



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

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WCB REMINDS CONNECT AMERICA FUND PHASE II AUCTION APPLICANTS OF THE PROCESS FOR OBTAINING A FEDERAL DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

WC Docket Nos. 09-197, 10-90

This Public Notice reminds participants in the Connect America Fund Phase II (CAF Phase II) auction (Auction 903) about the process for obtaining designation as an eligible telecommunications carrier (ETC) by the Federal Communications Commission (FCC or Commission) where a state lacks jurisdiction to do so.¹ Successful bidders must submit proof of their ETC designation in all supported areas within 180 days of the Commission's announcement of their winning bids.² In order to assist auction participants, we summarize and, where necessary, waive, the FCC's ETC designation process for winning bidders.³

FCC Jurisdiction Under Section 214(e)(6) of the Communications Act of 1934, as Amended

Congress gives primary authority for ETC designations to state commissions.⁴ The FCC has authority only when "a common carrier [is] providing telephone exchange service and exchange access

¹ Carriers subject to state jurisdiction must petition state commissions for ETC designation. 47 U.S.C. § 214(e)(2). Carriers seeking a designation relating to an auction application should not submit their petitions for ETC designation to the Commission (or the relevant state commission(s), if applicable) until after the release of the Auction Closing Public Notice. 47 CFR § 1.21002.

² *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5999, para. 141 (2016) (*Phase II Auction Order*); 47 CFR § 54.315(a)(3), (b)(5); *see also* 47 U.S.C. § 254(e) (providing that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support"). To meet this deadline (or qualify for waiver of this deadline), the Commission expects winning bidders to submit their petitions for ETC designation to the appropriate authority within 30 days of the Commission's announcement of their winning bids. *See Phase II Auction Order*, 31 FCC Rcd at 6002, para. 152. If a winning bidder fails to do so, it is subject to forfeiture liability for an auction default. *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1521-22, paras. 314-316 (2018) (*Phase II Auction Procedures Public Notice*).

³ *See* Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (delegating FCC ETC designation authority to the Common Carrier Bureau) (*Section 214(e)(6) Public Notice*); *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau, and Other Organizational Changes*, Order, 17 FCC Rcd 4672 (2002) (renaming the Common Carrier Bureau, the Wireline Competition Bureau); *see also* *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Report and Order*).

⁴ *See* 47 U.S.C. § 214(e)(2). Carriers subject to state jurisdiction should follow state rules and requirements to apply for designation.

that is not subject to the jurisdiction of a State commission.”⁵ The FCC places the burden of proof upon the petitioner seeking an FCC ETC designation to demonstrate that the FCC has jurisdiction.⁶

Non-Tribal Lands. Petitioners seeking an FCC ETC designation to serve non-Tribal lands must submit “an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”⁷ The statement may take the form of a “duly authorized letter, comment, or order, from the relevant state regulatory commission or a court of competent jurisdiction, indicating that the state lacks authority to designate the carrier.”⁸ Carriers cannot rely on jurisdictional statements in past orders relating to different carriers or simply challenge the state commission’s jurisdiction in their petition directly.⁹ If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.¹⁰

Tribal Lands. Petitioners seeking an FCC ETC designation to serve Tribal lands may petition the FCC directly so long as they have not initiated an ETC designation proceeding before the relevant state commission.¹¹ The petition must accurately describe and demonstrate that the specific geographic area satisfies the definition of Tribal lands adopted for this purpose¹² and provide fact-specific support for FCC jurisdiction, including citations to relevant case law, statutes, and treaties.¹³ Generalized statements of FCC jurisdiction are insufficient and will result in dismissal of the petition.¹⁴

Service Requirements

Section 214(e)(1) of the Communications Act of 1934, as amended (Act) requires all ETCs to offer, throughout their designated service areas, all services that the Commission designates for high-cost universal service support pursuant to section 254(c) of the Act, “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹⁵ Carriers must also advertise the availability of such services (and the charges thereof) using media of general distribution.¹⁶

⁵ *Id.* § 214(e)(6).

