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

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

<u>REPLY COMMENTS OF JSI and A-CAM COMPANIES</u>

JSI[1] and several A-CAM elector, rural local exchange carriers ("LECs"), listed below[2] hereby submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") June 20, 2019 Public Notice, wherein the FCC seeks comment on a joint petition filed on May 6, 2019 by Northeast Iowa Telephone Co. ("NEIT") and Western Iowa Telephone Association ("WITA"), requesting that the Wireline Competition Bureau ("WCB") issue a clarification or declaratory ruling "on the definition of locations under the Alternative Connect America Cost Model ("A-CAM") for residences that also serve as businesses" (the "Petition").[3] JSI and the A-CAM companies support the Joint Commenters[4] who argue that the guidance contained in USAC's HUBB FAQ[5] is inconsistent with the Commission's rules, as well as industry practice and reality in rural America, and therefore must

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[1] JSI is a consulting firm with over 50 years of experience in the communications industry. It provides management, accounting and technical support to hundreds of clients in the nation. Most of these clients are rural incumbent local exchange carriers ("RLECs") or their affiliates that offer service in rural areas of the nation.
[2] Interstate Telecommunications Coop., Inc., Grand River Mutual Telephone Corporation, Union River Telephone Company, RTC Communications, Winnebago Cooperative Telephone Association.
[3] *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.
[4] Joint Commenters include WTA – Advocates for Rural Broadband; ITTA – The Voice of America's Broadband Providers; NTCA – the Rural Broadband Association; Iowa Communications Alliance, Minnesota Telecom Alliance, Wisconsin State Telecommunications Association; Vantage Point Solutions.
[5] *See* USAC HUBB Frequently Asked Questions, accessible at http://www.usac.org/hc/faq/default.aspx (last visited July 16, 2019) ("USAC HUBB FAQ").

be clarified or modified.[6] JSI and the A-CAM companies ask the Commission to grant the relief requested in the Petition, and to make the proposed changes to USAC's HUBB FAQ to ensure that home-based businesses that are known based upon sources of business information where available and are located in eligible census blocks are considered locations and do not require separate subscriptions or facilities to count as such.

I. USAC's FAQ Guidance is Inconsistent with the FCC's Rules and Industry Practices

JSI and the A-CAM companies agree that home-based businesses should count as eligible locations for fulfilling A-CAM deployment obligations. Carriers wishing to receive A-CAM support must make broadband services available to a pre-determined number of eligible locations. Many carriers relied on the requirements laid out in the Commission's previous rules[7] when determining whether to accept the original and revised A-CAM offers. USAC's HUBB FAQ is inconsistent with the Commission's rules in two fundamental respects: (1) the guidance is inconsistent with the FCC's rules for identifying locations for purposes of A-CAM build-out requirements; and (2) the guidance requiring "separate facilities" disregards common practice by carriers and ignores one of the Commission's core principles of high-cost universal service support reform.[8]

a. USAC's HUBB FAQ is Inconsistent with the Commission's Rules for Identifying Locations for Purposes of A-CAM Build-Out Requirements

[6] *See* Comments of Joint Commenters. -

[7] *See 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 (2016) ("*2016 Rate-of-Return Reform Order*"); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) ("*2018 Rate-of-Return Reform Order*"); DA-16-1363, WCB Guidance on Location Reporting for Carriers Receiving CAF Support (rel. Dec. 8, 2016) ("WCB Guidance"); 47 C.F.R. §54.308.

[8] *See* Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90, et. al., filed July 11, 2019, at 2.

JSI and the A-CAM companies agree with the Joint Commenters that USAC's HUBB FAQ is inconsistent with the Commission's rules for identifying locations for purposes of A-CAM build-out requirements.[9] USAC's guidance requires "[f]or a carrier to count a business run out of a house or a business run out of a barn, shed, or other structure on the property, there must be separate facilities (drop/line) and separate equipment (e.g., modem) and the business must separately subscribe (get its own bill) to at least the minimum speed required".[10] However, such an actual subscription requirement is found nowhere in the relevant FCC orders. In fact, USAC's guidance completely contradicts the FCC.[11] The FCC has consistently maintained that broadband service is available (i.e., the location counts towards fulfillment of deployment obligations) if the carrier ***could provide*** qualifying broadband service to the location within ten business days upon request.[12] Where locations serve as both a residence and a home-based business, many rural LECs have reasonably interpreted the WCB Guidance as permitting them to count such locations as both a residential location and a business location.[13] Therefore, the HUBB FAQ does not accurately portray the scope of the Commission's rules and, in fact, goes far beyond the broadband service availability definition as it is applied to single family occupied residential locations, stand-alone business locations, and multi-unit dwellings—all of which can be considered as served locations so long as they could get connected to service within ten business days and not at an unreasonable expense. Why would USAC single out home-based businesses

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[9] *See* Comments of WTA at 2; ITTA at 2; NTCA at 2; Iowa Communications Alliance, Minnesota Telecom Alliance, Wisconsin State Telecommunications Association at 2; Vantage Point Solutions at 2.

[10] *See* USAC HUBB Frequently Asked Questions, accessible at http://www.usac.org/hc/faq/default.aspx (last visited July 16, 2019) ("USAC HUBB FAQ").

[11] *See 2016 Rate-of-Return Reform Order*; *2018 Rate-of-Return Reform Order*; DA-16-1363, WCB Guidance on Location Reporting for Carriers Receiving CAF Support (rel. Dec. 8, 2016) ("WCB Guidance"); 47 C.F.R. §54.308.

[12] *See* Petition at 3 (quoting, 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)).

[13] *See* Comments of WTA at 2.

as needing equipment installed and a separate account established so that it can be included in the HUBB?

