**Before the**

**Federal Communications Commission**

**Washington, DC 20554**

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| In the Matter of  Connect America Fund | )  )  )  )  ) | WC Docket No. 10-90 |

**COMMENTS OF**

**A-CAM RLECS WITH LOCATION DISCREPANCIES**

The A-CAM RLECs with Location Discrepancies (“A-CAM RLECs”)[[1]](#footnote-1) hereby submit these Comments in response to the request for comment issued by the Federal Communications Commission (the “FCC” or “Commission”) regarding approaches to identify and resolve discrepancies in the actual number of locations that exist in eligible census blocks in the Alternative Connect America Cost Model (“A-CAM”) as compared to A-CAM location count estimates.[[2]](#footnote-2) The A-CAM RLECs take this matter very seriously, as each company is an A-CAM I recipient or A-CAM II elector that has identified location discrepancies between the model-generated number of locations and the actual number of locations funded. Each company in the A-CAM RLECs has diligently searched its funded census blocks to look for locations, through a variety of costly and time-consuming methods.

Although the A-CAM RLECs share the FCC’s concern of ensuring that A-CAM recipients do not neglect to serve costly subsets of customers by claiming to have fewer locations than the model calculated, A-CAM RLECs assure the Commission that this will not be the case for the companies named below. Each company has painstakingly concluded that there is a discrepancy in the number of locations—in some cases a “widely divergent”[[3]](#footnote-3) discrepancy—and therefore the companies should not be penalized for missing deployment obligations at interim or final broadband build-out obligation timeframes related to A-CAM support. The A-CAM RLECs respectfully submit these comments demonstrating the unique characteristics of A-CAM recipients as opposed to Connect America Fund (“CAF”) Phase II auction recipients. As explained herein, because these unique characteristics include being the carrier of last resort for an extended period of time, the FCC should implement a streamlined approach to resolving discrepancies that takes the A-CAM carriers’ high degree of knowledge of their service territories into account and ensures that the process of resolving the discrepancies does not unreasonably burden the A-CAM recipient when it must produce evidence of the location discrepancy. Further, the FCC should include a fair process for resolving location discrepancies in census blocks with the Tribal Broadband Factor, which is not addressed in the CAF Phase II auction location discrepancy resolution approach.

1. **It is Vital that the FCC Implement a Mechanism to Ensure A-CAM Electors are Not Penalized Due to Locations that Simply Do Not Exist**

In the 2016 Reform Order, the FCC recognizes that in situations where more locations are specified in the model than those that actually exist in the funded census blocks, it “would make it impossible for a carrier to meet its deployment obligations.”[[4]](#footnote-4) The order then states, “[c]arriers that discover there is a widely divergent number of locations in their funded census blocks as compared to the model should have the opportunity to seek an adjustment to modify the deployment obligations.”[[5]](#footnote-5) This “opportunity,” however, is not well defined. The order merely states that the FCC “delegate[s] authority to the Bureau to address these discrepancies by adjusting the number of funded locations downward and reducing associated funding levels.”[[6]](#footnote-6)

The “impossibility” of A-CAM electors satisfying buildout obligations where locations simply do not exist has been further elaborated on in the context of the Locations Adjustment Public Notice,[[7]](#footnote-7) which was released in the context of resolving location discrepancies found by CAF Phase II auction winners. The A-CAM Discrepancy Public Notice cites the approach outlined in the Locations Adjustment Public Notice as one approach being considered by the FCC to use for A-CAM carriers.[[8]](#footnote-8) In the Locations Adjustment Public Notice, the FCC reviewed the development of the Connect America Model (“CAM”) which is for price cap carriers and cited “inaccuracies” in the data inputs. Because the CAM’s successor, the A-CAM, as well as the CAF Phase II auctions use the same data inputs, these inaccuracies also exist for A-CAM and CAF Phase II auction recipients. In its review, the FCC noted that in most instances, “these inaccuracies were likely to be minor and cancel each other out across the multiple census blocks in a state served by price cap carriers electing support.”[[9]](#footnote-9) The Locations Adjustment Public Notice then recounted that in developing the CAM, “[t]he Commission recognized, however, that in particular cases, ‘the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.’”[[10]](#footnote-10)

