

Nome/Fingal, Page, Sanborn/Rogers, and Tower City, each of which are small, rural communities ranging in population from approximately 40 to 275 persons.

ICTC submits this challenge to facilitate the further refinement of the A-CAM to accurately reflect the competitive coverage within the North Dakota study area served by ICTC. As discussed in greater detail below, version 2.2 of the A-CAM improperly excludes ICTC from eligibility for A-CAM-based support on three separate, but related, bases. *First*, A-CAM version 2.2 excludes 961 census blocks in ICTC’s study area based on the presence of a fixed wireless broadband service provider, Dickey Rural Services, Inc. (“DRS”), notwithstanding that DRS does not offer voice service within ICTC’s service area. *Second*, the model excludes 45 census blocks along the border of ICTC’s study area based on presumed competitive overlap with other providers (namely, BEK Communications Cooperative; Moore & Liberty Telephone Company/Griggs County Telephone; Polar Communications Mutual Aid Corporation; Dakota Central Telecommunications Cooperative; Dickey Rural Telephone Cooperative; and CenturyLink) when, in fact, no actual overlap exists. *Third* and finally, because locations within excluded census blocks are erroneously omitted from the list of “eligible locations” served by ICTC, the model correspondingly inflates the percentage of eligible locations to which ICTC has deployed 10/1 Mbps broadband Internet access service, indicating (incorrectly) that ICTC offers such service to 92.8 percent of eligible locations within its North Dakota study area and that ICTC therefore is ineligible to elect A-CAM-based support. When the data are corrected to include all eligible locations, ICTC falls well below the 90 percent threshold and thus should be deemed eligible to elect support under the A-CAM.

DISCUSSION

In the *Rate-of-Return Reform Order*, the Commission directed the Bureau to update the A-CAM “to incorporate ... June 2015 FCC Form 477 data,” including any corrections made thereto, for the purpose of “ensur[ing] that support is not provided to overbuild areas where another provider already is providing voice and broadband service.”³ The Commission also concluded that model-based support would not be made available to “any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state.”⁴ Version 2.2 of the A-CAM, released by the Bureau on April 7, 2016, makes these (and other) required adjustments to the model but, in so doing, incorrectly excludes ICTC from eligibility for A-CAM-based support. ICTC submits this challenge to correct inaccuracies reflected in A-CAM version 2.2 and requests that the changes detailed below be incorporated into the final version of the model.

I. THE PRESENCE OF DRS IN ICTC’S STUDY AREA DOES NOT PROVIDE A BASIS FOR EXCLUDING ICTC FROM RECEIVING SUPPORT UNDER THE A-CAM

DRS is a fixed wireless broadband provider operating in ICTC’s study area, among other areas of southeastern North Dakota. DRS offers service in a total of 1,034 census blocks within ICTC’s service area, 961 of which (the “DRS Census Blocks”) were erroneously excluded from version 2.2 of the A-CAM as served by an unsubsidized competitor.⁵ As reflected in DRS’s

³ *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, FCC 16-33 ¶ 71 (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”).

⁴ *Id.* ¶ 66.

⁵ A list of the DRS Census Blocks that were erroneously deemed ineligible for A-CAM-based support in version 2.2 of the model is attached hereto as Exhibit A. Exhibit A

June 2015 Form 477 data and the separate challenge filed by DRS (including the accompanying declaration of Bob Johnson, General Manager of DRS),⁶ DRS operates exclusively as a fixed wireless provider of broadband Internet access service. DRS does not offer voice service of any kind in ICTC’s study area. Likewise, no affiliate of DRS offers voice service in ICTC’s study area. DRS therefore does not qualify as an “unsubsidized competitor[]” that “already is providing voice and broadband service”—the criterion established by the Commission in the *Rate-of-Return Reform Order* for excluding census blocks based on competitive overlap.⁷ Locations within the DRS Census Blocks thus should not be deemed ineligible for A-CAM-based support in the final model.

Version 2.2 of the A-CAM presumably excludes the DRS Census Blocks based on the fact that DRS’s affiliate (and parent company), Dickey Rural Telephone Cooperative (“DRTC”), an incumbent LEC operating in a study area adjacent to ICTC, *does* offer voice service.⁸ However, DRTC’s voice offering is limited to DRTC’s study areas, which do not overlap with

excludes any census blocks that are ineligible for support under the A-CAM for any other reason—*e.g.*, census blocks with costs that fall below the \$52.50 funding benchmark.

