



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE REGARDING ALTERNATIVE CONNECT AMERICA MODEL FINAL DEPLOYMENT OBLIGATIONS

### WC Docket No. 10-90

In this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance and illustrative examples regarding calculation of final deployment obligations associated with Alternative Connect America Model support (A-CAM) and application of the Commission's support recovery rules in the event that a carrier does not meet its final deployment obligations. This guidance responds to questions from members of the public about the Commission's rules.

*The Commission's rules.* When companies that receive A-CAM I or II support do not meet their final deployment obligations, pursuant to section 54.320(d)(2) of the Commission's rules, the Universal Service Administrative Company (USAC) will recover from A-CAM recipients "the percentage of support that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that state."<sup>1</sup>

*What is the final milestone?* Each A-CAM I or A-CAM II recipient has two or three final milestones that it must meet.<sup>2</sup> For A-CAM I recipients, each carrier has an obligation to deploy at least 25/3 Mbps service to a number of eligible locations equal to a specified percentage of the carrier's fully funded locations, at least 10/1 Mbps service to a number of locations equal to the remainder of fully funded locations, and at least 4/1 Mbps service to a specified percentage of eligible locations with a capped funding amount.<sup>3</sup> For A-CAM II recipients, each carrier has an obligation to deploy at least 25/3 Mbps service to a number of eligible locations equal to the number of fully funded locations, and at least 4/1 Mbps to a number of locations equal to the specified percentage of capped locations.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 54.302(d)(2).

<sup>2</sup> The Bureau recently sought comment regarding a process to adjust a carrier's number of eligible locations subject to deployment obligations in the event that the carrier finds the actual number of locations in its eligible census blocks varies from the number of eligible locations identified in its authorization for A-CAM support. *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (WCB rel. June 5, 2019).

<sup>3</sup> 47 C.F.R. § 54.308(a)(1)(i)-(iii).

<sup>4</sup> 47 C.F.R. § 54.308(a)(1)(ii), (iv).

Each of these milestones must be independently met by deploying the requisite level of service (or better) to at least the specified number of eligible locations.<sup>5</sup> If an A-CAM I carrier has not deployed 25/3 Mbps service to the requisite number of locations, it will have failed to meet its milestone, even if it has deployed 10/1 Mbps service to a number of locations in excess of its requirements. However, if an A-CAM I recipient deployed 25/3 Mbps service to a number of locations in excess of its requirement, those excess locations could be applied to meet the requirement to provide at least 10/1 Mbps service. No single location may be used to meet multiple final deployment obligations.<sup>6</sup>

*What about the five percent flexibility?* In the *2016 Rate-of-Return Reform Order*, the Commission concluded that A-CAM carriers should have “some flexibility in their deployment obligations” and permitted them to deploy to 95% of the required locations by the end of the 10-year term.<sup>7</sup> Further, the Commission noted that “to the extent that an electing carrier deploys to less than 100 percent of the requisite locations, the remaining percent of locations would be subject to the same deployment obligations as for the carrier’s capped locations.”<sup>8</sup> Because these locations were still subject to deployment obligations, the Commission concluded that, unlike the price cap recipients of Connect America Phase II model support, it was not necessary for A-CAM recipients to refund any support when they took advantage of the five-percent flexibility.<sup>9</sup> In establishing A-CAM II in the *December 2018 Rate-of-Return Reform Order*, the Commission “provide[d] the same flexibility afforded other A-CAM recipients to deploy to only 95% of the required number of fully funded locations by the end of the term of support.”<sup>10</sup> The Commission further noted that “[t]hose 5% of locations would then shift into the carriers’ obligations to offer service to the number of capped locations.”<sup>11</sup>

The flexibility to deploy to only 95% of required locations without penalty applies only to deployment obligations associated with fully funded locations.<sup>12</sup> To the extent a carrier takes advantage

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<sup>5</sup> Although some census blocks are “fully funded” and some are “capped,” the locations are fungible with respect to deployment obligations. If an A-CAM recipient deploys 25/3 Mbps to an eligible location, it may count that toward its deployment obligations even if it is in a capped census block, rather than a fully funded one.