⁶ *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*).

⁷ *Phase II Auction Order*, 31 FCC Rcd at 6004, para. 154 (quoting *2000 Tribal Order*, 15 FCC Rcd at 12214, para. 7).

⁸ *2000 Tribal Order*, 15 FCC Rcd at 12264, para. 113.

⁹ *See id.*

¹⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7112, para. 183 (2014).

¹¹ *2000 Tribal Order*, 15 FCC Rcd at 12268-69, para. 126.

¹² *Id.* at 12268, para. 125 (requiring petitioners seeking FCC ETC designation for service provided on Tribal lands to describe the specific geographic areas they wish to serve and to demonstrate that such areas satisfy the definition of Tribal lands); *see also id.* at 12218-19, paras. 17-18 (defining Tribal lands to include “reservation” and “near reservation,” as those terms are defined under BIA’s regulations); 25 CFR § 20.1(r), (v).

¹³ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 122; *see also, e.g., Petition of Leech Lake Telecommunications Company, LLC for Designation as an Eligible Telecommunications Carrier within Ojibwe Tribal Lands*, WC Docket No. 09-197 et. al., at 5-8 (filed Dec. 5, 2015).

¹⁴ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 122.

¹⁵ 47 U.S.C. § 214(e)(1); *see also* 47 CFR § 54.201(d).

¹⁶ 47 U.S.C. § 214(e)(1); *see also* 47 CFR § 54.201(d).

For CAF Phase II support recipients, the Commission defines supported service as qualifying voice service and conditions grant of funding on the offering of qualifying broadband services.¹⁷ As a condition of receiving support, ETCs must therefore offer voice telephony as a standalone service throughout their designated service area and must offer voice telephony services at rates that are reasonably comparable to urban rates.¹⁸ The Commission has adopted a similar reasonable comparability rate certification requirement for broadband performance obligations.¹⁹

All ETCs must offer qualifying voice service using their own facilities, at least in part.²⁰ The Commission has interpreted the term “facilities,” for purposes of section 214(e) of the Act, to mean “any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1).”²¹ As explained by the Commission, “a carrier need not offer universal service wholly over its own facilities in order to be designated an eligible carrier because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.”²² Facilities are the ETC’s “own” if the ETC has exclusive right to use the facilities to provide the supported services²³ or when service is provided by any affiliate within the holding company structure.²⁴

An ETC satisfies its obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund (USF)-related requirements.²⁵ Accordingly, a broadband provider may satisfy its voice obligation by

¹⁷ 47 CFR § 54.101 (including both eligible voice telephony and eligible broadband internet access as services “supported by federal universal service support mechanisms,” and characterizing the provision of eligible broadband service as a high-cost public interest obligation); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17691-94, paras. 74-89 (2012) (describing the “core functionalities of the supported services as ‘voice telephony service,’” and separately conditioning receipt of offer broadband service in their supported area) (*USF/ICC Transformation Order*).

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, paras. 80-81; *see also* 47 CFR § 54.101(b).

¹⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15686-87, para. 120 (2014) (*December 2014 CAF Order*).

²⁰ 47 U.S.C. § 214(e)(1); 47 CFR § 54.101.

²¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8847, para. 128 (1997).

²² *Id.* at 8870, para. 169.

²³ *Id.* at 8866, para. 160.

²⁴ *December 2014 CAF Order*, 29 FCC Rcd at 15668 n.143; *see also* 47 U.S.C. § 153(2) (defining an affiliate as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person”); *cf.* Rural Broadband Experiments – Frequently Asked Questions (FAQs), May 27, 2015, at <https://www.fcc.gov/general/rural-broadband-experiments> (explaining that “recipients of support in the rural broadband experiments, like all recipients of Connect America support, are free to meet their broadband public interest obligations through any affiliate within the holding company”).

