



# PUBLIC NOTICE

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## CONNECT AMERICA FUND PHASE II AUCTION (AUCTION 903) CLOSES WINNING BIDDERS ANNOUNCED FCC FORM 683 DUE OCTOBER 15, 2018

**AU Docket No. 17-182**  
**WC Docket No. 10-90**

1. By this Public Notice, the Rural Broadband Auctions Task Force, Wireless Telecommunications Bureau (WTB), and Wireline Competition Bureau (WCB) announce that bidding in the Connect America Fund Phase II (Phase II) auction (Auction 903) concluded on August 21, 2018. There were 103 winning bidders in the auction, with the 10-year support amount totaling \$1.488 billion and covering 713,176 locations in 45 states. Of the 974,223 locations in the 30,033 eligible census block groups (CBGs), approximately 73 percent of the locations are covered by winning bids. While winning bids are for a range of performance tiers, winning bids for downstream speeds of at least 100 megabits per second (Mbps) cover 53 percent of these locations. And over 99.7 percent of these locations will receive at least 25 Mbps downstream speeds, more than twice the 10 Mbps minimum standard for the Connect America Fund program.

2. Winning bidders are required to submit a post-auction application for support (FCC Form 683) no later than **October 15, 2018**. Winning bidders that wish to assign some or all of their winning bids to related entities must do so by **September 14, 2018**, using the Divide Winning Bids process described below.

### I. WINNING BIDDERS

3. This Public Notice summarizes the results of the auction and provides winning bidders with important information, including FCC Form 683 filing requirements and support disbursement matters. Key information appears in the following attachments:

**Attachment A:** “Winning Bidders Summary” lists for each bidder: the state, the 10-year assigned support amount, and the number of locations assigned in winning bids.

**Attachment B:** “State Results Summary” lists for each state with eligible areas in Auction 903: the total assigned support, the number of locations assigned, and the number of bidders with winning bids.

**Attachment C:** “FCC Form 683: Application for Connect America Fund Phase II Auction Support – Instructions.”

4. A copy of this Public Notice will be sent to each qualified bidder via overnight delivery to the contact person at the contact address listed in each qualified bidder’s short-form application (FCC Form 183).

## II. AUCTION RESULTS

5. Concurrent with the release of this Public Notice, the Commission is making available the detailed auction results and bidding information described below.

**Online Map:** An interactive visual representation of the auction results is available on the Auction 903 web page ([www.fcc.gov/auction/903](http://www.fcc.gov/auction/903)) and at [www.fcc.gov/reports-research/maps/caf2-auction903-results/](http://www.fcc.gov/reports-research/maps/caf2-auction903-results/). There are options for displaying all eligible areas and non-winning bids. Clicking on a state or winning bid listed on the right-hand side of the map will zoom the map in to that area.

**Results Data:** An online viewer of results data and downloadable files that include the identities of bidders and all their submitted bids are now available in the FCC Auctions Public Reporting System ([auctiondata.fcc.gov](http://auctiondata.fcc.gov)), for which there is a link on the Results tab on the Auction 903 web page ([www.fcc.gov/auction/903/](http://www.fcc.gov/auction/903/)).<sup>1</sup>

6. Additionally, the Commission will soon make available certain, previously withheld information submitted in the applications to participate in the auction (FCC Forms 183). This information includes the state(s) and performance tier and latency combination(s) for which each applicant was found to be eligible and applicants' spectrum access attachments, if any.<sup>2</sup> The applications are viewable through the application search feature, which can be accessed through the Application tab on the Auction 903 web page.

## III. POST-AUCTION PROCEDURES

7. Under the competitive bidding rules adopted in the *Phase II Auction Order*, Auction 903 winning bidders must file a post-auction application for support, also referred to as FCC Form 683, consistent with all requirements of the long-form application process.<sup>3</sup> FCC Form 683 has two discrete parts—the Divide Winning Bids portion and the long-form application portion. Each winning bidder is required to file an FCC Form 683 to become authorized to receive support. Prior to completing the long-form application portion, a winning bidder may divide its winning bids by assigning them to related entities, as described below. If a winning bidder divides its winning bids among related entities, those entities will be required to file the long-form application portion of an FCC Form 683 for those winning

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<sup>1</sup> Because bids in Auction 903 implied annual support amounts, the bids and results data in the FCC Auctions Public Reporting System are on an annual basis, in contrast to the 10-year total support amounts reported in Attachments A and B.

