirements.⁷ One of the goals of BEAD is to ensure that high-speed internet service is accessible in every location eligible for BEAD funding.⁸ As suggested by the FCC, and in order to harmonize the requirements for A-CAM support with incoming BEAD funding, carriers should be required to provide service to 100% of unserved locations in their study areas.⁹ If there are

⁵ NEB. REV. STAT. § 86-324.01 (requiring that NUSF funds are distributed to carriers providing broadband service scalable to 100/100 Mbps or greater); NEB. REV. STAT. § 86-1304(1)(a) (requiring that broadband projects funded in the Nebraska Broadband Bridge Program be scalable to speeds of 100/100 Mbps). *See also* Commission Docket No. NUSF-108, In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements, *Order Authorizing Payments* (Jan. 25, 2022); Commission Docket No. NUSF-99 PO #2, In the Matter of the Nebraska Public Service Commission, on its Own Motion, to Administer the Universal Service Fund High-Cost Program, *Order Authorizing Payments and Setting Project Selection Deadline* (Jan. 25, 2022) (both orders requiring that NUSF funding be used to construct infrastructure capable of 100 megabits per second uploading and downloading pursuant to Neb. Rev. Stat. § 86-324.01).

⁶ NEB. REV. STAT. § 86-1304(1)(a). Under the NBBP, locations are considered unserved if they receive speeds of less than 25/3 Mbps, and underserved if they receive speeds of less than 100/20 Mbps. NEB. REV. STAT. § 86-1302.

⁷ NPRM at ¶ 32.

⁸ National Telecommunications and Information Administration, U.S. Department of Commerce, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program*, (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (“BEAD NOFO”).

⁹ *Id.* at ¶ 26.

changes to study area boundaries, carriers should be required to serve locations in eligible census blocks that are newly within their study area boundaries. Adopting this approach would both ensure high-speed service to all locations – in other words, all persons and businesses currently awaiting internet access – and render the issues presented in Paragraph 27 of the NPRM moot. The NPSC therefore recommends that carriers receiving Enhanced A-CAM should be required to provide 100/100 Mbps service to all eligible post-Fabric locations.

The NPSC is opposed to carriers receiving funding from both BEAD and A-CAM for the same location. We therefore suggest that providers should be prohibited from applying for BEAD support in areas where the provider is receiving Enhanced A-CAM support. In the case where BEAD support is awarded to a carrier for deployment of broadband internet in an area where another carrier is receiving Enhanced A-CAM support, the A-CAM recipient should be allowed to continue its deployment as planned and continue receiving support. If the A-CAM recipient chooses not to continue its deployment as planned, it should be allowed to refund any support received for locations which will be served through BEAD funding.

III. Deployment Timeframe and Requirements

The NPSC suggests that the proposed eight-year timeframe described in Paragraph 33 of the NPRM is too long. The need for broadband support is pressing, and eight years is simply too long to wait.¹⁰ A-CAM is a program which has already been providing support to carriers for several years. Additionally, in eight years, the speeds of 100/20 Mbps proposed in the NPRM may already be outdated.¹¹ To the extent that it is possible for the FCC to adopt a more rapid timeline

¹⁰ Notably, the Rural Digital Opportunity Fund seeks to have 80% of locations served within six years of providing support. FEDERAL COMMUNICATIONS COMMISSION, Auction 904: Rural Digital Opportunity Fund, *Fact Sheet*, <https://www.fcc.gov/auction/904/factsheet> (last visited June 30, 2022).

¹¹ The NPSC notes in particular that precision agriculture requires significant bandwidth and may benefit from symmetrical download/upload speeds. *See generally* Task Force for Reviewing the Connectivity and

for interim deployment milestones, the NPSC believes this would be the correct course of action. The NPSC would support the four-year schedule proposed by the FCC.¹²

Additionally, deployment milestones should be front-loaded, with more locations required to be served in the first two years of the program than in subsequent years. If the FCC adopts the four-year schedule suggested in Paragraph 33, a possible schedule could be deployment to at least 40% of eligible locations by the end of the second year, with an additional 15% of eligible locations required to be served each subsequent year. This would ensure that as many locations as possible would be served quickly, while allowing carriers extra time for the locations which are particularly difficult to serve.

With regard to post-deployment performance testing measures, the NPSC supports standardizing the requirements imposed on A-CAM I, A-CAM II, and Enhanced A-CAM carriers. The testing requirements and procedures should be standardized across all programs to the extent possible. This would increase administrative efficiency and reduce confusion.

IV. Support Amounts and Calculation

The FCC sought comment on whether the A-CAM framework and the model upon which it is based should be revisited.¹³ The NPSC believes that the locations underlying the framework and model should be revisited, on the principle that support should be distributed based upon the best available data. This may include 2020 census data, but could include other data sources such as curated or crowdsourced speed testing information. The creation of a new model would also

Technology Needs of Precision Agriculture in the United States, *Report* (Nov. 10, 2021), <https://www.fcc.gov/sites/default/files/precision-ag-report-11102021.pdf>. See also OpenVault, *Broadband Insights Report: 4Q21*, https://openvault.com/wp-content/uploads/2022/03/OVBI_4Q21_Report_FINAL-1.pdf (noting consumers' rising bandwidth usage and faster speed adoption, and suggesting that "the push to 10G service is already well underway").