<sup>6</sup> We note that a location may be used to meet multiple *interim* deployment obligations in the case of carriers that elected revised A-CAM I support and have two separate sets of interim deployment obligations that they must meet. See *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92; Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11902 para. 29 (2018) (*December 2018 Rate-of-Return Reform Order*). First, they need to meet interim milestones to deploy service that is at least 10/1 Mbps pursuant to their initial acceptance of A-CAM, and they must meet interim milestones to deploy service that is at least 25/3 Mbps pursuant to their revised A-CAM I election. 47 C.F.R. § 54.311(d). These two sets of interim deployment obligations are tested separately, and any location meeting the 25/3 Mbps interim deployment obligations may also be counted toward the interim deployment obligation to provide at least 10/1 Mbps service.

<sup>7</sup> *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, 3101 para. 33 (2016) (*2016 Rate-of-Return Reform Order*).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3101 n.68.

<sup>10</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11914-15, para. 67 (citing *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33 and n. 68).

of this flexibility, it must treat the locations as capped locations.<sup>13</sup> For example, an A-CAM II recipient that is otherwise obligated to provide 25/3 Mbps service to 200 eligible locations may use this flexibility to reduce this requirement to 190 locations. Similarly, an A-CAM I recipient that is otherwise obligated to deploy 25/3 Mbps service to 100 locations and 10/1 Mbps service to 100 locations may use this flexibility to reduce the requirements to 95 25/3 Mbps locations and 95 10/1 Mbps locations. For an A-CAM I recipient, the five-percent flexibility may not be disproportionately applied to its 25/3 Mbps obligations, rather than its 10/1 Mbps obligations. So, in the last example, the A-CAM I recipient could not use the five-percent flexibility to reduce its requirements to 90 25/3 Mbps locations, even if it met its requirement to provide at least 10/1 Mbps service to 100 locations.<sup>14</sup>

In each of these examples, the 10 locations not served with 25/3 Mbps or 10/1 Mbps due to the operation of the five-percent flexibility rule are added to the company's deployment obligations associated with capped locations. Thus, if each carrier initially had 30 capped locations, but added 10 more as a result of using its flexibility with respect to fully funded locations as in the examples above, it would have a revised total of 40 capped locations. If the carrier's obligation is to provide 4/1 Mbps service to 50% of its capped locations, it would have an obligation to provide 4/1 Mbps service to 20 locations, rather than 15 locations, as the original authorization would have required.

*What is "the relevant number of locations"?* The amount to be recovered by USAC in the event that a carrier fails to meet its milestone is prescribed, in part, as "the percentage of support that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations."<sup>15</sup> In this instance, the "relevant number of locations" is the total amount by which the company failed to meet its final deployment milestones, as adjusted by the five-percent flexibility. For example, if an A-CAM I recipient missed its adjusted 25/3 Mbps obligation by 10 locations its adjusted 10/1 Mbps obligation by 5 locations, and its adjusted 4/1 Mbps obligation by 5 locations, then its relevant number of locations would be 20. In another example, if an A-CAM II recipient missed its adjusted 25/3 Mbps requirement by 10 locations, but exceeded its 4/1 Mbps, then its relevant number of locations would be 10 locations. In a final example, if an A-CAM I recipient exactly met its adjusted 25/3 Mbps obligation, exceeded its adjusted 10/1 Mbps obligation by 10 locations, and missed its adjusted 4/1 Mbps by 5 locations, its relevant number would be 0, because in this instance the extra 10/1 Mbps locations also qualify as at least 4/1 Mbps.

The "average amount of support per location received in the state over the term of support" is the authorized amount of A-CAM support, not including transitional support, divided by the number of eligible locations in funded census blocks. This calculation does not distinguish between fully funded and capped locations, or eligible locations on Tribal or non-Tribal lands.

*What is "the total relevant high-cost support over the support term for that state"?* The second part of the recovery amount when a carrier fails to meet its final milestone is prescribed as "plus ten percent of the total relevant high-cost support over the support term for that state."<sup>16</sup> The total relevant high-cost support in this instance is the base amount of A-CAM support, and does not include transitional

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<sup>11</sup> *Id.* at n. 149.

<sup>12</sup> See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33 (providing the "same flexibility to deploy to only 95% of the required number of *fully funded* locations") (emphasis added).

<sup>13</sup> *Id.*

<sup>14</sup> If, however, the carrier had deployed 25/3 Mbps service to 100 locations, and 10/1 Mbps to 90 locations, it could apply its five-percent flexibility to both service tiers, and use the five excess 25/3 Mbps locations to satisfy the remaining five 10/1 Mbps locations.

<sup>15</sup> 47 C.F.R. § 54.320(d)(2).

<sup>16</sup> *Id.*

support for carriers whose A-CAM support was less than their legacy support or CAF-ICC support.

*What about deployment on Tribal lands?* “[T]o address the unique challenges of deploying high-speed broadband to rural Tribal communities,” the Commission incorporated a Tribal Broadband Factor for A-CAM II.<sup>17</sup> Under the Tribal Broadband Factor, the Commission reduced the funding threshold for census blocks in Tribal lands and raised the funding cap correspondingly.<sup>18</sup> A carrier electing an A-CAM II offer that includes an adjustment based on the Tribal Broadband Factor 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.<sup>19</sup> If a carrier does not meet the deployment obligations associated with Tribal lands, the shortfall in locations would be used as the “relevant number of locations” used to calculate the recovery amount if it exceeds the shortfall in total deployment obligations. For example, if a carrier were obligated to deploy 25/3 Mbps service to 200 locations in eligible census blocks, including 100 locations on Tribal lands, but deploys 25/3 Mbps service to 175 eligible locations, including 50 locations on Tribal lands it would have a shortfall of 25 locations overall, but a shortfall of 50 locations on Tribal lands. Because the shortfall of 50 locations on Tribal lands exceeds the 25-location shortfall for all areas, the “relevant number of locations” is 50 for recovery purposes. This test is separately applied for both 25/3 Mbps and 4/1 Mbps service obligations. Performing the test in this way – using the greater shortfall amount of either the total obligation or the Tribal-only obligation – prevents counting shortfalls in Tribal lands as duplicates. 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.

*Additional Information.* For additional information on this proceeding, contact Ted Burmeister at (202) 418-7389 or Theodore.Burmeister@fcc.gov, of the Wireline Competition Bureau, Telecommunications Access Policy Division.

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<sup>17</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11910-11, para. 55.

<sup>18</sup> *Id.* at paras. 55-56.

<sup>19</sup> See *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers To Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-372 (WCB rel. May 2, 2019); *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (WCB rel. June 5, 2019); Report 16.3 (showing Tribal land deployment obligations, available at <https://docs.fcc.gov/public/attachments/DOC-357276A1.xlsx>).

## APPENDIX

## A-CAM I ILLUSTRATIVE EXAMPLES

Examples 1-3 are based on a hypothetical A-CAM I recipient with the following characteristics. Using its 5% flexibility, the A-CAM I recipient may deploy to 5% fewer 25/3 Mbps and 10/1 Mbps locations than identified in its authorization, but any reduction in fully funded locations is treated as if those locations were capped locations for deployment obligation purposes. Because of the hypothetical carrier's density, 25% of capped locations must be provided 4/1 Mbps service, and the remainder served on reasonable request. Its average support per location is \$11,176 (Authorized support over ten-year term divided by Total Locations in Eligible blocks), and its Total Relevant Support is \$19,000,000 (Annual support times 10-year term).

	Annual A-CAM Support	Total Number of Rate-of-Return Locations in Census Blocks Receiving Model-Based Funding	Fully Funded Locations		Capped Locations	
			Number of Locations in Eligible Census Blocks with Obligation to Offer 25/3 Mbps	Number of Locations in Eligible Census Blocks with Obligation to Offer 10/1 Mbps	Number of Locations in Eligible Census Blocks with Obligation to Offer 4/1 Mbps	Number of Locations Remaining on Reasonable Request Standard
As Authorized	1,900,000	1,700	300	900	125	375
5% Flexibility			(15)	(45)		
Treated as Capped (25% 4/1 Mbps due to Density)					15	45
As Adjusted			285	855	140	420

Example 1. A-CAM I recipient deploys to an insufficient number of 25/3 Mbps, 10/1, Mbps, and 4/1 Mbps locations. The total shortfall is used to calculate the recovery amount.

	<b>As Adjusted</b>	285	855	140		
	<b>Deployed</b>	250	800	120		
	<b>Credit for Excess Deployment at Higher Tier</b>		-	-		
	<b>Excess (may satisfy lower obligations)</b>	-	-	-		
	<b>Shortfall (Results in Recovery)</b>	35	55	20		
<b>a</b>	<b>Total Shortfall</b>				110	Sum of Shortfall Amounts
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>				1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>				\$ 11,176	Ten-Year A-CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>				\$ 19,000,000	Annual A-CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>				\$ 4,223,588	$a*b*c + 10\% * d$

Example 2. A-CAM I recipient deploys to an excess number of 25/3 Mbps locations, but an insufficient number of 10/1 Mbps locations. The excess 25/3 Mbps locations partially offset the insufficient 10/1 Mbps locations.

		25/3 Mbps	10/1 Mbps	4/1 Mbps		
	<b>As Authorized</b>	300	900	125		
	<b>As Adjusted</b>	285	855	140		
	<b>Deployed</b>	310	800	140		
	<b>Credit for Excess Deployment at Higher Tier</b>		25	-		
	<b>Excess (may satisfy lower obligations)</b>	25	-	-		
	<b>Shortfall (Results in Recovery)</b>	-	30	-		
<b>a</b>	<b>Total Shortfall</b>				30	Sum of Shortfall Amounts
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>				1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>				\$ 11,176	Ten-Year A-CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>				\$ 19,000,000	Annual A-CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>				\$ 2,533,706	$a*b*c + 10\% * d$

Example 3. A-CAM I recipient deploys to the flexibility-adjusted number of 25/3 Mbps and 10/1 Mbps locations, but deploys to insufficient 4/1 Mbps locations.

		25/3 Mbps	10/1 Mbps	4/1 Mbps		
	<b>As Authorized</b>	300	900	125		
	<b>As Adjusted</b>	285	855	140		
	<b>Deployed</b>	285	855	100		
	<b>Credit for Excess Deployment at Higher Tier</b>		-	-		
	<b>Excess (may satisfy lower obligations)</b>	-	-	-		
	<b>Shortfall (Results in Recovery)</b>	-	-	40		
<b>a</b>	<b>Total Shortfall</b>				40	Sum of Shortfall Amounts
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>				1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>				\$ 11,176	Ten-Year A-CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>				\$ 19,000,000	Annual A-CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>				\$ 2,744,941	$a*b*c + 10\% * d$

## A-CAM II ILLUSTRATIVE EXAMPLES

Examples 4-6 are based on a hypothetical A-CAM II recipient that serves both Tribal and non-Tribal lands. Using its 5% flexibility, the A-CAM II recipient may deploy to 5% fewer 25/3 Mbps locations than identified in its authorization, but any reduction in fully funded locations is treated as if those locations were capped locations for deployment obligation purposes. Because of the hypothetical carrier's density, 25% of capped locations must be provided 4/1 Mbps service, and the remainder served on reasonable request. Its average support per location is \$13,333 (\$24 million authorized support over ten-year term divided by 1,800 Total Locations in Eligible Blocks), and its Total Relevant Support is \$24,000,000 (\$2.4 million Annual support times 10-year term).

	Total Non-Tribal and Tribal Annual Model-Based Support Offer	Total Non-Tribal and Tribal Eligible Locations	Total Non-Tribal and Tribal - Fully Funded - 25/3 Mbps Required	Total Non-Tribal and Tribal - Capped - 4/1 Required	Total Non-Tribal and Tribal - Capped - Reasonable Request	Total Tribal - Fully Funded - 25/3 Mbps Required	Total Tribal - Capped - 4/1 Mbps Required	Total Tribal - Capped - Reasonable Request
<b>As Authorized</b>	2,400,000	1,800	1,400	100	300	425	19	56
<b>5% Flexibility</b>			(70)			(21)		
<b>Treated as Capped (25% 4/1 Mbps due to Density)</b>				17	53		5	16
<b>As Adjusted</b>		1,800	1,330	117	353	404	24	72

*Example 4.* A-CAM II recipient exceeds its requirements for 25/3 Mbps and 4/1 Mbps service in the state generally, but has insufficient 25/3 Mbps deployment in Tribal lands. The shortfall in service on Tribal lands triggers universal service recovery.