⁶ See Revised June 30, 2015 Form 477 submission of Dickey Rural Services, Inc. (filed Dec. 4, 2015); Challenge of Dickey Rural Services, Inc., WC Docket No. 10-90 (filed Apr. 26, 2016) (“DRS Challenge”), attached hereto as Exhibit B; Declaration of Bob Johnson (dated April 26, 2016) (“DRS Declaration”), attached as an exhibit to the DRS Challenge. As discussed in the DRS Challenge, DRS’s fixed wireless broadband data initially were submitted in the ILEC Form 477 submission of DRS’s parent company, Dickey Rural Telephone Cooperative. DRS later opted to submit its fixed wireless broadband data as of June 30, 2015 on a standalone basis, as reflected in the separate non-ILEC submission filed on December 4, 2015.

⁷ *Rate-of-Return Reform Order* ¶ 71.

⁸ See Revised June 30, 2015 Form 477 submission of Dickey Rural Telephone Cooperative (filed Dec. 4, 2015); DRS Declaration ¶ 3.

either DRS's service area within ICTC's study area or ICTC's study area more generally.⁹ DRTC's voice service offering therefore was incorrectly imputed to DRS.

Moreover, the *Rate-of-Return Reform Order* in no way suggests that the Commission intended to limit a rate-of-return carrier's ability to elect support under the A-CAM based on the service offerings of a competitor's affiliate in areas *outside* of the rate-of-return carrier's statewide service area.¹⁰ To the contrary, the Commission stated that exclusions based on competitive overlap were to be limited to "*overbuild areas* where another provider already is providing voice *and* broadband service meeting the Commission's requirements."¹¹ Voice services offered by DRS or the company's affiliate *elsewhere*—*i.e.*, in areas outside of ICTC's study area—thus cannot qualify for exclusion as "overbuild areas." Moreover, taking such a broad approach to identifying competitive overlap would severely limit eligibility under the A-CAM, in direct contravention of the Commission's goal of encouraging rate-of-return carriers to transition to incentive-based regulation.¹² ICTC therefore urges the Commission to update the

⁹ As explained in Section II below, although the separate study areas of ICTC and DRTC share 6 census blocks in common, the respective service territories do not actually overlap. Rather, ICTC and DRTC serve customers in different geographic portions of the 6 shared census blocks.

¹⁰ Even assuming, *arguendo*, that the voice offering of DRS's affiliate, offered in a distinct geographic area from the service area of DRS itself, somehow could be imputed to DRS and the areas in which it overlaps with ICTC, DRTC does not qualify as an "unsubsidized competitor" as required by the Commission under the *Rate-of-Return Reform Order* and, as a result, DRS could not qualify as an unsubsidized competitor on the basis of DRTC's voice offering. *See infra* Section II.

¹¹ *Rate-of-Return Reform Order* ¶ 71 (emphasis added).

¹² *Id.* ¶ 4 (explaining that establishing the A-CAM "will advance the Commission's longstanding objective of adopting fiscally responsible, accountable and incentive-based policies to replace outdated rules and programs"); *id.* ¶ 21 (explaining that rate-of-return carriers that elect model-based support under the A-CAM will no longer "be subject to rate-of-return regulation for common line offerings, and they no longer will participate in the [NECA's] common line pool").

model to reflect that locations in the DRS Census Blocks are eligible for support under the A-CAM.¹³

II. THE PRESENCE OF ICTC AND ANOTHER ILEC IN “BORDER” CENSUS BLOCKS DOES NOT PROVIDE A BASIS FOR EXCLUDING SUCH CENSUS BLOCKS FROM RECEIVING SUPPORT UNDER THE A-CAM

Version 2.2 of the A-CAM also deems a number of census blocks along the border areas of ICTC’s study area (the “Border Census Blocks”) to be ineligible for support based on presumed competitive overlap with providers operating in those areas.¹⁴ In particular, A-CAM version 2.2 identifies: (a) 10 census blocks as served by ICTC and BEK Communications Cooperative (“BEK”); (b) 11 census blocks as served by ICTC and Moore & Liberty Telephone Company/Griggs County Telephone (“MLGC”); (c) 8 census blocks as served by ICTC and Polar Communications Mutual Aid Corporation (“Polar”); (d) 8 census blocks as served by ICTC and Dakota Central Telecommunications Cooperative (“Dakota Central”); (e) 6 census blocks as served by ICTC and Dickey Rural Telephone Cooperative (“DRTC”); and (f) 2 census blocks as served by ICTC and CenturyLink, Inc. (“CenturyLink”). In each case, the purportedly overlapping service provider is the incumbent LEC that operates in a mutually exclusive service territory adjacent to ICTC’s study area. As discussed below, locations within the Border Census Blocks should not be excluded from eligibility for support under the A-CAM for two independent reasons.