<sup>2</sup> We will continue to withhold from routine public inspection responses to the technical questions in Appendix A of the *Auction 903 Procedures Public Notice* and any supporting information; financial information for which confidential treatment was requested under the section 0.459(a)(4) abbreviated confidential treatment process; and any other information subject to a request for confidential treatment that has been granted or remains pending. 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, 1475-76, 1528-29, para. 127, App. A (2018) (*Auction 903 Procedures Public Notice*).

<sup>3</sup> 47 CFR § 1.21004; *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6000, para. 144 (2016) (*Phase II Auction Order*).

bids, as described below. A winning bidder will be responsible for completing the long-form application portion of FCC Form 683 for any winning bids that it does not assign to a related entity.

8. **Winning bidders that intend to file a long-form application covering all their winning bids are not required to participate in the Divide Winning Bids process.**<sup>4</sup> Any winning bidder that does not submit the Divide Winning Bids portion of FCC Form 683 prior to 6:00 p.m. ET on September 14, 2018, must file a long-form application that covers *all* its winning bids. In such circumstances, the winning bidder must file the long-form application in its own name, be designated as the eligible telecommunications carrier (ETC) to serve the relevant areas, be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Phase II support.

**A. Divide Winning Bids Portion of FCC Form 683**

9. Any winning bidder that intends to assign some or all its winning bids to related entities must do so by submitting the Divide Winning Bids portion of the FCC Form 683 during the Divide Winning Bids filing window. **The Divide Winning Bids filing window will open at 10:00 a.m. Eastern Time (ET) on Tuesday, September 4, 2018, and close at 6:00 p.m. ET on Friday, September 14, 2018.** During this period, a winning bidder will be able to log into the Auction Application System using the FCC Registration Number (FRN) that it used to file its short-form application and complete the Divide Winning Bids portion of FCC Form 683. The instructions in Attachment C explain how a winning bidder can assign its winning bids to related entities.

10. A winning bidder may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (i.e., March 30, 2018).<sup>5</sup> The Auction Application System will not permit a winning bidder to assign its winning bids to another winning bidder. A related entity is an entity that is controlled by the winning bidder or is a member of (or an entity controlled by a member of) a consortium/joint venture of which the winning bidder is a member.<sup>6</sup> Thus, if a holding company/parent company is a winning bidder in Auction 903, the winning bidder may designate at least one operating company that it controls to complete the long-form application to receive Phase II support for some or all of the winning bids in a state. If a consortium/joint venture is a winning bidder in Auction 903, the entity may designate at least one member of (or an entity controlled by a member of) the consortium/joint venture to complete the long-form application to receive Phase II support for some or all of the winning bids in a state.

11. A winning bidder may assign winning bids to more than one entity in a single state, but it cannot assign a single winning bid to more than one entity.<sup>7</sup> Thus, a winning bidder may not apportion among multiple entities either: 1) eligible census blocks within a winning bid for an individual census block group, or 2) separate census block groups within a winning package bid.

12. **Each entity that is assigned a winning bid through the Divide Winning Bids process is the entity that must file the long-form application portion of FCC Form 683 in its own name, be designated as the eligible telecommunications carrier to serve the relevant area(s), be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Phase II support.**<sup>8</sup>

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<sup>4</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1442-43, para. 37.

<sup>5</sup> *Id.* at 1442, para. 37 n.75.

<sup>6</sup> *See generally id.* at 1441, para. 34 (defining a controlling interest for purposes of Auction 903 “as an individual or entity with positive or negative *de jure* or *de facto* control”); *see also* 47 CFR § 1.2105(a)(4)(i) (defining *de jure* and *de facto* control).

<sup>7</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1442, para. 37.

<sup>8</sup> *Id.* at 1442-43, para. 37.

