



# PUBLIC NOTICE

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

**Big Bend Telecom, Ltd., Must Submit Letter of Credit and Legal Counsel's Opinion Letter by August 4, 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 the Universal Service Administrative Company (USAC) to disburse rural broadband experiment support to Big Bend Telecom, Ltd. (BBT), for its provisionally selected bid projects, as summarized in the Attachment to this Public Notice, subject to the conditions described below. Combined, these bids total \$178,425 and cover 15 census blocks in rural Texas. Because we find good cause, we also grant BBT'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 bids.<sup>1</sup>

To be authorized to receive this support, BBT 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 – **August 4, 2016 at 11:59 p.m. ET.**<sup>2</sup>

On December 5, 2014, the Bureau announced its provisional selection of a first round of bids for rural broadband experiments support, including five bids placed by BBT.<sup>3</sup> Under the post-selection review process established by the Commission in its *Rural Broadband Experiments 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>4</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 their spectrum access in the areas for which they

<sup>1</sup> Petition of Big Bend Telecomm, Ltd. for Waiver of ETC Designation Deadline for Rural Broadband Experiments, Emergency Request for Expedited Treatment, WC Docket No. 10-90, WC Docket No. 14-259 (filed Feb. 12, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001016255> (BBT Waiver Request).

<sup>2</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>3</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, 14687, Attach. A (WCB 2014) (*First Round Public Notice*).

<sup>4</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8786–93, paras. 51–71.

seek support.<sup>5</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>6</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>7</sup>

The Bureau reviewed the materials submitted by BBT for each of its provisionally selected bids. Based on its review, the Bureau is prepared to authorize USAC to disburse support for these bids, subject to submission of the required LOC(s) and Bankruptcy Code opinion letter(s) for these bids.

*Technical and Financial Information.* We find that BBT has timely submitted the required technical and financial information.<sup>8</sup> Based on our review of this information, we find that BBT has demonstrated sufficient ability to meet its commitments.

*LOC Commitment Letter.* We find that BBT has timely submitted the required letter from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to BBT sufficient to cover these bids.<sup>9</sup>

*ETC Designation.* We find that BBT has submitted documentation sufficient to show that the relevant state authority has designated BBT as an ETC in all areas covered by its winning bids.<sup>10</sup> We also find good cause to grant BBT's petition for waiver of its deadline for submitting this information.<sup>11</sup>

In its waiver request, BBT states it began to prepare its ETC application for submission to the Public Utility Commission of Texas (Texas PUC) immediately after the release of the Bureau's *First Round Public Notice*.<sup>12</sup> BBT explains, however, that the Texas PUC requires applicants for ETC designation to identify the specific wire centers (and uncertificated areas) included within their intended service area. To fulfill this requirement, BBT had to first obtain and transfer paper copies of exchange boundary maps to mapping software and then electronically overlay the census blocks covered by BBT's provisionally selected bids.<sup>13</sup> Moreover, the Texas PUC required BBT to prepare competitive marketing strategy plans for its voice service offerings and to create a five-year network improvement plan.<sup>14</sup> For these reasons, BBT explains, it did not submit its application to the Texas PUC until January 30, 2015. The Texas PUC could not complete its review in accordance with its procedural process before expiration of the Commission's deadline for submitting proof of ETC designation.<sup>15</sup> Accordingly, BBT submitted the subject waiver request on February 12, 2015, seeking extension of the filing deadline until the Texas PUC completed its review of BBT's ETC application.<sup>16</sup> On March 19, 2015, the Texas PUC approved BBT's ETC designation, and on March 23, 2015, less than twenty days after the Commission's deadline, BBT submitted a copy of this order to the Commission.<sup>17</sup>

Based on the above summarized record, we find good cause to waive the 90-day deadline for submission of ETC designation. When the Commission established the 90-day deadline for submitting proof of ETC designation, it understood that some state proceedings might extend beyond that time frame.<sup>18</sup> BBT acted with due diligence in the preparation and submission of its application to the Texas PUC. The subsequent delay in submitting proof of ETC designation to the Commission was relatively minimal and did not impact the Bureau's ability to make the Phase II offer of support. In light of the foregoing circumstances, we find on balance that it serves the public interest to accept BBT's March 23, 2015 submission of the required proof of ETC designation. Accordingly, we grant BBT's waiver request.