Given that the FCC has recognized that “inaccuracies” exist in the CAM and, by extension, the A-CAM, it is imperative that the FCC develop a mechanism to address the discrepancies in the A-CAM by making appropriate adjustments in the number of locations and not applying penalties designed for carriers that do not build out to locations that do not actually exist. Accordingly, the A-CAM RLECs urge the Commission to develop and implement an appropriate mechanism to ensure that the location discrepancies are addressed, and that no penalties are applied for not meeting buildout obligations where locations simply don’t exist. As explained in more detail below, if the Commission finds that the mechanism being developed for the CAF Phase II auction winners is the appropriate mechanism, the A-CAM RLECs urge that a streamlined process be allowed to reflect the unique characteristics of A-CAM electors.

1. **In Contrast to CAF Phase II Auction Winners, Rate of Return Carriers Have a Compelling Incentive to Ensure that Broadband is Deployed to Every Eligible Location**

The companies in the A-CAM RLECs have undertaken significant efforts to determine the actual number of locations in the funded census blocks in their study area and have found

discrepancies between the number of locations in the A-CAM and the actual number of locations in their funded census blocks. Some companies have been working on compiling an accurate count of locations in their funded census blocks since electing A-CAM I, and others have sought assistance from engineers and mapping experts to try to determine an accurate number prior to electing A-CAM II, despite the short timeframe to evaluate the offer. Companies have used one or more of the three geolocation methods approved by USAC[[11]](#footnote-11) noting where census block boundaries and funded blocks are, to determine if locations can be “counted” towards the buildout obligation and have ensured that the structures meet the FCC’s definition of a “location” for buildout purposes.[[12]](#footnote-12) The A-CAM RLECs emphasize that simply counting the number of properties in funded blocks still might not be sufficient, because the FCC’s rules prohibit many kinds of structures from being treated as a “location” for the HUBB filing.

In contrast to CAF Phase II winners, there is even more pressure on A-CAM I and A-CAM II electors to find any and all locations in funded blocks given their carrier of last resort obligations and long-term commitment to the rural communities that they have served for so many years. For example, cooperatives have a mandate to serve all members in their certificated service area. Family-owned RLECs and cooperatives whose staff live and work in the communities are constantly reminded of where high-speed broadband service is not available. Additionally, state commissions exercise rigorous oversight as part of their annual Eligible Telecommunications Carrier (“ETC”) certification process to ensure broadband is being deployed to the most remote locations. The same does not hold true for most CAF Phase II auction winners, some of whom have operations that are based in distant or urban areas and have no existing relationship with the communities they will now be serving. Further, the CAF Phase II auction recipients had the ability to choose which census block groups they wanted to serve and were expected to do their own due diligence on the number of locations in each block *prior to participating in the auction.* A-CAM recipients do not have the ability to choose which census block groups they serve, because they must serve their entire regulated study area per their ETC and carrier of last resort requirements.

In contrast to CAF Phase II auction recipients, A-CAM recipients are far more familiar with the various types of structures within their service territories because of their focus solely on the rural territories where they have been providing service for decades. For example, A-CAM recipients would be more familiar as to where structures such as livestock housing, storage sheds and unmanned weather stations exist which are common in rural areas but would not qualify as locations for buildout obligations. Further challenges that exacerbate determining locations include: not always being able to tell if a dwelling is subdivided into apartments, not being able to collect information from non-customers who are very private, not being able to trespass on properties with private roads or long driveways to know what type of structure is at the end; and other challenges – all common in rural and remote areas, and familiar challenges to the A-CAM RLECs. A-CAM recipients also must have an extremely high level of knowledge about the local population above and beyond what might be typical for telephone company staff and certainly above and beyond what many of the CAF Phase II winners would have.

To further illustrate the considerable time and effort A-CAM recipients employ to identify every eligible location with the result being a significant location discrepancy, one company in the A-CAM RLECs became very familiar with all of the various structures in the funded census blocks but is facing a shortfall of potentially hundreds of locations if the FCC determines that home-based businesses can’t be counted as two locations unless a separate drop and account is present.[[13]](#footnote-13) To compound the issue, the company has determined that **225** locations have been demolished and turned back into farmland since the 2010 Census. This highly rural area has not had any significant growth or new construction of homes since the 2010 Census, and it is more lucrative to turn vacant properties into farmable lots than to rebuild homes in this area. This is just one example of the level of information that A-CAM electors need to evaluate to figure out the cause and extent of their location discrepancies.

