

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Connect America Fund: A National Broadband ) WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service )
Support )
)

ORDER

Adopted: May 3, 2024

Released: May 3, 2024

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives the Commission’s rules, sua sponte, to the limited extent provided herein, to include in West Side Telephone Company’s (West Side’s) Enhanced Alternative Connect America Model (Enhanced A-CAM) offer locations that would otherwise have been treated as served by a competitor due to a federally enforceable commitment by ClearFiber. As we explain in more detail below, this limited waiver applies only to the locations within West Side’s West Virginia study area where ClearFiber, Inc., is no longer subject to a grant from the Rural Utilities Service to deploy broadband.1 This waiver reflects coordination with our sister federal agencies and state broadband offices to ensure the efficient use of federal broadband funding to provide access to all Americans.

II. BACKGROUND

2. The Commission adopted the Enhanced A-CAM mechanism on July 24, 2023, as a voluntary path for supporting widespread deployment of 100/20 Mbps or better 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.2 In order to avoid duplicative spending, the Commission directed the Bureau to “coordinate the areas under consideration for Enhanced A-CAM offers with other federal agencies, e.g., the Rural Utilities Service, NTIA, and the Department of Treasury, and to remove from eligibility locations already subject to enforceable commitments to deploy 100/20 or faster broadband service [at the time of the offer].”3 Pursuant to the Enhanced A-CAM Order, locations that were, as of the date of the Enhanced A-CAM offer, subject to a federally enforceable commitment for a broadband provider to deploy 100/20 Mbps or faster service were treated as served for purposes of Enhanced A-CAM obligations and support.4 Recognizing that “[c]omplete information on federal commitments will

1 See USDA Rural Development has approved a grant of \$3,000,000.00, USDA Rural Development, U.S. Department of Agriculture, https://www.rd.usda.gov/sites/default/files/CCProjectSummariesWestVirginia.pdf, at 2.

2 See Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (July 24, 2023) (Enhanced A-CAM Order).

3 Enhanced A-CAM Order at 20, para. 42; 47 CFR § 54.308(a)(3)(i).

4 Id.

likely not be available in the National Broadband Funding Map at the time Enhanced A-CAM offers are made or elected,” the Commission directed the Bureau and the Office of Economics and Analytics to adjust carriers’ lists of required deployment locations and support to reflect improvements in data no later than December 31, 2025.<sup>5</sup>

3. In September 2019, ClearFiber was awarded a Community Connects Grant from the Rural Utilities Service (RUS) to deploy broadband service in Monongalia County, West Virginia.<sup>6</sup> The area for this grant partially overlapped the service area of West Side Telephone, an incumbent local exchange carrier that subsequently elected Enhanced A-CAM. As a result, locations in that portion of West Side Telephone’s service area were treated as if they were served by a competitor. Under Enhanced A-CAM, West Side therefore would not receive support for these locations and would have no obligation to deploy 100/20 Mbps or faster service to them.

4. RUS has recently determined that ClearFiber would not be able to complete its deployment obligations, and reduced ClearFiber’s grant accordingly, resulting in some West Virginia locations no longer being funded through RUS.<sup>7</sup> Therefore, approximately 180 locations within West Side Telephone’s service area that were treated as served by a competitor when the Commission announced Enhanced A-CAM offers are no longer subject to a federally enforceable commitment.<sup>8</sup>

### III. DISCUSSION

5. After consultation with West Side Telephone, RUS, the National Telecommunications and Information Administration (NTIA), and the West Virginia State Office of Broadband, the Bureau concludes that the public interest favors including those locations which are no longer subject to an enforceable commitment by ClearFiber within Enhanced A-CAM. West Side Telephone has stated that it will accept Enhanced A-CAM support for these locations if they are included in the program.<sup>9</sup> Accordingly, the Bureau waives the Commission’s rules as necessary to provide that locations subject to ClearFiber’s enforceable commitment at the time of the Enhanced A-CAM offer that are no longer receiving RUS funding will not be treated as “competitor-served” due to that enforceable commitment. Enhanced A-CAM support will be provided for those locations consistent with the Enhanced A-CAM rules, and West Side Telephone will be required to deploy broadband service to those locations.