13. A winning bidder that assigns some or all its winning bids to a related entity must make a number of certifications in the Divide Winning Bids portion of FCC Form 683. In particular, it must certify and acknowledge that it:

- has assigned the winning bids to related entities that were named in the short-form application or are newly formed,
- will inform each entity of its filing obligation and cause each entity to submit a timely FCC Form 683 long-form application,
- will be at risk for default if any of the related entities do not submit a timely FCC Form 683 long-form application, and
- will submit a timely FCC Form 683 long-form application for any of the winning bids that it did not assign to another entity.

**B. Obligation to Apply for Support – Long-Form Application Portion of FCC Form 683**

14. A winning bidder that retains any of its bids, as well as all entities that are assigned winning bids by a winning bidder, must electronically submit the long-form application portion of FCC Form 683 covering those bids prior to the close of the long-form application filing window. **The long-form application filing window will open at 10:00 a.m. ET on Monday, October 1, 2018, and will close at 6:00 p.m. ET on Monday, October 15, 2018.** Certain additional information may be submitted to the Commission after this filing window closes, as described below. **The Auction Application System will open a filing window at 10:00 a.m. ET on Monday, October 22, 2018 to permit applicants to submit this additional information by the relevant deadlines.**

**1. Deadlines**

15. Attachment C of this Public Notice provides instructions for completing the long-form application portion of FCC Form 683. These instructions are consistent with the Commission's requirements fully described in section 54.315(b) & (c) of the Commission's rules and paragraphs 289 to 316 of the *Auction 903 Procedures Public Notice*.<sup>9</sup> Below is a summary of the information that must be submitted by the applicable application deadlines:<sup>10</sup>

- **Information due prior to 6:00 p.m. ET on October 15, 2018:**
  - **Applicant information**, including legal classification (e.g., corporation, general partnership, etc.), jurisdiction of formation, address, contact information, and responsible individual
  - **Whether the applicant has already been designated as an eligible telecommunications carrier (ETC)** for all the eligible census blocks in a winning bid(s)<sup>11</sup>

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<sup>9</sup> 47 CFR § 54.315(b), (c); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1512-21, paras. 289-316; *see also Phase II Auction Order*, 31 FCC Rcd at 5986-6005, paras. 111-56.

<sup>10</sup> As discussed in Attachment C, certain applicant information will be automatically transferred from a winning bidder's short-form application (FCC Form 183) to its long-form application (FCC Form 683).

<sup>11</sup> By February 25, 2019, the long-form applicant must obtain from all the relevant states or the Commission a high-cost ETC designation(s) that cover its winning bid areas and upload the required documentation and a certification letter to its FCC Form 683. 47 CFR § 54.315(b)(5); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

- If the applicant has already obtained a high-cost ETC designation that covers all the relevant areas in a state, it should submit the required ETC documentation and certification letter by this deadline so that Commission staff can expeditiously verify the applicant's ETC status in the state
  - If the applicant has obtained a high-cost ETC designation for only some of the relevant areas in a state, Commission staff will not verify the applicant's ETC status in a state until the applicant has submitted the required documentation and certification letter for *all* the relevant areas in the state
- **Whether the applicant is required to submit audited financial statements** during the long-form application process and whether it seeks confidential treatment of those financial statements<sup>12</sup>
- **Initial project overview(s)** describing at a high-level the applicant's intended technology and system design for each state with a winning bid.<sup>13</sup> An applicant should not include any confidential trade secrets or commercial information in its overview(s), which will be made publicly available.
- **Project funding description(s)** that explains how necessary construction will be funded in each state<sup>14</sup>
- **Spectrum access description(s)** demonstrating that the applicant has sufficient access to spectrum in each state, if applicable<sup>15</sup>
- **Agreement information**, including information regarding any agreements relating to the applicant's participation in Auction 903<sup>16</sup>
- **Ownership information**, including information regarding entities that have an ownership or other interest in the applicant and associated Commission-regulated businesses<sup>17</sup>
- **Various certifications**, including certifications regarding the applicant's compliance with statutory and regulatory requirements; financial and technical qualifications; available funds; compliance with the relevant public interest obligations and ETC requirements; and spectrum access, if applicable<sup>18</sup>

16. In the *Auction 903 Procedures Public Notice*, the Commission adopted a deadline of 60 days from the release of this Public Notice for long-form applicants to submit letter of credit commitment

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<sup>12</sup> As noted below, the audited financial statements are due by February 25, 2019. 47 CFR § 54.315(b)(4); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519-20, para. 311; *Phase II Auction Order*, 31 FCC Rcd at 5983-84, 5989, paras. 102-03, 116.