As an initial matter, ICTC’s service territory does not actually overlap with the respective service territories of BEK, MLGC, Polar, Dakota Central, DRTC, or CenturyLink, as ICTC

¹³ See Exhibit A.

¹⁴ A list of the Border Census Blocks that were erroneously deemed ineligible for A-CAM-based support in version 2.2 of the model is attached hereto as Exhibit C. Exhibit C excludes any census blocks that are ineligible for support under the A-CAM for any other reason—*e.g.*, census blocks with costs that fall below the \$52.50 funding benchmark.

General Manager and CEO certifies in the accompanying declaration.¹⁵ Each ILEC instead operates in its own distinct study area, the boundaries of which often do not align to the geographic boundaries utilized by the U.S. Census Bureau. The census blocks shared in common between ICTC and BEK, MLGC, Polar, Dakota Central, DRTC, or CenturyLink merely identify the border regions of ICTC’s and the respective ILEC’s mutually exclusive study areas. The Border Census Blocks thus do not reflect actual competitive overlap, as each company’s customers are located in different geographic portions of the census blocks. Accordingly, locations within the Border Census Blocks should not be excluded from eligibility to receive A-CAM-based support.

Even assuming, *arguendo*, that some *de minimis* amount of overlap did exist between ICTC and one or more of the neighboring ILECs in the Border Census Blocks, such overlap—by another ILEC—is not sufficient to disqualify the Border Census Blocks from support under the A-CAM. In the *Rate-of-Return Reform Order*, the Commission stated its intention to exclude from model-based support only the overbuild areas of “unsubsidized competitors.”¹⁶ BEK, MLGC, Polar, Dakota Central, DRTC, and CenturyLink do not qualify as such, as each company

¹⁵ Declaration of Derrick Bulawa, CEO/General Manager of BEK Communications Cooperative ¶ 2 & Schedule (1) (dated April 27, 2016), attached hereto as Exhibit D; Declaration of Dave Dunning, CEO/General Manager of Polar Communications Mutual Aid Corporation ¶ 2 (dated April 27, 2016) (“Polar Declaration”), attached hereto as Exhibit E; Declaration of Keith Larson, CEO/General Manager of Dakota Central Telecommunications Cooperative ¶ 2 (dated April 25, 2016) (“Dakota Central Declaration”), attached hereto as Exhibit F; Exhibit B, DRS Declaration ¶ 3. ICTC was unable to secure declarations from MLGC or CenturyLink, but ICTC’s service area does not overlap with the study areas of either of those ILECs, as demonstrated by the declaration of ICTC General Manager and CEO, Mark Johnson. Declaration of Mark Johnson, General Manager and CEO of Inter-Community Telephone Company ¶¶ 4-5 (dated April 28, 2016), attached hereto as Exhibit G. Additional evidence demonstrating that ICTC does not actually overlap in the Border Census Blocks with BEK, MLGC, Polar, Dakota Central, DRTC, or CenturyLink is available upon request.

¹⁶ *Rate-of-Return Reform Order* ¶ 71.

is an ILEC and a participant in the legacy high-cost universal service program or, in the case of CenturyLink, the Connect America Fund (“CAF”).¹⁷ Thus, on this independent basis, the Commission should update the A-CAM to ensure that the Border Census Blocks are deemed eligible for support.¹⁸

III. ICTC HAS NOT DEPLOYED 10/1 MBPS BROADBAND SERVICE TO 90 PERCENT OR MORE OF ELIGIBLE LOCATIONS WITHIN ITS STUDY AREA IN NORTH DAKOTA

In an effort to target A-CAM-based support in areas currently lacking broadband service, the Commission concluded in the *Rate-of-Return Reform Order* that it would not offer model-based support “to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state.”¹⁹ To calculate a carrier’s 10/1 Mbps broadband service coverage within a given state, the Commission determined that it would rely on June 2015 FCC Form 477 data submitted as of the release date of the *Rate-of-Return Reform Order*, and clarified that locations within census blocks “presumed to be served by an unsubsidized competitor” would not be included in the model, subject to the instant challenge process.²⁰