6. Generally, the Commission’s rules may be waived for good cause shown.<sup>10</sup> Waiver of the Commission’s rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.<sup>11</sup> We believe that both circumstances are present here.

7. Special circumstances are present because of the removal of ClearFiber’s enforceable commitment to complete its deployment obligation under RUS’s Community Connects Grant in certain locations in West Virginia. At the time of the Enhanced A-CAM offer, these locations within West Side Telephone’s service area were subject to an enforceable commitment, so treating these locations as served

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<sup>5</sup> See *Enhanced A-CAM Order*, at 21, 33-34, paras. 43, 77.

<sup>6</sup> See <https://www.rd.usda.gov/sites/default/files/CCProjectSummariesWestVirginia.pdf>, at 2.

<sup>7</sup> FCC National Broadband Map, Federal Communications Commission, <https://broadbandmap.fcc.gov> (Broadband Funding Map).

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

<sup>9</sup> West Side Telephone has accepted an offer of Enhanced A-CAM support for these locations if the Commission makes them eligible.

<sup>10</sup> 47 CFR § 1.3.

<sup>11</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

by a competitor and removing them from the list of Enhanced A-CAM eligible locations worked to conserve limited federal resources. The removal of the enforceable commitment in these locations was an unanticipated change in circumstances that, had it occurred prior to the Enhanced A-CAM offer, would have made the affected locations eligible for Enhanced A-CAM. Moreover, consistent with the schedule set forth by the Commission, the Bureau's process to finalize Enhanced A-CAM deployment obligations and support amounts for electing carriers is still ongoing. We further note that, in light of these changed circumstances and the absence of an enforceable commitment in these locations, West Side has agreed to provide high-speed broadband service to the locations ClearFiber had previously committed to serve using RUS funding. Changing the scope of West Side's offer at this time, therefore, would not harm West Side. In this scenario, a waiver of our rule removing areas subject to an enforceable commitment from inclusion in Enhanced A-CAM is warranted.

8. The public interest would also be served by such a waiver. Granting the waiver will result in broadband deployment with no impact to West Virginia's BEAD funding. Without such a waiver, neither ClearFiber nor West Side Telephone would receive support to deploy high-speed broadband service to the affected locations, which would not serve the public interest. Absent a waiver, West Virginia would likely be required to allocate Broadband Equity, Access, and Deployment Program (BEAD) funding to facilitate deployment to the locations ClearFiber had previously committed to serve. By granting a waiver and allowing West Side to receive Enhanced A-CAM support for those locations, West Virginia will be able to more efficiently utilize its limited BEAD funding and facilitate deployment in areas that are not covered by a different state or federal program, which is consistent with Enhanced A-CAM's goals.<sup>12</sup> Accordingly, the public interest is served by making the listed locations eligible for Enhanced A-CAM support and obligations, consistent with the remainder of the Commission's rules governing Enhanced A-CAM.

9. Moreover, the waiver will not significantly increase the budget for Enhanced A-CAM. Predicted Enhanced A-CAM support is below the budget approved by the Commission. Making these locations<sup>13</sup> eligible for Enhanced A-CAM support will minimally increase the program's expenditures, however, the expenditures will still remain below the program's budget. Accordingly, making these locations eligible for Enhanced A-CAM is in the public interest.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that 47 CFR § 54.308(a)(3)(i) is WAIVED to the limited extent described herein.

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<sup>12</sup> *Enhanced A-CAM Order* at 43, para. 100 (noting the goal of "maximiz[ing] the deployment of high-quality broadband service by helping states and other eligible entities set allocations for the BEAD Program and further the efficient use of federal broadband funding, including additional programs funded by other federal agencies.").

<sup>13</sup> The Broadband Funding Map already indicates that this area is included within Enhanced A-CAM. In addition, we will include the locations in this area when the Enhanced A-CAM Interim Eligible Locations List is next updated. See *Enhanced A-CAM, Rate of Return Resources*, Federal Communications Commission, <https://www.fcc.gov/general/rate-return-resources>.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau