



# 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

DA 16-195  
Released: February 24, 2016

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

New Lisbon Broadband and Communications, LLC Must Submit Letter of Credit and Legal Counsel's Opinion Letter by March 7, 2016

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 experiment support for New Lisbon Broadband and Communications, LLC (New Lisbon) for its provisionally selected bid as summarized in the Attachment to this Public Notice. This \$37,695.60 bid covers seven census blocks in rural Indiana.<sup>1</sup> We also grant New Lisbon's petition for waiver and extension of its obligation to submit by March 5, 2015, proof of eligible telecommunications carrier (ETC) designation in all areas covered by its provisionally selected bid.<sup>2</sup>

To be authorized to receive this support, New Lisbon must submit at least one acceptable irrevocable stand-by letter of credit (LOC) and Bankruptcy Code opinion letter from its legal counsel in accordance with the instructions provided below by the applicable deadline – **March 7, 2016 at 11:59 p.m. ET.**<sup>3</sup>

On December 5, 2014, the Bureau announced its provisional selection of a first round of bids for rural broadband experiments support, including New Lisbon's bid described in the Attachment.<sup>4</sup> Under the post-selection review process established by the Commission in its *Rural Broadband Experiments*

<sup>1</sup> The original bid was placed and provisionally selected under the name, New Lisbon Telephone Company, on December 5, 2014. See *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, 14687, Attach. A (WCB 2014) (*Round One Public Notice*). On December 19, 2014, New Lisbon Telephone Company made a minor modification to its application by changing the bidder name to New Lisbon Broadband and Communications, LLC, a wholly owned subsidiary of New Lisbon Telephone Company.

<sup>2</sup> Petition of New Lisbon Broadband and Communications, LLC for Waiver of ETC Designation Deadline for Rural Broadband Experiments, WC Docket No. 10-90, WC Docket No. 14-259 (filed Mar. 4, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001025670>. New Lisbon subsequently filed two supplements notifying the Commission of the procedural status of its application before the local authority. See Supplement to Petition for Waiver (filed Mar. 31, 2015) <http://apps.fcc.gov/ecfs/comment/view?id=60001027900>; Second Supplement to Petition for Waiver (filed Apr. 2, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001028081>; Third Supplement to Petition for Waiver (filed Dec. 17, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001360102> (Third Waiver Supplement).

<sup>3</sup> See *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>4</sup> See *Round One Public Notice*, 29 FCC Rcd at 14687, Attach. A.

*Order*, release of this notice triggered these bidders' obligations to submit, by specified deadlines, certain information and documents necessary to the Bureau's assessment of their fitness for authorization.<sup>5</sup> More specifically, these bidders were required to provide, within 10 business days of the release of the public notice, certain 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>6</sup> Within 60 days of the public notice, these bidders were required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by Letter of Credit (LOC).<sup>7</sup> And, within 90 days of the public notice, these bidders were required to submit appropriate documentation of their designation as an ETC in all of the areas for which support will be received as well as a certification of accuracy.<sup>8</sup>

For New Lisbon's provisionally selected bid identified in the Attachment, the Bureau reviewed the submitted materials. Based on our review, the Bureau is prepared to authorize support for this bid, subject to submission of the required LOC and Bankruptcy Code opinion letter for the identified bid.

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<sup>5</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8786–93, paras. 51–71.

<sup>6</sup> See *id.* at 8787, paras. 52, 54.

<sup>7</sup> See *id.* at 8787–88, para. 54.

<sup>8</sup> See *id.* at 8778–79, 8788, paras. 22–23, 54.

*Technical and Financial Information.* We find that New Lisbon has timely submitted the required technical and financial information.<sup>9</sup> Based on our review of this information, we find that New Lisbon has demonstrated sufficient ability to meet its commitments.

*LOC Commitment Letter.* We find that New Lisbon has timely submitted the required letter from a bank meeting the Commission’s requirements committing to issue an irrevocable stand-by original LOC to New Lisbon sufficient to cover the winning bid.<sup>10</sup>

*ETC Designation.* We find that New Lisbon has submitted documentation sufficient to show that the relevant state authority has designated New Lisbon as an ETC in all areas covered by its winning bid.<sup>11</sup> We also find good cause to grant New Lisbon’s petition for waiver of its March 5, 2015 deadline for submitting this information.<sup>12</sup>

New Lisbon explains that upon release of the Bureau’s public notice announcing the provisional selection of its bid, New Lisbon immediately began taking steps to prepare its ETC application.<sup>13</sup> Recent applicants for ETC designation before the Indiana Utility Regulatory Commission (IURC), however, had sought designation as limited ETCs, eligible only to receive Lifeline support.<sup>14</sup> For this reason, New Lisbon had few examples upon which to model its own application and little precedential guidance regarding the scope or nature of the information necessary for a full ETC designation.<sup>15</sup> New Lisbon states that it contacted staff at both the IURC and the Indiana Office of Utility Consumers Counsel (OUCC), who acknowledged the novelty of its application and the related ambiguities concerning the review process and stressed the need for close collaboration.<sup>16</sup> New Lisbon subsequently submitted its application in draft form to OUCC staff, which gave rise to several requests for clarification and additional information that delayed finalization and submission of its application to the IURC until March 3.<sup>17</sup> As part of its review, the IURC also requested additional technological, marketing and deployment information.<sup>18</sup>

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<sup>9</sup> See *id.* at 8787, para. 52.