<sup>13</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1514, para. 299.

<sup>14</sup> 47 CFR § 54.315(b)(2)(vi); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1518, para. 306; *Phase II Auction Order*, 31 FCC Rcd at 5989, para. 116.

<sup>15</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1518-19, paras. 307-08.

<sup>16</sup> *Id.* at 1485, para. 162.

<sup>17</sup> 47 CFR §§ 1.2112(a), 54.315(b)(2)(i).

<sup>18</sup> *See, e.g.*, 47 CFR § 54.315(b)(2)(ii), (iii), (v), (vii); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1513-14, 1518, 1519, paras. 292-97, 306, 308.

letters, as well as detailed technology and system design descriptions.<sup>19</sup> We find good cause to waive this deadline and provide a short extension for the filing of this information. Generally, the Commission's rules may be waived for good cause shown.<sup>20</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>21</sup> We find that special circumstances exist because we have shifted the initial post-auction filing deadline to allow for the Divide Winning Bids portion of FCC Form 683 and we cannot immediately open another filing window for the information due by the 60-day deadline due to administrative reasons.<sup>22</sup> We conclude that it serves the public interest to extend the deadline to provide long-form applicants with sufficient time to submit this information after the filing window re-opens at 10:00 a.m. ET on Thursday, October 22, 2018, and before the deadline of 6:00 p.m. ET on November 5, 2018. Because we are only extending the 60-day deadline by a week and are not adjusting the final 180-day long-form application deadline, we expect that this extension will not materially delay our efforts to authorize applicants for support. Accordingly, we find the public interest benefits outweigh any potential harm.

- **Information due prior to 6:00 p.m. ET on November 5, 2018:**

- **Letter of credit commitment letter(s)** for each applicable state from a qualified bank committing to issue an irrevocable stand-by letter of credit to the long-form applicant in the required form that covers the first year of support (at a minimum)<sup>23</sup>
- **Detailed technology and system design description(s)** for each applicable state, including a network diagram certified by a professional engineer; paragraphs 298 to 305 of the *Auction 903 Procedures Public Notice* provide detailed guidance on how an applicant can successfully meet this requirement<sup>24</sup>
  - The professional engineer must certify that he or she has reviewed the network diagram and that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements<sup>25</sup>
  - While it is not necessary that the professional engineer certifying the network diagram have a Professional Engineer license, the certification should describe

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<sup>19</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1514, 1519, paras. 300, 309.

<sup>20</sup> 47 CFR § 1.3.

<sup>21</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)).

<sup>22</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1512, para. 290 (noting that the original initial long-form application filing deadline was “[u]nless otherwise provided by public notice, within 10 business days after release of the Auction 903 closing public notice”).

<sup>23</sup> 47 CFR § 54.315(b)(3); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 309; *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 134. At a minimum, the letter must provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit in Appendix B of the *Phase II Auction Order*. *Phase II Auction Order*, 31 FCC Rcd at 6045-49, App. B. The requirements for a qualified bank are described in detail in the *Phase II Auction Order* and section 54.315(c) of the Commission's rules. 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd 5992-97, paras. 126-33.

<sup>24</sup> 47 CFR § 54.315(b)(2)(iv); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1514-18, paras. 298-305.

<sup>25</sup> 47 CFR § 54.315(b)(2)(iv); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1514, para. 298; *Phase II Auction Order*, 31 FCC Rcd at 5987-88, para. 114.

the professional engineer's qualifications such that the certifier's expertise is apparent