²⁵ *Cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7215, para. 9 (WCB 2013) (finding that it is not sufficient for a broadband provider to qualify as an “unsubsidized competitor” if a consumer must obtain voice service from a third party, because that broadband provider would not be offering a voice service) (*Phase II Challenge Process Order*).

offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.²⁶

Under section 54.202 of the Commission's rules, the Commission adopted additional requirements for parties seeking an FCC ETC designation.²⁷ For example, a petitioner seeking an FCC ETC designation must submit a five-year improvement plan and a certification committing to implement consumer protection and customer service standards (consumer protection certification).²⁸ The Commission adopted these requirements in 2005, in conjunction with related annual reporting obligations, to monitor carriers' use of funding.²⁹

For CAF recipients, however, the Commission adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones.³⁰ For this reason, the Commission eliminated the five-year improvement plan requirement for price-cap and rate-of-return carriers and for recipients of funding under the rural broadband experiments.³¹ The Commission also eliminated, for all CAF recipients, the annual reporting obligations associated with both the five-year improvement plan and the consumer protection certification, after determining that such obligations were no longer essential to the Commission's ability to monitor ETC use of support for its intended purpose.³² Consistent with these decisions, we find good cause to waive, on our own motion, the requirement that winning bidders seeking an FCC ETC designation file a five-year improvement plan and demonstrate that it will satisfy applicable consumer

²⁶ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that “because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service,” and requiring carriers to “offer VoIP over their broadband network on a standalone basis”); cf. *Phase II Challenge Process Order*, 28 FCC Rcd 7224, n.21 (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or “through a managed voice solution obtained from a third party vendor . . . , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers”).

²⁷ 47 CFR § 54.202.

²⁸ *Id.* § 54.202(a)(1)(ii), (a)(3).

²⁹ *Id.* § 54.313(a)(1) (2015) (requiring the annual filing of a progress report); *id.* § 54.202(a)(5) (2015) (requiring the annual certification of compliance with applicable service quality standards and consumer protection rules).

³⁰ See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 6010-12, paras. 172-177 (requiring recipients of Phase II competitive support to file location information and milestone certifications); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3163-3169, paras. 209-217 (2016) (requiring rate-of-return carriers to file location information and milestone certifications) (*2016 Rate-of-Return Reform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15686-89, paras. 124-28 (2014) (requiring recipients of Phase II model-based support to file location information and milestone certifications); *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, Order, 29 FCC Rcd 8769, 8795-97, paras. 76-85 (2014) (requiring rural broadband experiment participants to file location information and milestone certifications).

³¹ *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, 3168, paras. 216, 220 (eliminating five-year plan and related progress reports for rate-of-return and price-cap carriers); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 29 FCC Rcd 8769, 8801, 8095, para. 77 (2014) (eliminating five-year plan requirement for recipients of rural broadband experiment support); see also *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12101, para. 49 (2016) (eliminating five-year plan and related progress reports for Alaska Communications Systems, Inc.).

³² See *Connect America Fund et al.*, *ETCs Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order, 32 FCC Rcd 5944, 5944-48, paras. 3-14 (2017) (*ETC Reporting Streamlining Order*) (eliminating requirements relating to the reporting of network outages, unfulfilled service requests, complaints, and pricing and the certification of compliance with applicable service quality standards).

protection and service quality standards.³³ We do so for the same reasons the Commission eliminated them from the annual reporting requirements.³⁴

To obtain an FCC ETC designation, winning bidders must continue to meet the other requirements of section 54.202 of the Commission's rules, i.e., they must (1) certify their commitment to meeting the service and performance quality requirements applicable to their support type;³⁵ and (2) demonstrate their ability to remain functional in emergency situations.³⁶ They should also indicate, as part of their certification their commitment to satisfying additional requirements applicable to all high-cost ETCs, such as Lifeline obligations.³⁷

To demonstrate compliance with ETC requirements, winning bidders may incorporate by reference the relevant information and certifications submitted as part of their Auction 903 applications. When making their section 214(e)(1) commitment to offering supported services, carriers may rely on the information and certifications submitted in their Auction 903 long-form applications to demonstrate their ability and commitment to meeting service and performance quality requirements.

