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**DA 23-758**

**SMALL ENTITY COMPLIANCE GUIDE**

**Enhanced Alternative Connect America Cost Model**

**FCC 23-60**

**WC Docket Nos. 10-90, 14-58, 09-197, 16-271**

**RM-11868**

**Adopted July 23, 2023**

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although the Commission has attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of this Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in the Commission's approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct your comments, recommendations, or calls for further assistance to the Commission's Consumer Center:

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## **I. OBJECTIVES OF THE PROCEEDING**

On July 24, 2023, the Commission released a Report and Order establishing the Enhanced Alternative-Connect America Cost Model (A-CAM) program.<sup>1</sup> The Commission adopted the Enhanced A-CAM program as a voluntary path for supporting the widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.

The Commission adopted deployment and service obligations to align deployment with the requirements of the Infrastructure Investment and Jobs Act (Infrastructure Act),<sup>2</sup> encourage the deployment of affordable broadband service, and allow the Commission to monitor compliance with the program rules. The Commission extended the term of support for electing carriers by ten years beyond the remaining five years in the current A-CAM term, for a total of fifteen years. The Commission also set a methodology for determining support amounts for locations without 100/20 Mbps broadband service within a potential budget of no more than \$1.27 billion annually, or no more than \$1.33 billion annually if certain conditions are met, using an updated version of the A-CAM. Finally, the Commission made eligible for the Enhanced A-CAM program all current A-CAM recipients as well as rate-of-return carriers eligible to receive legacy support and adopted a voluntary election process for eligible carriers.

In adopting this program, the Commission furthered its long-standing goals by promoting the universal availability of voice and broadband networks, while also taking measures to minimize the burden on the nation's ratepayers. The Commission also adopted requirements for the Enhanced A-CAM program to complement existing federal, state, and local funding programs, so that broadband funding can be used efficiently to maximize the deployment of high-quality broadband service across the United States.

## **II. COMPLIANCE REQUIREMENTS**

Current A-CAM I or A-CAM II participants, as well as rate-of-return carriers that are currently eligible to receive legacy support, will have the opportunity to voluntarily elect, on a state-level basis, to receive Enhanced A-CAM support as calculated by the A-CAM. Any eligible carrier that does not elect support pursuant to this program will continue to receive support pursuant to the terms and conditions of its existing support mechanism. We describe the requirements for Enhanced A-CAM below.

### **A. *Election, 47 CFR § 54.311(a).***

Each eligible carrier interested in participating in Enhanced A-CAM must take action to accept an offer and identify the technologies it intends to use to meet the program requirements.<sup>3</sup> The Wireline Competition Bureau will release a public notice providing procedures for how and by when the offer must be accepted.

### **B. *Service Obligation, 47 CFR 54.308(a)(3), 47 CFR § 54.313(f)(1)(i).***

Each Enhanced A-CAM carrier must commercially offer broadband and standalone facilities-based voice service meeting the following requirements to 100 percent of locations in its study areas within the state:<sup>4</sup>

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<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (Jul. 23, 2023) (*Enhanced A-CAM Order*).

<sup>2</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act).

<sup>3</sup> 47 CFR § 54.311(a); *Enhanced A-CAM Order* at 42-43, paras. 98-100.

<sup>4</sup> 47 CFR § 54.308(a)(3).

- *Speed*: Offer broadband service at actual speeds of at least 100 Mbps downstream/20 Mbps upstream to 100 percent of locations in its study areas within the state by the end of 2028.<sup>5</sup> The Wireline Competition Bureau will provide a list of Enhanced A-CAM required locations concurrently with the offer of Enhanced A-CAM support and will update the list to reflect any additional information related to locations, broadband coverage, or enforceable commitments determined to have existed at the time of the offer.<sup>6</sup>
- *Latency*: Offer service with roundtrip latency of 100 milliseconds or less.<sup>7</sup>
- *Data Usage*: Offer usage allowances reasonably comparable to those available through comparable offerings in urban areas.<sup>8</sup>
- *Reasonable Rates*: Offer service at rates that are reasonably comparable to rates for comparable offerings in urban areas.<sup>9</sup> For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark that the Wireline Competition Bureau announces annually.<sup>10</sup>

**C. *Service Milestones, 47 CFR § 54.311(d)(4).***

Enhanced A-CAM carriers must complete deployment to:<sup>11</sup>

- 50% of required locations by December 31, 2026
- 75% of required locations by December 31, 2027
- 100% of required locations by December 31, 2028