- **Information due prior to 6:00 p.m. ET on February 25, 2019:**
  - **Documentation of high-cost ETC designation(s)** in all areas where the applicant will receive support, as described in paragraph 310 of the *Auction 903 Procedures Public Notice*.<sup>26</sup> An applicant should also upload a .csv file of the census blocks that are included in the ETC designation order, if applicable.
  - **ETC certification letter(s)** from an officer of the applicant certifying that the long-form applicant's ETC designation(s) covers all the areas where the applicant will receive support<sup>27</sup>
  - If not provided with the FCC Form 183 short-form application by the long-form applicant or a related entity,<sup>28</sup> **financial statements from the prior fiscal year (i.e., 2017) that have been audited by an independent certified public accountant**, including the audit opinion, balance sheets, net income, and cash flow statements<sup>29</sup>
    - The applicant must submit the audited financial statements of the entity that submitted its unaudited financial statements in the relevant FCC Form 183 short-form application or its own audited financial statements<sup>30</sup>
    - Any applicant that fails to submit the audited financial statements as required by this deadline will be subject to a base forfeiture of \$50,000, which will be subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines<sup>31</sup>

17. Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Phase II public interest obligations if authorized to receive support. Commission staff will notify a long-form applicant if additional information is required. If the application and the information with respect to each winning bid in a particular state is complete and the long-form applicant has demonstrated that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids for

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<sup>26</sup> 47 CFR § 54.315(b)(5); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 141.

<sup>27</sup> 47 CFR § 54.315(b)(5); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 141.

<sup>28</sup> In this context, a related entity means the long-form applicant's parent/holding company or, if the long-form applicant is a member of a consortium or joint venture, the member of the consortium or joint venture that submitted financial statements with the short-form application.

<sup>29</sup> 47 CFR § 54.315(b)(4); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519-20, para. 311; *Phase II Auction Order*, 31 FCC Rcd at 5983-84, 5989, paras. 102-03, 116.

<sup>30</sup> Accordingly, if the long-form applicant is a member of a consortium, it should submit the audited financial statements of the consortium member that submitted its unaudited financial statements in FCC Form 183. If the long-form applicant is an operating company of a holding company that filed a FCC Form 183 on behalf of the long-form applicant, the long-form applicant should submit the audited financial statements of the holding company. A long-form applicant also has the option of filing its own audited financial statements instead.

<sup>31</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519-20, para. 311; *Phase II Auction Order*, 31 FCC Rcd at 5984-85, paras. 103-05; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

which the Commission is ready to authorize Phase II support.<sup>32</sup> If a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids that are considered in default.<sup>33</sup>

- If not already provided, the applicant will have 10 business days from the release of the public notice indicating that the Commission is ready to authorize support to submit:
  - **Irrevocable standby letter(s) of credit** for each state where the long-form applicant will be authorized to receive support. Long-form applicants should carefully review the letter of credit requirements in section 54.315(c) of the Commission's rules and in the *Phase II Auction Order*,<sup>34</sup> which are summarized below:
    - The letter(s) of credit must cover the first year of support for the state, at a minimum.<sup>35</sup> An applicant may obtain multiple letters of credit to cover all the bids in the state, but compliance with service milestones will be reviewed on a state-wide basis. Accordingly, if a long-form applicant chooses to obtain a letter of credit for each of its bids that are located in a state and defaults, a draw on *all* the letters of credit covering all of the bids in the state will be authorized.<sup>36</sup>
    - The letter(s) of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix B of the *Phase II Auction Order*.<sup>37</sup>
    - The long-form applicant must be the entity that is named in the letter(s) of credit<sup>38</sup>
    - The letter(s) of credit must be issued by a qualified bank. The issuing bank eligibility requirements are described in section 54.315(c)(2) of the Commission's rules and in paragraphs 126 to 133 of the *Phase II Auction Order*.<sup>39</sup>
    - Before a support recipient can receive its next year's support and each year's support thereafter, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year, subject to certain reductions when the support recipient has substantially met its service milestones<sup>40</sup>

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<sup>32</sup> 47 CFR § 54.315(b)(6)(v).

<sup>33</sup> A long-form applicant that defaults on a winning bid in a state may still be authorized to receive support for its remaining winning bids in that state.

<sup>34</sup> 47 CFR § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, 6045-49, paras. 119-40, App. B.

<sup>35</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

<sup>36</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

<sup>37</sup> *Id.* at 6045-49, App. B.

<sup>38</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1443, para. 37.

<sup>39</sup> 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd 5992-97, paras. 126-33.