¹⁷ See USAC Funding Disbursement Search Results for BEK Communications Cooperative, SAC 381604, attached hereto as Exhibit H; USAC Funding Disbursement Search Results for Moore & Liberty Telephone Company/Griggs County Telephone, SAC 381622, attached hereto as Exhibit I; Exhibit E, Polar Declaration ¶ 3; USAC Funding Disbursement Search Results for Polar Communications Mutual Aid Corporation, SAC 381630, attached hereto as Exhibit J; Exhibit F, Dakota Central Declaration ¶ 3; USAC Funding Disbursement Search Results for Dakota Central Telecommunications Cooperative, SAC 381610, attached hereto as Exhibit K; USAC Funding Disbursement Search Results for Dickey Rural Telephone Cooperative, SAC 381611, attached hereto as Exhibit L; USAC Funding Disbursement Search Results for CenturyLink, Inc. f/k/a Qwest Corporation, SAC 385144, attached hereto as Exhibit M.

¹⁸ See Exhibit C.

¹⁹ *Rate-of-Return Reform Order* ¶ 66.

²⁰ *Id.* ¶¶ 66, 59, 71; see also Public Notice at 2 n.12 (“The model excludes from support calculations those census blocks that are presumed to be served by an unsubsidized competitor.” (citing *Rate-of-Return Reform Order* ¶ 59)).

Identifying the correct universe of “eligible locations”—*i.e.*, locations in census blocks that are not served by unsubsidized competitors—is a fundamental prerequisite to the Commission’s identification of those carriers that will be eligible to elect support under the A-CAM. Indeed, to the extent any census blocks served by a particular carrier are misidentified and excluded from the model (based on an erroneous determination that the census blocks are served by an unsubsidized competitor), such mistakes are likely to impact the model’s results with respect to the carrier’s level of 10/1 Mbps broadband service deployment within a given state, by either understating or overstating the level of such deployment. In turn, the model’s inaccurate calculation of a carrier’s 10/1 Mbps broadband service deployment ultimately could result in an inaccurate determination regarding the carrier’s overall eligibility to elect support under the A-CAM.

That is precisely what has occurred with respect to ICTC in version 2.2 of the A-CAM. Relying on the preliminary (but now definitively rebutted) determination that the DRS Census Blocks and Border Census Blocks are served by “unsubsidized competitors,” version 2.2 of the A-CAM excluded all of the locations in those census blocks (identified in Exhibits A and C, respectively) when calculating the percentage of eligible locations to which ICTC has deployed 10/1 Mbps broadband service. Importantly, ICTC’s 10/1 Mbps broadband service is significantly more prevalent in the remaining census blocks than in the census blocks wrongfully excluded from the model. As a result, the illustrative results reported with version 2.2 of the A-CAM significantly overstate ICTC’s 10/1 Mbps broadband coverage within its study area, and thus improperly deem ICTC to be ineligible for *any* model-based support. In particular, Illustrative Report 6.3, which the Bureau released concurrently with version 2.2 of the A-CAM, calculates that ICTC has deployed 10/1 Mbps broadband service to 92.8 percent of its eligible

locations within North Dakota. But when locations from the erroneously excluded DRS Census Blocks and Border Census Blocks are reinstated in the calculation of ICTC's 10/1 Mbps broadband service coverage, it becomes clear that ICTC has deployed 10/1 Mbps broadband service to only 22.09 percent of eligible locations within its North Dakota study area.²¹ The Commission therefore should re-run its calculation of ICTC's deployment of 10/1 Mbps broadband service incorporating the incorrectly excluded census blocks and reverse the preliminary (and likewise incorrect) determination that ICTC will not be eligible to elect support under the A-CAM.

CONCLUSION

For all of the above reasons, ICTC challenges version 2.2 of the A-CAM and urges the Commission to take the remedial steps identified herein to ensure that ICTC is not unfairly denied the right to elect model-based support. More generally, ICTC looks forward to working with the Bureau to ensure that accurate data are used to identify areas eligible for support under the final version of the A-CAM.

²¹ Declaration of Paul Nesenson, John Staurulakis, Inc. ¶ 4 (dated April 28, 2016), attached hereto as Exhibit N. Even in the event the Border Census Blocks are excluded from the calculation, ICTC remains well below the 90 percent threshold. *See id.* ¶ 6 (explaining that ICTC has deployed 10/1 Mbps broadband service to only 22.24 percent of eligible locations, when eligible locations is defined to include: (a) all eligible locations identified in version 2.2 of the A-CAM, and (ii) all eligible locations in the DRS Census Blocks identified in Exhibit A).

Respectfully submitted,

/s/ Matthew A. Brill

Matthew A. Brill
Amanda E. Potter
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

*Counsel for Inter-Community Telephone
Company, LLC*

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