*LOC and Opinion Letter Requirement.* No later than 10 business days after the release of this Public Notice, BBT must submit at least one irrevocable stand-by signed LOC, issued in substantially the

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<sup>5</sup> See *id.* at 8787, paras. 52, 54.

<sup>6</sup> See *id.* at 8787–88, para. 54.

<sup>7</sup> See *id.* at 8778–79, 8788, paras. 22–23, 54.

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>19</sup> The Bureau previously released information that provisionally selected bidders may find helpful in obtaining their LOCs.<sup>20</sup> At a minimum, the LOC(s) must be equal to the amount of the first disbursement of support.<sup>21</sup> The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.<sup>22</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>23</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).

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<sup>8</sup> See *id.* at 8787, para. 52.

<sup>9</sup> See *id.* at 8787, para. 54.

<sup>10</sup> See Application of Big Bend Telecomm, Ltd. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418 and as an Eligible Telecommunications Provider Pursuant to P.U.C. SUBST. R. § 26.417 and P.U.C. SUBST. R. § 26.423, Order No. 5 Notice of Approval For Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider (approved Mar. 19, 2015), [http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNT\\_R\\_NO=44397&TXT\\_ITEM\\_NO=20](http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNT_R_NO=44397&TXT_ITEM_NO=20).

<sup>11</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>12</sup> See BBT Waiver Request at 2.

<sup>13</sup> See *id.* at 5.

<sup>14</sup> See *id.* at 2, 4–5.

<sup>15</sup> See BBT Waiver Request at 5.

<sup>16</sup> See *supra* note 1.

<sup>17</sup> See *supra* note 10.

<sup>18</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22.

<sup>19</sup> *Id.* at 8788, 8805, para. 54, Append. A.

<sup>20</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>21</sup> *Id.* at 8791, para. 62.

<sup>22</sup> *Id.* at 8790, para. 59.

<sup>23</sup> *Id.* at 8789, para. 58.

After reviewing the LOC(s) and opinion letter(s), the Bureau will authorize support for BBT if it determines that BBT has met all requirements.<sup>24</sup>

*Instructions for Submission of Letter of Credit and Opinion Letter.* BBT 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 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 – **August 4, 2016 at 11:59 p.m. ET**, at the following address: Rural Broadband Experiments LOC, USAC, 700 12th Street NW, Suite 900, Washington, DC 20005. 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 Kristen Farole.

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 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 BBT 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.

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<sup>24</sup> *Id.* at 8788, para. 54.

**Attachment**

**Ready to Authorize Big Bend Telecom, Ltd.'s Provisionally Selected Bids**

Category Two<sup>25</sup>

<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>
<b>Big Bend Telecom, Ltd.</b>					
	TX	8	\$14,800.00	2	446149

Category Three<sup>26</sup>

<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>
<b>Big Bend Telecom, Ltd.</b>					
	TX	7	\$30,250.00	2	446350
	TX	9	\$12,500.00	1	446351
	TX	11	\$60,125.00	3	446352
	TX	13	\$60,750.00	7	446353

<sup>25</sup> Recipients authorized to receive support for category two projects must offer at least one service plan that provides 10 Mbps downstream/1 Mbps upstream with at least 100 GB of usage, latency no greater than 100 milliseconds, and at a price that meets the Commission's reasonable comparability benchmarks. *See Rural Broadband Experiments Order*, 29 FCC Red at 8780, para. 27.

<sup>26</sup> Recipients authorized to receive support for category three projects must offer at least one service plan in extremely high-cost census blocks that provides 10 Mbps downstream/1 Mbps upstream with at least 100 GB of usage, latency no greater than 100 milliseconds, and at a price that meets the Commission's reasonable comparability benchmarks. *See id.* at 8780, para. 28.