<sup>40</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, 5997, paras. 122, 135. Once an Auction 903 support recipient has met its 60 percent service milestone, its letter of credit may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once an Auction 903 support recipient has met its 80 percent service milestone, its letter of credit may be valued at 60 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. *See Connect*



- The letter(s) of credit must remain open until the support recipient has certified that it has met the final service milestone and the Universal Service Administrative Company (USAC) has verified that the build out obligation has been fulfilled<sup>41</sup>
- **Letter of Credit Bankruptcy Opinion Letter(s)** from legal counsel regarding the treatment of the letter(s) of credit or its proceeds in a bankruptcy proceeding<sup>42</sup>

18. Once Commission staff has determined that a long-form application is complete and the long-form applicant is financially and technically qualified, and the letter(s) of credit and accompanying opinion letter(s) have been received and approved, WCB will issue a public notice announcing the authorization of support for the winning bid(s) and directing USAC to begin disbursing support.<sup>43</sup> USAC will issue a new study area code to each long-form applicant for each state in which it is authorized to receive support. Long-form applicants will be notified of the new study area code prior to the authorization for support along with procedures for disbursing support. Monthly support disbursements will begin shortly after the authorization public notice has been released.

19. If an applicant is not authorized to receive support for a winning bid, it will be in default and subject to forfeiture for that winning bid as described below.

## 2. Forfeiture in the Event of Default

20. As described in the *Phase II Auction Order*,<sup>44</sup> winning bidders or long-form applicants that have been assigned winning bids during the Divide Winning Bids stage will be subject to a forfeiture in the event of a default. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Phase II support, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise.

21. In the event of an auction default, a base forfeiture per violation of \$3,000 may be imposed.<sup>45</sup> So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to five percent of the bidder's total assigned support for the bid for the support term.<sup>46</sup> Notwithstanding this limitation, the total base forfeiture will

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*America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1405, para. 64 (2018) (*Phase II Auction Reconsideration Order*); *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

<sup>41</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

<sup>42</sup> 47 CFR § 54.315(c)(3); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1520, para. 313; *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125.

<sup>43</sup> 47 CFR § 54.315(b)(6)(vi).

<sup>44</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1520-21, paras. 314-15.

<sup>45</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

<sup>46</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, para. 144; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A's winning bid includes 100 CBGs for \$100,000 over the 10-year support term. We may impose a base forfeiture of \$5,000 (5 percent of \$100,000) because otherwise the base forfeiture would be \$300,000 (\$3,000 x 100 CBGs), which is three times the entire bid amount. In contrast, if Bidder B's winning bid includes

also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.<sup>47</sup> A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding.<sup>48</sup> In other words, there shall be separate apparent violations for each census block group assigned in a bid.

**C. General FCC Form 683 Information**

22. For both the Divide Winning Bids and long-form application portions of FCC Form 683, the application may be filed at any time after the relevant filing window opens until the filing window closes. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the relevant filing window closes.

23. A winning bidder and/or long-form applicant must always click on the CERTIFY & SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 683 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. If a winning bidder or long-form applicant needs guidance or encounters technical difficulties in filing FCC Form 683, it may contact FCC Auctions Technical Support using the information in the Contact section, below.

**D. Maintaining Accuracy of Information**

24. Each long-form applicant must make all changes to its information in the Auction Application System using FCC Form 683. With the release of this Public Notice, long-form applicants are no longer required to maintain the accuracy and completeness of information furnished in their FCC Form 183 applications.

25. A long-form applicant will be permitted to make minor modifications to its application after the deadline for submitting applications.<sup>49</sup> Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or not available at the time the application was submitted.<sup>50</sup> If a long-form applicant makes a major modification to its application, the application will be denied.<sup>51</sup> In such an event, the long-form applicant will be subject to forfeiture. Major modifications include, but are not limited to, any changes in the ownership of the long-form applicant that constitute an assignment or transfer of control, any changes in the identity of the long-form applicant, or any changes in the required certifications.<sup>52</sup>

**E. Public Availability of FCC Form 683 Information**

26. Information submitted in FCC Form 683 will generally be publicly available after Commission staff completes its review. Accordingly, a long-form applicant should take care not to include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social

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100 CBGs for \$7,000,000 over the support term, we may impose a base forfeiture of \$300,000 (\$3,000 x 100 CBGs), which is 4.3 percent of the total bid.