Demonstration that Designation Serves the Public Interest, Convenience, and Necessity

Section 214(e)(6) of the Act and section 54.202(b) of the Commission's rules requires the Commission to find that an ETC designation serves the public interest.³⁸ While Congress did not identify specific criteria to be used in making such a determination, the public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the principles for the preservation and advancement of universal service.³⁹ To this end, the Commission adopted a cost-benefit test designed to assess whether designation would further universal service policies, placing the burden of proof on the petitioning carriers to demonstrate that the advantages of

³³ Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may consider issues of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166. Waiver of the Commission's 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Ne. Cellular*, 897 F.2d at 1166.

³⁴ *See, e.g., 2016 Rate-of-Return Reform Order*, 31 FCC at 3166, 3168, para. 216 (explaining that the detailed broadband buildout obligations of rate-of-return ETCs provide a "more defined yardstick by which to measure their progress towards the universal availability of voice and broadband service in their areas," and thus, obviate the need for a five-year plan and annual updates); *ETC Reporting Streamlining Order*, 32 FCC Rcd at 4944, para. 1 (eliminating several ETC rules as either duplicative of other reporting requirements or simply no longer necessary given other methods of overseeing use of USF support).

³⁵ 47 CFR § 54.202(a)(1)(i).

³⁶ *Id.* § 54.202(a)(2) (requiring a petitioner seeking an FCC ETC designation to "[d]emonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations").

³⁷ *See id.* § 54.101(d); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016) (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

³⁸ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

³⁹ 47 U.S.C. § 254(b).

service, such as increased consumer choice, would outweigh the disadvantages, such as poor coverage.⁴⁰ In the Phase II auction context, however, bidders demonstrate their ability to efficiently offer service through the competitive bidding process while in their short-form and long-form applications, bidders demonstrate their ability to meet their public interest obligations.⁴¹ Through such processes, the Commission conducts the cost-benefit analysis for ETC designation.⁴² Accordingly, carriers need not provide additional specific evidence of service to the public interest in their petitions for ETC designation.

Certification of Eligibility for Benefits under the Anti-Drug Abuse Act

Petitioners must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in section 1.2002 of the Commission's rules.⁴³

Post-Designation Reporting Obligations

Winning bidders that are designated as an ETC must file on a recurring basis:

- *Annual Section 54.313 Report.* On July 1st of the year following the year an ETC begins receiving support and on each subsequent July 1st thereafter, it must file an FCC Form 481.⁴⁴ Annual reports are filed with the Universal Service Administrative Company (USAC).⁴⁵ ETCs must complete the FCC Form 481 on USAC's website.⁴⁶ As part of this form, carriers must test and certify compliance with relevant performance requirements in section 54.309 of the Commission's rules.⁴⁷ The Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau (WTB), and the Office of Engineering and Technology (OET)

⁴⁰ See *ETC Designation Report and Order*, 20 FCC Rcd at 6388-89, paras. 40-42. As part of this determination, the Commission also conducted a cream-skimming analysis to ensure that potential designees could not selectively choose to serve high-density portions of a rural telephone company's study area while receiving support, under legacy identical support rules, based on the average costs of the rural telephone company in providing service throughout the study area. *Id.* at 6393-95, paras. 48-53. In the *Phase II Auction Order*, however, the Commission explained that a cream-skimming analysis in the Phase II Auction context is irrelevant since winning bidders will be the only carrier receiving support to serve a bid area and must serve areas the marketplace would not otherwise serve absent subsidy. See *Phase II Auction Order*, 31 FCC Rcd at 6008, para. 165.

⁴¹ See 47 CFR § 54.315 (requiring prospective bidders to include within their applications, among other things, certifications and evidence demonstrating that they are financial and technically qualified to meet public interest obligations).

⁴² *Id.* § 54.315.

⁴³ *Id.* § 1.2002.

⁴⁴ 47 CFR § 54.313(h)(2)(i); *Id.* § 54.313(j).