<sup>10</sup> See *id.* at 8787, para. 54.

<sup>11</sup> The Indiana Utility Regulatory Commission designated New Lisbon as an ETC in the relevant areas on September 23, 2015. See Petition of New Lisbon Broadband and Communications, LLC, for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Purpose of Participating in the Connect America Fund Rural Broadband Experiment, Cause No 40152 ETC 7 (approved Sept. 23, 2015), [https://myweb.in.gov/IURC/eds/Modules/Ecms/Cases/Docketed\\_Cases/ViewDocument.aspx?DocID=0900b631801cc559](https://myweb.in.gov/IURC/eds/Modules/Ecms/Cases/Docketed_Cases/ViewDocument.aspx?DocID=0900b631801cc559).

<sup>12</sup> The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *NE Cellular Tele. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). However, waiver of the Commission’s policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest. See *Connect America Fund et al.*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788 n.95 (2014) (delegating authority to the Bureau to act on petitions for waiver of ETC designation deadlines).

<sup>13</sup> See Third Waiver Supplement at 1–2.

<sup>14</sup> See *id.* at 2.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 3–4.

The Commission established the 90-day deadline for the rural broadband experiments, although understood that some state proceedings may take longer.<sup>19</sup> Given New Lisbon’s representations that it diligently took steps to prepare its application, working closely with staff at OUCC and IURC prior to formally filing the application, that New Lisbon ultimately was designated as an ETC by the IURC, and that this delay did not impact the Bureau’s ability to make the Phase II offer of support, we conclude New Lisbon has established good cause to waive the 90-day deadline for submission of ETC designation. In light of the foregoing circumstances, we find on balance that it serves the public interest to accept New Lisbon’s September 24, 2015 submission of the required proof of ETC designation.

*LOC and Opinion Letter Requirement.* No later than 10 business days after the release of this Public Notice, New Lisbon 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 Commission.<sup>20</sup> The Bureau previously released information that provisionally selected bidders may find helpful in obtaining their LOCs.<sup>21</sup> At a minimum, the LOC(s) must be equal to the amount of the first disbursement of support.<sup>22</sup> The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.<sup>23</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>24</sup> 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 LOC(s) and opinion letter(s), the Bureau will authorize support for New Lisbon if it determines that New Lisbon has met all requirements.<sup>25</sup>

*Instructions for Submission of Letter of Credit and Opinion Letter.* New Lisbon must submit at least one LOC and one opinion letter for the provisionally selected bid identified in the Attachment. The LOC(s) and opinion letter(s) must reference the relevant study area code as 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 – **March 7, 2016 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 the original of the LOC(s) and the opinion letter(s) be sent 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 in two attachments. The LOC(s) attachment should be designated as “Letter of Credit” and the opinion letter(s) attachment should be designated as “Opinion Letter.” Provisionally

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<sup>19</sup> *Id.* at 8778, para. 22.

<sup>20</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, 8805, para. 54, Append. A.

<sup>21</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 (WCB 2015).

<sup>22</sup> *Id.* at 8791, para. 62.

<sup>23</sup> *Id.* at 8790, para. 59.

<sup>24</sup> *Id.* at 8789, para. 58.

<sup>25</sup> *Id.* at 8788, para. 54.

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.

The failure to meet this deadline will result in removal of New Lisbon from continuing eligibility for rural broadband experiments support.

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400 or at TTY (202) 418-0484.

**- FCC -**

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

Category One<sup>26</sup>

| Bidder Name                                  | State | Selected Bid Project ID | Selected Bid Amount | Census Blocks Covered by Selected Bid | Study Area Code |
|----------------------------------------------|-------|-------------------------|---------------------|---------------------------------------|-----------------|
| New Lisbon Broadband and Communications, LLC |       |                         |                     |                                       |                 |
|                                              | IN    | 3                       | \$37,695.60         | 7                                     | 326111          |

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<sup>26</sup> Recipients authorized to receive support for category one projects must deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream and offer at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all eligible locations. For that service plan, recipients must provide usage that is reasonably comparable to usage available for comparable wireline offerings in urban areas, at a price that meets the Commission's reasonable comparability benchmarks, and latency no greater than 100 milliseconds.