To be clear, the A-CAM RLECs in no way are advocating an approach to resolve location discrepancies that would relieve A-CAM recipients from having to deploy service to high-cost and low-return areas. In fact, some of the A-CAM RLECs either have *already* deployed FTTH throughout the study area, or they are in the process of doing so, and they have no plans on leaving customers behind and creating a micro rural-rural divide. The FCC should not assume that model-based funding recipients want to adjust their locations to a lower number because they don’t want to build out. A-CAM recipients have been under carrier of last resort obligations for voice for well over fifty years and remain so now for both voice and broadband, so they have an innate desire to serve all upon reasonable request. The streamlined approach to adjust the number of locations is solely because the locations do not exist, and the A-CAM recipients have diligently made this conclusion based on their knowledge of their rural communities and extensive time and effort using FCC and USAC approved methods for determining locations for build-out purposes.

1. **Given the Unique Characteristics of A-CAM Recipients, the FCC Should Adopt a Streamlined Approach to Resolve Discrepancies**

Given the intricate knowledge that A-CAM recipients have of their service territories and

their decades-long obligations to serve every location upon reasonable request, the A-CAM RLECs urge the Commission to adopt a streamlined certification process for A-CAM recipients. Under this streamlined approach, an officer of an A-CAM recipient would submit the actual number of locations with an attestation that the company has utilized one of the methods approved by USAC to determine the discrepancy, and that the amount of locations reported is accurate to the best of the officer’s knowledge. A summary of the steps that were taken by the company to determine that there is a location discrepancy would also be submitted. If the Commission would like a vetting process similar to the one being established for the CAF Phase II auction recipients, then comment could be sought on the number of locations along with the certification and summary.

The A-CAM RLECs believe that this approach would be in line with the steps proposed in the Locations Adjustment Public Notice for resolving CAF Phase II auction winner discrepancies which includes submitting evidence (in this case the certification and summary) and making it available to be reviewed by stakeholders (a challenge process). Under the Locations Adjustment Public Notice, the FCC will then “adjudicate individual claims for relief based on a preponderance of the evidence standard,”[[14]](#footnote-14) and, after these steps are completed, the FCC will issue an order and make the support adjustment. These steps would also take place under the streamlined approach. The A-CAM RLECs understand that the FCC does not want model-based support recipients to “cherry pick” locations in funded census blocks and claim that the less lucrative locations do not exist. No A-CAM recipient wishes to take advantage of a process to be relieved from deploying service to hard-to-reach locations, especially since the A-CAM includes support for “reasonable request” locations. This differs significantly from the CAF Phase II auction winners who are required to deploy certain speeds to every location in the funded blocks, and there are no reasonable request locations built in to their support disbursements.

Accordingly, the Commission should establish a streamlined approach to resolve location discrepancies for A-CAM recipients that contains an attestation with the number of locations that the A-CAM recipient is short along with a summary of the steps taken according to FCC and USAC guidelines. The A-CAM RLECs believe that a streamlined certification that includes this evidence will be less burdensome but still sufficient for the Commission to make its determination.

1. **The FCC Should Include a Fair Process for Resolving Tribal Location Discrepancies That is Consistent with Non-Tribal Areas**