⁴⁵ *ETC Reporting Obligations Elimination Order*, 32 FCC Rcd at 5948, para. 15 (determining that the Commission "will no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018"); 47 CFR § 54.313.

⁴⁶ See Universal Service Administrative Company High Cost Forms, Form 481, <http://www.usac.org/hc/tools/forms.aspx>; Instructions for Completing FCC Form 481, http://www.usac.org/_res/documents/hc/pdf/forms/FCC-Form-481-Instructions.pdf.

⁴⁷ 47 CFR § 54.309.

have adopted a uniform framework to measure and report on the performance of ETCs' broadband service.⁴⁸

- *Annual 54.314 Certification.* On October 1st, beginning in the year after the winning bidder begins receiving support and continuing throughout the entire support term, an ETC designated by the FCC must certify that the support received in the prior year was used, and the support that will be received in the upcoming year will be used, only for the provision, maintenance, and upgrading of facilities and services for which support is intended.⁴⁹ An ETC designated by the FCC must self-certify by filing a sworn affidavit executed by a corporate officer attesting to the relevant facts.⁵⁰ Certifications must be filed with both the FCC and USAC. ETCs may submit their certifications to USAC via its online filing system⁵¹ or by sending the appropriate certification sample letter (provided on USAC's website) via email or U.S. mail.⁵² Certifications must also be submitted to the FCC's Office of the Secretary on or before October 1st. The submission should clearly reference WC Docket No. 14-58, ETC Annual Reports and Certifications.
- *Annual Reporting of Location Information.* On or before the last business day of the second calendar month following the one-year anniversary of support authorization, and by the same day in subsequent years until all build-out requirements are satisfied, winning bidders must file with USAC through the High-Cost Universal Broadband (HUBB) portal location information, including geocoded data, for each qualifying location to which they are offering the requisite service and identify the kind of technology used to bring such service.⁵³ In the first year, bidders must submit all locations where the requisite service is being provided, and in subsequent years, all locations to which they are newly offering service.⁵⁴ The Commission has consistently encouraged carriers subject to defined deployment obligations and HUBB reporting obligations to report location data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.⁵⁵
- *Milestone Certifications.* By the last business day of the second calendar month following each relevant service milestone, an ETC must file a certification that they have met their

⁴⁸ *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Order, DA 18-710 (WCB/WTB/OET rel. July 6, 2018); *see also Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1387, para. 16 (2018) (*Phase II Auction Reconsideration Order*) (establishing general guidelines for the adoption of a performance methodology); *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112; 47 CFR § 54.313(a)(6).

⁴⁹ 47 CFR § 54.314. The affidavit becomes part of the public record. *See id.*

⁵⁰ 47 CFR § 54.314(b), (c)(2). Relevant state authorities submit certifications on behalf of the ETCs they designate. *Id.* § 54.314(a).

⁵¹ *See* Universal Service Administrative Company Online Filing User Guide for Section 54.314 Self-Use Certification, http://www.usac.org/_res/documents/hc/pdf/forms/Self-Certifiers-User-Guide.pdf.

⁵² *See* Universal Service Administrative Company Self-Use Certification Sample Letter, http://www.usac.org/_res/documents/hc/pdf/samples/sample-self-use-cert-letter.pdf.

⁵³ 47 CFR § 54.316(a)(4).

⁵⁴ *Phase II Auction Order*, 31 FCC Rcd at 6010-11, para.173.

⁵⁵ *See id.* at 6011, para. 173; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3164, 3167, paras. 211, 218 (2016); *see generally Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12910 (2016) (*HUBB Public Notice*); Universal Service Administrative Company, Filing Geolocated Broadband Deployment Data, <https://usac.org/hc/tools/hubb.aspx>.

interim service milestone and are meeting the requisite public interest obligations.⁵⁶ If an ETC is unable to meet an interim build-out milestone, it must notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government as appropriate, no later than ten business days after the applicable deadline.⁵⁷ If the ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it may also seek waiver of the service milestones.⁵⁸ The Commission has repeatedly warned Phase II support recipients, however, that it does not expect to routinely grant such waiver requests, emphasizing the difficulty of demonstrating good cause under circumstances where carriers fail to plan for some contingencies that would otherwise prevent compliance with defined deployment obligations.⁵⁹

