



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

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## WIRELINE COMPETITION BUREAU ANNOUNCES RURAL BROADBAND EXPERIMENTS SUPPORT FOR 3 PROVISIONALLY SELECTED BIDS IS READY TO BE AUTHORIZED

**BARC Electric Cooperative and Northeast Rural Services, Inc. Must Submit Letters of Credit and Legal Counsel's Opinion Letters by October 14, 2015**

**WC Docket No. 10-90**

**WC Docket No. 14-259**

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that it is ready to authorize rural broadband experiments support for the provisionally selected bids identified in the Attachment of this Public Notice. The bids that are ready to be authorized cover 292 census blocks in two states for a total of \$2,821,652.85 in support. To be authorized to receive the support listed in the Attachment, the provisionally selected bidders identified in that attachment are required to submit at least one acceptable irrevocable stand-by letter of credit (LOC) and Bankruptcy Code opinion letter from their legal counsel in accordance with the instructions provided below by the applicable deadline – **October 14, 2015 at 11:59 p.m. ET.**<sup>1</sup>

On December 5, 2014, the Bureau announced the first round of provisionally selected bidders for the rural broadband experiments.<sup>2</sup> On March 4, 2015, the Bureau announced a second round of provisionally selected bidders.<sup>3</sup> Within 10 business days of the public notice announcing the provisionally selected bidders, these entities were required to submit technical and financial information, including the most recent three consecutive years of audited financial statements, a description of the technology and system design that will be used to deliver voice and broadband service, including a network diagram certified by a professional engineer, and for entities proposing to use wireless technologies, a description of spectrum access requirements.<sup>4</sup> Within 60 days of the public notice, provisionally selected bidders were required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by LOC.<sup>5</sup> And within 90 days of the public notice, provisionally selected bidders were required to submit appropriate documentation of their eligible telecommunications carrier

<sup>1</sup> *Connect America et al.*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788-93, paras. 54-71 (2014) (*Rural Broadband Experiments Order*).

<sup>2</sup> *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (Wireline Comp. Bur. 2014).

<sup>3</sup> *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 2045 (Wireline Comp. Bur. 2015).

<sup>4</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, paras. 52, 54.

<sup>5</sup> *Id.* at 8787-88, para. 54.

(ETC) designations in all of the areas for which they will receive support and certify that the information submitted is accurate.<sup>6</sup>

For each of the provisionally selected bidders identified in the Attachment, the Bureau has reviewed the submitted materials. Based on our review, the Bureau is prepared to authorize support for the provisionally selected bids identified in the Attachment, subject to submission of the required LOC(s) and Bankruptcy Code opinion letter(s) for the identified bids.

*Technical and Financial Information.* We find that the provisionally selected bidders listed in the Attachment have submitted the required technical and financial information for the identified bids. Based on our review of these materials, we conclude that we are ready to authorize these bidders.<sup>7</sup>

*LOC Commitment Letter.* We find the provisionally selected bidders listed in the Attachment have submitted letters from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to that entity.<sup>8</sup> We note that in a separate order, the Bureau found good cause to waive the May 4, 2015 letter of credit commitment letter filing deadline for Northeast Rural Services, Inc. (Northeast Rural Services).<sup>9</sup>

*ETC Designation.* We find that each of the provisionally selected bidders listed in the Attachment has submitted documentation that demonstrates that it has obtained ETC designation from the relevant state authority or the Commission to serve the census blocks covered by the provisionally selected bids listed in the Attachment. We note that in its order designating BARC Electric Cooperative's wholly-owned subsidiary BARConnects, LLC (BARConnects) as an ETC, the Bureau found good cause to waive the June 2, 2015 deadline for submitting proof of ETC designation for BARConnects.<sup>10</sup>

*Challenge Process.* In the *Rural Broadband Experiments Application Public Notice*, the Bureau noted that any census blocks that were deemed served by an unsubsidized competitor in the Phase II Challenge Process would be deemed ineligible for rural broadband experiments support, and the provisionally selected bidder that proposed to serve that census block would have its support reduced proportionally.<sup>11</sup> A census block included in one of Northeast Rural Services bids identified in the Attachment was deemed to be served by an unsubsidized competitor in the Phase II challenge process.<sup>12</sup> The amount of support that Northeast Rural Services will receive if authorized to begin receiving support for this bid has been correspondingly reduced by \$2,665.15.

*LOC and Opinion Letter Requirement.* No later than 10 business days after the release of this Public Notice, the provisionally selected bidders identified in the Attachment must submit at least one irrevocable stand-by signed LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix A of the *Rural Broadband Experiments Order* by a bank that is acceptable to the

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<sup>6</sup> *Id.* at 8778-79, 8788, paras. 22-23, 54.

<sup>7</sup> *Id.* at 8787, para. 52.

<sup>8</sup> *Id.* at 8787, para. 54.

<sup>9</sup> *Connect America Fund, Rural Broadband Experiments*, WC Docket No. 10-90, 14-259, Order, DA 15-1090 (Wireline Comp. Bur. rel. Sept. 28, 2015).

<sup>10</sup> *Petition of BARConnects, LLC for FCC Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia et al.*, WC Docket No. 14-259 et al., Order, DA 15-1081, para. 22 (Wireline Competition Bur. rel. Sept. 25, 2015).

<sup>11</sup> *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, Public Notice, 29 FCC Rcd 10016, 10035-36, paras. 64-66 (Wireline Comp. Bur. 2014).