**D. *Failure to Meet Buildout Obligations, 47 CFR § 54.320(c) & (d).***

Enhanced A-CAM carriers that do not meet their service milestones will be subject to certain reporting requirements, support reductions, and even possible recovery of support.<sup>12</sup> The non-compliance measures are detailed in section 54.320(d) of the Commission's rules, and the measures that will apply will depend on the size of the compliance gap (i.e., the number of required locations that the ETC fails to build out to by the applicable deadline).<sup>13</sup>

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<sup>5</sup> *Id.* Enhanced A-CAM required locations are those locations identified in the National Broadband Map within the carrier's service area where voice and terrestrial broadband services of speeds 100 Mbps downstream/20 Mbps upstream or faster are not yet available or lack an enforceable commitment for deployment of such broadband service. In the context of Enhanced A-CAM, an enforceable commitment exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding. *Id.*

<sup>6</sup> 47 CFR § 54.308(a)(3)(i).

<sup>7</sup> *Id.* § 54.313(f)(1)(i); *Enhanced A-CAM Order* at 18, para. 37.

<sup>8</sup> 47 CFR § 54.313(f)(1)(i); *Enhanced A-CAM Order* at 27, para. 59.

<sup>9</sup> *Enhanced A-CAM Order* at 26-27, para. 59.

<sup>10</sup> See FCC, Urban Rate Survey Orders and Public Notices, <https://www.fcc.gov/general/urban-rate-survey-orders-and-public-notice> (last visited Aug. 16, 2023).

<sup>11</sup> 47 CFR § 54.311(d)(4).

<sup>12</sup> *Id.* § 54.320(c) & (d); *Enhanced A-CAM Order* at 24, para. 50.

<sup>13</sup> 47 CFR § 54.320(d).

**E. Performance Testing, 47 CFR § 54.313(a)(6).**

Enhanced A-CAM carriers remain subject to the same performance testing requirements as all other high-cost support recipients.<sup>14</sup> The Commission requires that high-cost support recipient annually test and report the speed and latency of a random sample of locations. Carriers that fail to meet the required performance standards will be subject to additional reporting and may have a percentage of universal service support withheld/recovered based on the level of non-compliance.<sup>15</sup>

**F. BEAD Program Coordination Requirements, 47 CFR § 54.313(f)(6)(i).**

As a condition of receiving Enhanced A-CAM support, recipients must make efforts to avoid duplicative funding.<sup>16</sup>

- Enhanced A-CAM carriers must participate in good faith in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine eligible locations,<sup>17</sup> and to otherwise coordinate with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding.
- Enhanced A-CAM carriers may not receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified by the Commission or Wireline Competition Bureau, that supports broadband deployment for those locations for which they are receiving Enhanced A-CAM support.

**G. Affordability Requirement, 47 CFR § 54.313(f)(6)(ii).**

Enhanced A-CAM carriers must participate in the Affordable Connectivity Program (ACP) as a condition of receiving Enhanced A-CAM support.<sup>18</sup> If a carrier accepts the Enhanced A-CAM offer and subsequently elects not to participate or ceases to participate in ACP or a substantially similar successor program, the carrier will be considered in default of its obligations.<sup>19</sup> Enhanced A-CAM carriers must also make available Lifeline service to qualifying low-income consumers.<sup>20</sup>

**H. Cybersecurity and Supply Chain Risk Plans, 47 CFR § 54.308(e).**

Enhanced A-CAM carriers must implement operational cybersecurity and supply chain risk management plans by January 1, 2024.<sup>21</sup> They must submit such plans to the Universal Service Administrative Company (USAC), and certify they have done so, by January 2, 2024, or within 30 days of approval under the Paperwork Reduction Act, whichever is later.<sup>22</sup>

Cybersecurity risk management plans must reflect the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity and must reflect an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance

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<sup>14</sup> *Id.* § 54.313(a)(6); *Enhanced A-CAM Order* at 24, para. 51.

<sup>15</sup> *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018).

<sup>16</sup> 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 24-25, paras. 52-53.

<sup>17</sup> More information about BEAD challenge processes is available at <https://www.internetforall.gov/bead-challenge-process-policy>.

<sup>18</sup> 47 CFR § 54.313(f)(6)(ii); *Enhanced A-CAM Order* at 25, para. 55.

<sup>19</sup> *Enhanced A-CAM Order* at 26, para. 57.

<sup>20</sup> *Id.* at 27, para. 59.

<sup>21</sup> 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

<sup>22</sup> 47 CFR § 54.308(e)(2); *Enhanced A-CAM Order* at 47, para. 109.