¹² NPRM at ¶ 33.

¹³ NPRM at ¶ 40.

ensure compliance with the Broadband DATA Act, as the creation of a new model should resolve discrepancies between model locations and Fabric locations.¹⁴ However, any updates to the A-CAM model should be made in an expedited fashion to avoid delaying the deployment of much-needed broadband.

The NPSC posits that support calculations should take into account support received by carriers through state-funded programs. For example, in 2021, Nebraska awarded approximately \$19.3 million dollars to carriers through the Nebraska Broadband Bridge Program to provide broadband service at speeds of 100/100 Mbps.¹⁵ The NPSC anticipates awarding another \$20 million in broadband funding in that program in 2022. The NPSC also provided approximately \$40 million in NUSF High Cost support to ILECs for maintaining, operating, and building out broadband-capable networks in 2021, and has allocated approximately \$50 million for those purposes in 2022.¹⁶ Included in that NUSF funding is support for ACAM-receiving companies to augment the federal support they receive in capped ACAM-eligible areas so that more robust service, at a minimum of 100/100 Mbps, can be delivered to those locations. Since many other states beyond Nebraska are also administering broadband funding programs,¹⁷ the NPSC encourages the FCC to allow states to identify locations which have received state funding at 100/20 Mbps or higher, and for the Enhanced A-CAM model to appropriately account for that

¹⁴ See NPRM at ¶ 44.

¹⁵ See In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Nebraska Broadband Bridge Act, NPSC Docket No. C-5272, *Order Issuing Grant Awards and Results of Challenges* (Jan. 4, 2022).

¹⁶ 2022 NUSF High Cost Support Distribution, available at <https://psc.nebraska.gov/telecommunications/high-cost-information>.

¹⁷ See National Telecommunications and Information Administration, *State Broadband Programs* (last visited June 28, 2022), <https://broadbandusa.ntia.doc.gov/resources/states>.

funding.¹⁸ Similarly, locations that are already funded through another federal program at 100/20 Mbps or higher should be removed from eligibility.

The FCC also sought comment on whether areas with partial or complete fiber deployment should be eligible for support.¹⁹ While the NPSC recognizes that some carriers may be seeking ongoing support to maintain this service, the NPSC believes that building new service to unserved and underserved locations should be prioritized to the maximum extent possible. Determination of eligibility should be conducted at the location level, rather than the census block level, in order to be as accurate as possible.²⁰ If a location has already been served through previous A-CAM funding, the NPSC believes that location should remain on the existing support schedule. Additionally, the determination of whether a location is eligible for Enhanced A-CAM funding should be primarily based upon whether that location is currently receiving 100/20 Mbps service. Locations that do not meet that standard should be eligible for Enhanced A-CAM support.

V. Program Administration

The FCC proposed a modification to 47 C.F.R. § 54.313(i) to require that annual high-cost reports only be filed with USAC.²¹ The NPSC is not opposed to this proposal, provided that states maintain full access to the annual reports.

¹⁸ The NPSC notes that some states, including Nebraska, may provide funding as an enhancement to federal funding already received. For example, the Nebraska Universal Service Fund (“NUSF”) acts in a supplemental fashion for carriers receiving federal support. While a location that is fully funded by another federal or state program should be excluded from receiving duplicate support, the NPSC does not believe supplemental funding should necessarily render a location ineligible for support.

¹⁹ NPRM at ¶ 45.

²⁰ See NPRM at ¶ 47-48. The NPSC notes that the issues noted by the FCC regarding the splitting of census blocks by study area boundaries would be resolved by utilizing the Fabric mapping data, as locations would then be wholly contained within a study area.

²¹ NPRM at ¶ 62.

The FCC also sought comment on the creation of a streamlined mechanism for study area boundary changes.²² The NPSC has in place mechanisms for carriers to modify their study areas so that customers that are not served today may get service from a provider serving an adjacent study area.²³ This has been another important mechanism for getting broadband to people that need it. Carriers receiving new customers and taking on resultant expenses would benefit from an expedited review process, and carriers no longer serving those locations should not be receiving funding for them. We therefore support a streamlined mechanism for study area boundary changes. Additionally, the NPSC would suggest that any study area changes which have been previously approved by a state should be eligible for the streamlined review process. The NPSC would be willing to share additional information regarding Nebraska's boundary change process should the FCC determine that it would be helpful.

VI. Conclusion

The NPSC appreciates the efforts of the FCC and the Coalition to review and improve the high-cost program, and hopes our suggestions will be taken into account. We encourage you to reach out to the NPSC if you have any questions or wish to discuss this matter further.

Respectfully submitted,

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²² NPRM at ¶ 101.

²³ See NEB. REV. STAT. §§ 86-135 – 86-138.