<sup>12</sup> *See Connect America Fund, Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Order, 30 FCC Rcd 2718 (Wireline Comp. Bur. 2015).

Commission.<sup>13</sup> The Bureau previously released information regarding LOCs that provisionally selected bidders may find helpful in obtaining their LOCs.<sup>14</sup> At a minimum, the LOC must be equal to the amount of the first disbursement of support.<sup>15</sup>

Provisionally selected winners may submit a separate LOC for each of their bids identified in the Attachment, or may submit one LOC that covers all of their bids identified in the Attachment. Note that the LOC attached in Appendix A of the *Rural Broadband Experiments Order* does not permit partial draws.<sup>16</sup> Thus, if a provisionally selected winner submits one LOC and one opinion letter that covers all of its bids, those bids will be considered one project for determining whether the provisionally selected winner has defaulted. If the provisionally selected winner defaults on one of the projects and does not cure the default within the allotted timeframe, the Bureau will draw on the LOC for all of the support that has been disbursed for all of the bids covered by the LOC.<sup>17</sup>

The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.<sup>18</sup> Those requirements vary for U.S. banks and non-U.S. banks. In addition, a provisionally selected bidder is required to provide with its LOC(s) at least one opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat, under section 541 of the Bankruptcy Code, the LOC or proceeds of the LOC as property of the provisionally selected bidder's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiments recipient-related entity requesting issuance of the LOC.<sup>19</sup> If a provisionally selected bidder chooses to submit a separate LOC for each bid, it may submit an opinion letter for each of its bids, or may submit an opinion letter that covers all of its LOCs. The opinion letter(s) must not be dated at an earlier date than the issue date of the LOC(s) and should reference the specific LOC(s).

After reviewing the LOCs and opinion letters submitted by the provisionally selected bidders identified in this Public Notice, the Bureau will authorize support for the specific provisionally selected bidders for which all requirements, including submission of the LOC(s) and opinion letter(s), have been met.<sup>20</sup>

*Instructions for Submission of Letter of Credit and Opinion Letter.* Provisionally selected bidders identified in the Attachment of this Public Notice must submit at least one LOC and one opinion letter for the provisionally selected bids identified in the Attachment. The LOC(s) and opinion letter(s) must reference the relevant study area code listed in the Attachment.

The original of the LOC(s) and opinion letter(s) must be submitted to the Universal Service Administrative Company by the applicable deadline – **October 14, 2015 at 11:59 p.m. ET**, at the following address: Rural Broadband Experiments LOC, USAC, 2000 L Street NW, Suite 200, Washington, DC 20036. We recommend that each provisionally selected bidder send the original of the

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<sup>13</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, 8805, para. 54, App. A.

<sup>14</sup> See *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket Nos. 10-90 and 14-259, Public Notice, 29 FCC Rcd 333 (Wireline Comp. Bur. 2015).

<sup>15</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8791, para. 62.

<sup>16</sup> *Id.* at 8806, App. A.

<sup>17</sup> *Id.* at 8798-800, paras. 88-96 (explaining the non-compliance measures for the rural broadband experiments).

<sup>18</sup> *Id.* at 8790, para. 59.

<sup>19</sup> *Id.* at 8789, para. 58.

<sup>20</sup> *Id.* at 8788, para. 54.

LOC(s) and the opinion letter(s) by means of delivery requiring signature. These documents may be sent to the attention of Joanne Kim.

A copy of the LOC(s) and opinion letter(s) must also be uploaded to the FCC Form 5620 by the applicable deadline. An applicant must provide this required information in two attachments. The LOC attachment should be designated as “Letter of Credit” and the opinion letter attachment should be designated as “Opinion Letter.” Provisionally selected bidders do not need to upload interim drafts of the LOC(s) and opinion letter(s) to FCC Form 5620 after they have upload their initial LOC(s) and opinion letter(s) by the deadline, but they should submit the final version of their LOC(s) and opinion letter(s) to FCC Form 5620 after they have received approval.

Any provisionally selected bidder that fails to meet this deadline will no longer be eligible to receive rural broadband experiments support for the relevant bids.

For additional information on this proceeding, contact Heidi Lankau ([Heidi.Lankau@fcc.gov](mailto:Heidi.Lankau@fcc.gov)) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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**Attachment**  
**Ready to Authorize Provisionally Selected Bidders and Bids**

Category One

| <b>Bidder Name</b>                           | <b>State</b> | <b>Selected Bid Project ID</b> | <b>Selected Bid Amount</b> | <b>Census Blocks Covered by Selected Bid</b> | <b>Study Area Code</b> |
|--|--------------|--------------------------------|----------------------------|--|------------------------|
| BARC Electric Cooperative                    |              |                                |                            |  |                        |
|  | VA           | 1                              | \$239,918.00               | 64   | 196141                 |
| Northeast Rural Services, Inc. <sup>21</sup> |              |                                |                            |  |                        |
|  | OK           | 5                              | \$442,963.00               | 34   | 436142                 |
|  | OK           | 11                             | \$2,138,771.85             | 194  | 436143                 |

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<sup>21</sup> Northeast Rural Services was previously authorized to begin receiving rural broadband experiment support for bid numbers 1, 4, 6, and 12. *See Rural Broadband Experiment Support Authorized for Five Winning Bids for First Step Internet, LLC and Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, DA 15-1003 (Wireline Comp. Bur. rel. Sept. 11, 2015). Northeast Rural Services was also provisionally selected for additional bids in the first and second rounds. Those bids are still undergoing post-selection review.