Goals and Objectives or the Center for Internet Security Critical Security Controls.<sup>23</sup> Carriers' supply chain risk management plans must incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161.<sup>24</sup> Enhanced A-CAM carriers can consult existing federal government resources designed to share supply chain security risk information with trusted communications providers and suppliers to facilitate the creation of cybersecurity and supply-chain risk management plans.<sup>25</sup>

If an Enhanced A-CAM carrier makes a substantive modification to its cybersecurity or supply chain risk management plan, that carrier must submit its updated plan to USAC within 30 days of making that modification.<sup>26</sup> A modification to a cybersecurity or supply chain risk management plan will be considered as substantive if at least one of the following conditions apply:<sup>27</sup>

- There is a change in the plan's scope, including any addition, removal, or significant alteration to the types of risks covered by the plan (e.g., expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);
- There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);
- There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);
- There is a shift in the threat landscape prompting the organization to recognize the emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;
- Any updates made to comply with new cybersecurity regulations, standards, or laws;
- Significant changes in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or
- Any large-scale technological changes, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

The Wireline Competition Bureau will direct USAC to withhold 25 percent of the Enhanced A-CAM carrier's monthly support if the Enhanced A-CAM carrier does not timely submit a certification or its plans to USAC by the required deadline, or if at any time during the support term the Enhanced A-CAM carrier does not have in place operational cybersecurity and supply chain risk management plans

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<sup>23</sup> 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47-48, para. 111.

<sup>24</sup> 47 CFR § 54.308(e)(5). *See also* Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161 <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8276.pdf> (last visited Aug. 17, 2023).

<sup>25</sup> *Enhanced A-CAM Order* at 49, para. 114. *See also* FCC Small Business Cyber Planner 2.0, <https://www.isao.org/resource-library/government-programs/fcc-small-business-cyber-planner-2-0/> (last visited Aug. 16, 2023); *see also* Federal Communications Commission, *Cybersecurity for Small Businesses*, <https://www.fcc.gov/communications-business-opportunities/cybersecurity-small-businesses> (last visited Aug. 16, 2023); *see also* Cybersecurity and Infrastructure Security Agency, *CISA Cybersecurity Awareness Program Small Business Resources*, <https://www.cisa.gov/publication/stopthinkconnect-small-business-resources> (last visited Aug. 16, 2023); ISAO Standards, National Institute of Standards and Technology (NIST), *Planning Tools & Workbooks*, <https://www.nist.gov/itl/smallbusinesscyber/planning-guides/planning-tools-workbooks> (last visited Aug. 16, 2023).

<sup>26</sup> 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48, para. 112.

<sup>27</sup> 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

meeting the Commission's requirements.<sup>28</sup> Once the carrier comes into compliance, USAC will stop withholding support, and the carrier will receive all of the support that has been withheld.<sup>29</sup>

**I. Tribal Government Engagement, 47 CFR § 54.313(a)(5).**

Enhanced A-CAM carriers must demonstrate on an annual basis that they have engaged with Tribal governments in their supported areas on a range of issues, including compliance with local rights of way, land use permitting facilities siting, and environmental and cultural preservation review processes, as well as Tribal business and licensing requirements, that are necessary for a carrier to obtain before fulfilling its deployment and service obligations.<sup>30</sup>

Enhanced A-CAM carriers must also initiate engagement with any relevant Tribal governments within 90 days of being extended an Enhanced A-CAM offer.<sup>31</sup> The Commission expects that carriers that intend to accept Enhanced A-CAM offers will act in good faith to provide the relevant Tribe(s) with an opportunity to consent to the Enhanced A-CAM carrier's deployment of broadband in the Tribal area.<sup>32</sup> The Commission expects that carriers that intend to accept Enhanced A-CAM offers will take reasonable steps necessary to obtain Tribal consent meeting the BEAD Program requirements in time for states and other eligible entities to conduct their challenge processes to identify locations that are eligible for BEAD Program funding.<sup>33</sup> If a state awards BEAD Program funds to another service provider to serve locations subject to an Enhanced A-CAM authorization, the Enhanced A-CAM carrier and the Tribal government can notify the Wireline Competition Bureau that they mutually agree to forego the Enhanced A-CAM deployment obligation for those locations, and the Wireline Competition Bureau will adjust the Enhanced A-CAM recipient's support and deployment obligations.<sup>34</sup>

**J. Tariff Requirements for Legacy Rate-of-Return Carriers**

Legacy rate-of-return carriers authorized to receive Enhanced A-CAM support will have requirements related to tariffs.<sup>35</sup> Enhanced A-CAM recipients must exit the NECA Common Line pool, although they have the option of continuing to use NECA to tariff their Common Line and consumer broadband-only loops (CBOL) charges.<sup>36</sup> Such carriers must coordinate with NECA on making any required tariff filings in order to ease the administrative burden associated with implementation of any changes.<sup>37</sup>

**III. RECORDKEEPING AND REPORTING REQUIREMENTS**

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<sup>28</sup> 47 CFR § 54.308(e)(3)(i),(ii); *Enhanced A-CAM Order* at 47, para. 109.