All post-designation ETC-related filings must be submitted in good faith and, include a certification that, to the best of the ETC's knowledge and belief, the information is complete and accurate.⁶⁰ In addition, ETCs have an on-going duty to correct or amend information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data is inaccurate, incomplete, or contains data errors or anomalies.⁶¹ The failure to timely file information may result in penalties in the form of a reduction in support.⁶²

⁵⁶ 47 CFR § 54.314(b)(4) (requiring a “certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c)”; *id.* § 54.310(c) (“Recipients of Connect America Phase II awarded through a competitive bidding process must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year.”).

⁵⁷ 47 CFR § 54.320(d).

⁵⁸ *December 2014 CAF Order*, 29 FCC Rcd at 15700, para. 154.

⁵⁹ *See Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1394, para. 33, n.88 (2018) (explaining that “it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term”); *id.* (explaining that “the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver”) (citing *December 2014 CAF Order*, 29 FCC Rcd at 15660, para. 40, n.93).

⁶⁰ *See, e.g.*, FCC Form 481 Officer Certification (requiring an officer of a petitioning entity to certify that he/she is “an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate”); *see also* 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading”).

⁶¹ *See Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900, 12910 (2016) (*HUBB Public Notice*).

⁶² 47 CFR § 54.313(j); *Id.* § 54.314.

Document Retention and Compliance Audits. Under section 54.320 of the Commission’s rules, recipients of high-cost support must retain, for at least ten years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the FCC (and any of its bureaus or offices) and to USAC, and to their respective auditors.⁶³ In addition, all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders, including verification of actual deployment to reported locations.⁶⁴

Consequences for Non-Compliance. A Phase II Auction support recipient authorized to receive Phase II support is subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement, other service requirements, or fails to fulfill any other term or condition of Phase II support.⁶⁵ These measures scale with the extent of non-compliance, and include additional reporting, withholding of support, and support recovery.⁶⁶ A defaulting support recipient may also be subject to sanctions, including, but not limited to, potential revocation of ETC designations and suspension or debarment.⁶⁷ Additionally, a support recipient will be subject to any non-compliance measures adopted in conjunction with the methodology for measuring and reporting speed and latency performance to fixed locations.⁶⁸

Discontinuance of Service and/or Relinquishment of Support. It is a violation of FCC rules to receive USF support if that support is not used to provide, maintain, and upgrade voice and/or broadband facilities and services in eligible areas or if the recipient is no longer offering supported services. A carrier that cannot appropriately use USF support must relinquish its ETC designation pursuant to section 214(a) of the Act and section 54.205 of the Commission’s rules.⁶⁹ The ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission’s Electronic Comment Filing System (ECFS). WCB will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.⁷⁰ The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission’s rules.⁷¹

Section 1.21002 Applicable to ETC Designation Petitions

⁶³ 47 CFR § 54.320(b).

⁶⁴ *Id.* § 54.320(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, para. 621.

⁶⁵ 47 CFR §§ 54.315(c)(4), 54.320.

⁶⁶ *Id.* §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 CAF Order*, 29 FCC Rcd at 15694-701, paras. 142-57.

⁶⁷ 47 CFR § 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194; *ETC Designation Report and Order*, 20 FCC Rcd at 6402, para. 72 (“If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission’s criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier’s designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.”).

⁶⁸ *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

⁶⁹ 47 U.S.C. § 214(a); 47 CFR § 54.205.

⁷⁰ 47 U.S.C. § 214(e)(4).

⁷¹ 47 CFR § 63.71.