The Petition rightly contends that an A-CAM support recipient only needs to offer qualifying broadband service to the defined number of eligible locations because the support recipient has no control over whether the resident or business actually chooses to subscribe to its broadband service.[14] Moreover, many A-CAM I and II electors relied on these rules in determining whether they had the right number of eligible locations to meet their build-out requirements. Ignoring the Commission's rules in favor of USAC's inconsistent guidelines could result in carriers not being able to meet their build-out obligations and subsequently face penalties. Finally, if the guidance contained in USAC's HUBB FAQ were to be enforced, JSI agrees with NTCA that, "many locations critical for precision agriculture and other agribusiness apps [could be] discounted or disregarded altogether when determining what kinds of locations need broadband.[15] The FCC's codified rules should take precedent over USAC's HUBB FAQ guidance, and locations should not be disregarded simply because they sit on the same property as a qualified location, but in a separate structure.

b. USAC's "Separate Facilities" Requirement Disregards Common Practices and Ignores a Core Principle of High-Cost USF Reform

JSI and the A-CAM companies agree that the "separate facilities" component of USAC's HUBB FAQ guidance disregards common practice by requiring carriers to waste time and money installing multiple drops to ensure that a home-based business is properly counted as a separate location.[16] The FCC does not require separate facilities (drop/line) and separate

[14] *See* Petition at 3.
[15] *See* Comments of NTCA at 3-4.
[16] *See* Comments of ITTA at 3.

equipment for home-based business.[17] Typically, carriers "install one fiber drop per physical address, with multiple fiber strands within that drop to meet the capacity requirements of the residents and businesses within that physical address."[18] The guidance in USAC's HUBB FAQ would imply duplicative, unnecessary, and costly efforts by rural providers. This guidance goes against one of the FCC's stated core principles of high-cost USF reform, which is to ensure that support is provided as efficiently as possible.[19] Rural LECs are under scrutiny to not "waste or abuse" USF resources, and installing two separate lines or drops to the same property and installing duplicate equipment when there is no technical explanation for doing so is certainly a wasteful use of USF.

II. The FAQ Should be Modified to Reflect the FCC's Underlying Rules for Build-Out Obligation Reporting in the HUBB

Given that the guidance contained in USAC's HUBB FAQ is inconsistent with the Commission's rules and with common industry practice, the guidance must be modified. JSI agrees with NTCA's recommendation that the FCC, "instruct USAC to modify the HUBB FAQ to mirror the FCC's existing requirements rather than create a subscription requirement that is both inconsistent with the FCC's rules and orders and unnecessary to fulfill the FCC's goal with respect to accountability."[20] JSI and the A-CAM companies propose the following changes to the current USAC HUBB FAQ:

Q. How should a carrier report deployment at a residence that also has a home business within the same structure?

> *A. A carrier receives credit for and must report ~~the house~~ as a served location a residence at which*

[17] *See* Petition at 3-4.
[18] *See* Comments of ITTA at 3.
[19] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3091, para. 6.
[20] *See* Comments of NTCA at 6.

> *broadband is available, regardless of whether the ~~house~~ resident subscribes to the service. A carrier likewise receives credit for and must report as a served location a business at which broadband is available, regardless of whether the business subscribes to the service.*
>
> *For a carrier to count as a separate location a business ~~run out of a house or a business run out of a barn, shed or other structure on the property,~~ that shares a physical structure with a residence and thereby count the residence and home-based business in that same structure as two separate units (and thus two separate locations) for reporting and deployment milestone purposes, the carrier must validate the existence of the home-based business based upon sources of business information where available (e.g., a governmental agency registration or other indications of business activity) and provide such information to USAC upon request~~there must be separate facilities (drop/line) and separate equipment (e.g., modem) and the business must separately subscribe (get its own bill) to at least the minimum speed required~~. See DA-16-1363 WCB Guidance on Location Reporting for Carriers Receiving CAF Support.*

III. Conclusion

Only the Commission and the WCB have jurisdiction to establish location counting principles and methods. As noted by WTA, USAC has no right or power to supersede or modify such Commission or WCB determinations by FAQ or any other device.[21] USAC's HUBB FAQ goes beyond the scope of its administrative authority by requiring actual separate drops or lines, separate subscriptions and separate bills for businesses run out of barns, sheds or other structures on a property. Additionally, USAC's guidance leads to inequitable results since companies relied on the FCC's codified rules in making their decision to accept A-CAM support. Consequently, if those that accepted A-CAM fail to meet the 95 percent build-out requirement within the term of

[21] *See* Comments of WTA at 3.

the A-CAM plan due to a portion of otherwise eligible locations (i.e., certain home-based businesses) not being permitted to be counted, the companies could face significant, punitive penalties.[22] JSI and the A-CAM companies agree with the opinion of the Iowa Communications Alliance, Minnesota Telecom Alliance, and the Wisconsin State Telecommunications Association that "in rural markets, many small businesses operate from home [and] applying a separate, stricter standard that includes an actual subscription and additional facilities to these locations risks leaving out many of the kinds of locations that the High Cost universal service program is intended to help."[23] Consequently, JSI and the A-CAM companies strongly urge the Commission to grant the relief requested by NEIT and WITA in its Petition.

Respectfully Submitted,

/s/ John Kuykendall
John Kuykendall, Vice President
JSI
7852 Walker Dr. Suite 200
Greenbelt, Maryland 20770

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On Behalf of

The A-CAM Companies

[22] *See 2016 Rate-of-Return Reform Order*, ¶¶ 77-79; *see also* 47 C.R.F. §54.320.
[23] *See* Comments of Iowa Communications Alliance; Minnesota Telecom Alliance; Wisconsin State Telecommunications Association at 3.