<sup>29</sup> 47 CFR § 54.308(e)(3)(iii).

<sup>30</sup> *Id.* § 54.313(a)(5); *Enhanced A-CAM Order* at 44, para. 103.

<sup>31</sup> *Enhanced A-CAM Order* at 44, para. 104.

<sup>32</sup> *Id.* at 45, para. 104.

<sup>33</sup> *Id.* at 45, para. 104. In engaging with Tribal governments, Enhanced A-CAM carriers must be aware that the BEAD Program will not recognize the acceptance of an Enhanced A-CAM offer as an enforceable commitment for the deployment of qualifying broadband, "unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location." *Enhanced A-CAM Order* at 45, para. 104; Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO) (May 13, 2022), at 37 n.52, 48 n.70, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>34</sup> *Enhanced A-CAM Order* at 45, para. 105.

<sup>35</sup> *Enhanced A-CAM Order* at 39, para. 91.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

To comply with Broadband Deployment Reporting (47 CFR § 54.316) and Annual Reporting (47 CFR § 54.313), each Enhanced A-CAM recipient must:

- By March 1 of each year, submit in the High-Cost Universal Broadband (HUBB) portal information regarding the locations to which the carrier is offering broadband service in satisfaction of its public interest obligations. This information includes latitude/longitude, address information, and the date of deployment.<sup>38</sup>
- By March 1 of each year following a service milestone, submit in the HUBB portal a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations to the required number of locations.<sup>39</sup>
- All Enhanced A-CAM recipients must continue to submit an annual FCC Form 481, as already required, by July 1,<sup>40</sup> which must also include:
  - A certification that the recipient participated, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine the eligibility of locations for the BEAD Program, and that they otherwise coordinated with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding;<sup>41</sup>
  - A certification that the recipient has complied with the obligation not to receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified by the Commission or Bureau, that supports broadband deployment for those locations for which they are receiving Enhanced A-CAM support;<sup>42</sup>
  - A description and certification that in the previous year, they continued to participate in the Affordable Connectivity Program or any substantially similar successor program, as required by the terms of their Enhanced A-CAM offers;<sup>43</sup> and
  - A certification, that they have maintained their cybersecurity and supply chain risk management plans pursuant to section 54.308(e) of the Commission's rules, as well as report whether they filed any substantive modifications pursuant to section 54.308(e)(6) in the prior year, including the date they filed any substantive modifications.<sup>44</sup>

Enhanced A-CAM recipients remain subject to all other reporting and record retention requirements currently applicable to all high-cost support recipients, including the requirement to retain all records for at least 10 years from receipt of funding.<sup>45</sup> They also remain subject to random compliance audits and other investigations.<sup>46</sup>

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<sup>38</sup> 47 CFR § 54.316(a)(9); *Enhanced A-CAM Order* at 23, para. 49 n.158.

<sup>39</sup> 47 CFR § 54.316(b)(8).

<sup>40</sup> 47 CFR § 54.313(a), (f); *Enhanced A-CAM Order* at 27, para. 59.

<sup>41</sup> 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 24-25, para. 52.

<sup>42</sup> 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 25, para. 53.

<sup>43</sup> 47 CFR § 54.313(f)(6)(ii); *Enhanced A-CAM Order* at 26, para. 57.

<sup>44</sup> 47 CFR § 54.313(f)(6)(iii); *Enhanced A-CAM Order* at 49, para. 112.

<sup>45</sup> 47 CFR § 54.320(b).

<sup>46</sup> *Id.* § 54.320(a).



#### **IV. IMPLEMENTATION DATE**

The rules in the *Enhanced A-CAM Order* shall become effective August 17, 2023, with the exception of the following rules, which require the Office of Management and Budget's (OMB) approval under the Paperwork Reduction Act: 47 CFR §§ 54.308(e)(2), 54.308(e)(6), 54.313(f)(1)(i), 54.313(f)(6)(i), 54.313(f)(6)(ii), 54.313(f)(6)(iii), 54.316(a)(9), and 54.316(b)(8). These rules shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

#### **V. INTERNET LINKS**

A copy of the *Enhanced A-CAM Order* is available at: <https://www.fcc.gov/document/fcc-adopts-plan-bring-reliable-broadband-rural-communities>.

A copy of the Federal Register Summary of the *Enhanced A-CAM Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2023-08-17/pdf/2023-16674.pdf>.