In a Public Notice released on July 12, 2019, the FCC explained that carriers electing A-CAM II that include Tribal Broadband Factor adjustments “must separately meet the deployment obligations for Tribal lands set forth in the A-CAM II offer in addition to the deployment obligations for the service area as a whole.”[[15]](#footnote-15) In other words, if an A-CAM II recipient with Tribal areas is short on Tribal-adjusted locations but has excess regular locations, it cannot count the excess regular locations toward the Tribal deployment requirements. The Commission reasons, “Failing to enforce separate buildout obligations for Tribal lands would result in windfall support amounts for some A-CAM II carriers and would thwart the Commission’s established goal of broadband deployment in rural Tribal communities.”[[16]](#footnote-16) The A-CAM RLECs commend the FCC’s dedication to ensuring that broadband is deployed in Tribal lands and that the Tribal Broadband Factor helps facilitate that deployment, but it also cautions the Commission to have a fair process for resolving Tribal location discrepancies that is consistent with non-Tribal eligible location discrepancies. As demonstrated in Tribal engagement reports included in annual ETC reports, it is difficult to determine the exact number of locations on Tribal lands. Accordingly, the A-CAM RLECs urge the FCC to ensure that the streamlined process for A-CAM recipients to resolve location discrepancies would also apply to Tribal lands.

1. **Conclusion**

The A-CAM RLECs with Location Discrepancies have a duty to serve every location in

their regulated service areas with voice and broadband service, and none of the A-CAM RLECs wish to intentionally leave customers behind with no broadband. In comparing the CAF Phase II auction winners to A-CAM I and II recipients, there are several key differences which should convince the FCC that it can implement a streamlined process for resolving location discrepancies in A-CAM areas. Accordingly, the Commission should establish a streamlined approach to resolve location discrepancies for A-CAM recipients that contains an attestation with the number of locations that the A-CAM recipient is short along with a summary of the steps taken according to FCC and USAC guidelines. This streamlined process should also be applied to A-CAM II electors serving areas that benefit from Tribal Broadband Factor adjustments. The streamlined process for resolving location discrepancies will meet the Commission’s need to evaluate evidence that a discrepancy exists without unduly burdening A-CAM recipients who must undertake resource-intensive processes to determine the number of locations that do not exist in their study areas.

Respectfully Submitted,

*/s/ John Kuykendall*

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*On Behalf of*

The A-CAM RLECs with Location Discrepancies

1. The A-CAM RLECs with Location Discrepancies (“A-CAM RLECs”) include: Winnebago Cooperative Telecom Assn.; Interstate Telecommunications Cooperative Inc. - SD; RTC Communications; Union River Telephone Company; and Northeast Iowa Telephone Company. [↑](#footnote-ref-1)
2. *Wireline Competition Bureau Issues Corrected Alternative Connect America Mode II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, Public Notice, WC Docket No. 10-90, DA 19-504 (rel. June 5, 2019) (“A-CAM Discrepancy Public Notice”). [↑](#footnote-ref-2)
3. *See id citing Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3102 (2016) (“*2016 Reform Order*”), at ¶ 34 (discussing the prospect for “widely divergent” location counts). [↑](#footnote-ref-3)
4. 2016 Reform Order at para. 34. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. W*ireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8620 at para. 5 (WCB 2018) (“Locations Adjustment Public Notice”). [↑](#footnote-ref-7)
8. A-CAM Discrepancy Public Notice at 2 citingLocations Adjustment Public Notice. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *See*, <https://www.usac.org/_res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf> at pg. 2 citing the following three geolocation methods: “Geolocation with GPS in the field (Best results) . . . Desktop geolocation using web-based maps and imagery (Very good results) . . . Automated address geocoding (Good results).” [↑](#footnote-ref-11)
12. *See, e.g., Wireline Competition Bureau Provides Guidance To Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations, Public Notice, 31 FCC Rcd 12900 (WCB 2016).* [↑](#footnote-ref-12)
13. *See* Petition for Clarification or Declaratory Ruling on the Definition of Location for Home Offices Under the Connect America Fund – Alternative Connect America Cost Model, WC Docket No. 10-90 (filed May 6, 2019)(Petition); *see also Comments Sought on Petition for Declaratory Ruling of Northeast Telephone Company and Western Iowa Telephone Association*, Public Notice, DA 19-579, released June 20, 2019. [↑](#footnote-ref-13)
14. Locations Adjustment Public Notice at 2. [↑](#footnote-ref-14)
15. *Wireline Competition Bureau Provides Guidance Regarding Alternative Connect America Model Final Deployment Obligations,* WC Docket No. 10-90, DA 19-650 (rel. July 12, 2019). [↑](#footnote-ref-15)
16. *Id.*  [↑](#footnote-ref-16)