Upon receipt of a petition filed pursuant to section 214(e)(6), the Commission routinely issues a public notice establishing a pleading cycle.⁷² Under section 1.21002 of the Commission's rules, after an application to participate in an auction for Universal Service Fund support is filed, applicants are prohibited from engaging in certain communications about their bids or bidding strategies, either directly or indirectly, with other applicants.⁷³ Such prohibition applies until the long-form application deadline, which will fall on the 10th day after the release of the public notice announcing the close of the auction (unless otherwise provided by public notice).⁷⁴ Petitions for ETC designation that contain information about bid areas could constitute a prohibited communication, if disclosed prior to the Commission announcing winning bids in the Auction Closing Public Notice. Consequently, to avoid violating the prohibited communications rule, petitioners seeking a designation in connection with an auction application should not submit their petitions for ETC designation to the Commission (or the relevant state commission(s), if applicable) until after the release of the Auction Closing Public Notice.

ETC Petition Filing Requirements

Petitions for ETC Designation and Related Pleadings. All ETC petitions filed with the Commission must reference "Petition for Designation as an Eligible Telecommunications Carrier Pursuant to section 214(e)(6) of the Act, **WC Docket No. 09-197**." Comments and reply comments must reference the same information as well as the DA number assigned to the public notice establishing a pleading cycle for the petition, as described below. If a petitioner is seeking designation to serve Tribal lands, it must provide copies of its petition to the appropriate state commission⁷⁵ and to the affected tribal government and tribal regulatory authority, as applicable,⁷⁶ when it files its petition for ETC designation with the Commission.

Pleading Cycle. Upon receipt of an ETC petition, the Commission will issue a public notice establishing a pleading cycle.⁷⁷ If the ETC designation petition involves Tribal lands, the Commission shall send copies of this public notice to the state commission by overnight mail and to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.⁷⁸ The Commission encourages any statements and analyses from the appropriate tribal authority addressing the jurisdictional question or the merits of the designation request.⁷⁹

Requests for Confidential Treatment. To the extent that a petitioner seeks confidential treatment of any information included in its petition, it must file a separate request for confidentiality pursuant to section 0.457 and 0.459 of the Commission's rules, along with redacted copies.⁸⁰

FCC Electronic Filings. Petitions and related filings may be filed using ECFS at <http://fjallfoss.fcc.gov/ecfs2/>.⁸¹ Filers must transmit one electronic copy of the comments for each docket number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers.

⁷² Section 214(e)(6) Public Notice, 12 FCC Rcd at 22950.

⁷³ 47 CFR § 1.21002.

⁷⁴ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1477, para. 134 (2018).

⁷⁵ *2000 Tribal Order*, 15 FCC Rcd at 12266-67, para. 120.

⁷⁶ 47 CFR § 54.202(c).

⁷⁷ Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948.

⁷⁸ See *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 120; 47 CFR § 54.202(c).

⁷⁹ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 120.

⁸⁰ 47 CFR §§ 0.457, 0.459.

⁸¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Paper Filings. Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings submitted to the FCC must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- *Hand or Messenger Delivery.* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- *Commercial Overnight Mail.* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- *U.S. Postal Service First-Class, Express, and Priority Mail.* U.S. Postal Service mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.
- *Additional Copies.* One copy of each paper filing must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563.

Permit but Disclose Ex Parte Communications. For the purposes of the Commission's *ex parte* rules, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.⁸² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).⁸³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.⁸⁴ If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.⁸⁵ Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).⁸⁶ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).⁸⁷ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

⁸² See 47 CFR § 1.1206.

⁸³ *Id.* § 1.2016(b)(2)(iii).

⁸⁴ *Id.* § 1.206(b)(1).

⁸⁵ *Id.*

⁸⁶ *Id.* § 1.1206(b)(2).

⁸⁷ *Id.* § 1.1206(b)(2)(i); see also *id.* § 1.49(f).

Public Inspection. Filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com. The documents may also be viewed in and downloaded from ECFS.

People with Disabilities: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

For further information, please contact the Nissa Laughner at (202) 418-1358 or Nissa.Laughner@fcc.gov, or Alexander Minard at (202) 418-0428 or Alexander.Minard@fcc.gov, both of the Wireline Competition Bureau, Telecommunications Access Policy Division.

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