		25/3 Mbps - Non-Tribal and Tribal	25/3 Mbps - Tribal	4/1 Mbps - Non-Tribal and Tribal	4/1 Mbps - Tribal		
	<b>As Authorized</b>	1,400	425	100	19		
	<b>As Adjusted</b>	1,330	404	117	24		
	<b>Deployed</b>	1,350	375	150	24		
	<b>Credit for Excess Deployment at Higher Tier</b>			20	-		
	<b>Excess (may satisfy lower obligations)</b>	20	-	53	0		
	<b>Shortfall (Results in Recovery)</b>	-	29	-	-		
<b>a</b>	<b>Shortfall ("Relevant Locations")</b>					29	Greater of Tribal-only or Total Shortfall
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>					1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>					\$ 13,333	Ten-Year A- CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>					\$ 24,000,000	Annual A- CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>					\$ 3,130,800	a*b*c + 10% * d

*Example 5.* A-CAM II recipient has shortfalls in 25/3 Mbps deployment generally, and on Tribal lands specifically. Because the overall shortfall is greater than the shortfall on Tribal lands, the overall shortfall is used to calculate the recovery amount.

		25/3 Mbps - Non-Tribal and Tribal	25/3 Mbps - Tribal	4/1 Mbps - Non-Tribal and Tribal	4/1 Mbps - Tribal		
	<b>As Authorized</b>	1,400	425	100	19		
	<b>As Adjusted</b>	1,330	404	117	24		
	<b>Deployed</b>	1,200	375	120	24		
	<b>Credit for Excess Deployment at Higher Tier</b>			-	-		
	<b>Excess (may satisfy lower obligations)</b>	-	-	3	0		
	<b>Shortfall (Results in Recovery)</b>	130	29	-	-		
<b>a</b>	<b>Shortfall ("Relevant Locations")</b>					130	Greater of Tribal-only or Total Shortfall
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>					1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>					\$ 13,333	Ten-year A- CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>					\$24,000,000	Annual A- CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>					\$ 5,676,000	a*b*c + 10% * d

*Example 6.* A-CAM II recipient exceeds its 25/3 Mbps obligations generally, but fails to meet both its general 4/1 Mbps deployment obligation, and its 25/3 Mbps deployment obligation for Tribal lands. Because it has a shortfall for 25/3 Mbps deployment in Tribal lands and also a shortfall in 4/1 Mbps deployment in its service area as a whole, both shortfalls apply in the calculation of the recovery amount.

		25/3 Mbps - Non-Tribal and Tribal	25/3 Mbps - Tribal	4/1 Mbps - Non-Tribal and Tribal	4/1 Mbps - Tribal		
	<b>As Authorized</b>	1,400	425	100	19		
	<b>As Adjusted</b>	1,330	404	117	24		
	<b>Deployed</b>	1,335	400	100	24		
	<b>Credit for Excess Deployment at Higher Tier</b>			5	-		
	<b>Excess (may satisfy lower obligations)</b>	5	-	-	0		
	<b>Shortfall (Results in Recovery)</b>	-	4	12	-		
<b>a</b>	<b>Shortfall ("Relevant Locations")</b>					16	Greater of Tribal-only or Total Shortfall
<b>b</b>	<b>Recovery Factor per 54.320(d)(2)</b>					1.89	From Rule
<b>c</b>	<b>Average Support per Location</b>					\$ 13,333	Ten-Year A- CAM Support/Total Eligible Locations
<b>d</b>	<b>Total Relevant Support over Term</b>					\$24,000,000	Annual A- CAM Support * 10 years
<b>e</b>	<b>Recovery Amount</b>					\$ 2,803,200	a*b*c + 10% * d