<sup>47</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8); *Phase II Auction Order*, 31 FCC Rcd at 6000-01, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

<sup>48</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

<sup>49</sup> 47 CFR § 54.315(b)(6)(iii).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* § 54.315(b)(6)(iv).

<sup>52</sup> *Id.*

Security Numbers, in its application. However, consistent with the Commission's limited information procedures in place for Auction 903, certain information will be withheld from routine public inspection even after support is authorized.

27. Information related to a long-form applicant's detailed technology and system design description and its project funding description will be treated as confidential and will be withheld from public inspection.<sup>53</sup> The Commission will treat long-form applicants that submit this information as having made a request to treat this information as confidential trade secrets and/or commercial information. As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.

28. Moreover, a long-form applicant may request confidential treatment of its audited financial statements directly on FCC Form 683, using an abbreviated process under section 0.459(a)(4) of the Commission's rules. The applicant need not submit a separate section 0.459 confidentiality request with its FCC Form 683.<sup>54</sup>

29. Nevertheless, if a request for public inspection under section 0.461 is made for the long-form applicant's audited financial statements, detailed technology and system design description, or project funding description, the long-form applicant will be notified and then must justify the continued confidential treatment of the information if it objects to the disclosure.<sup>55</sup>

30. A long-form applicant may include with its FCC Form 683 a request that any other information submitted in its application not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's rules.<sup>56</sup> Requests for confidential treatment of information other than that discussed above will not be routinely granted.

#### **IV. OTHER IMPORTANT INFORMATION**

##### **A. Maintaining Prohibition on Certain Communications**

31. Section 1.21002 of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, an applicant "is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support."<sup>57</sup> As explained more fully in the *Auction 903 Procedures Public Notice*, this prohibition took effect as of the short-form application filing deadline, i.e., March 30, 2018, at 6:00 p.m. ET, and extends until the deadline for filing the long-form application portion of FCC Form 683, i.e., **October 15, 2018, at 6:00 p.m. ET.**<sup>58</sup>

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<sup>53</sup> *Id.* § 0.459; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1515, paras. 300 n.447 & 306 n.499. A long-form applicant's high-level initial project overview will be made publicly available. *Id.* at 1514, para. 299.

<sup>54</sup> 47 CFR § 0.459(a)(4). To ensure that the particular information is afforded such treatment, in both cases, a long-form applicant must upload the information to FCC Form 683 using the appropriate attachment "type" as described in the instructions in Attachment C.

<sup>55</sup> *Id.* § 0.461

<sup>56</sup> *Id.* § 0.459.

<sup>57</sup> *Id.* § 1.21002(b).

<sup>58</sup> See *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1477, para. 134.

32. **This prohibition applies to all short-form applicants regardless of whether such applicants became qualified bidders or actually bid.**<sup>59</sup> We also emphasize that, for purposes of this prohibition, an “applicant” includes the entity filing the application, each entity capable of controlling the applicant, and each entity that may be controlled by the applicant or by an entity capable of controlling the applicant.<sup>60</sup>

33. The prohibition of “communicating in any manner” includes public disclosures, private communications, and indirect or implicit communications, as well as express statements of bids and bidding strategies.<sup>61</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

#### **B. High-Cost Eligible Telecommunications Carrier Designations**

34. As noted above, by February 25, 2019, the long-form applicant must have obtained a high-cost ETC designation(s) from all the relevant states or the Commission that covers its winning bid areas and must submit the required documentation and a certification letter(s) from an officer.<sup>62</sup> Long-form applicants subject to state jurisdiction must petition the relevant state commissions for ETC designation and should follow state rules and requirements to apply for designation(s).<sup>63</sup> Long-form applicants not subject to state jurisdiction must petition the Commission for designation(s) as described in the *Auction 903 ETC Public Notice*.<sup>64</sup>

35. In the event a long-form applicant determines that it will be unable to obtain the necessary ETC designations within 180 days, it should upload a petition for waiver of the deadline to its FCC Form 683. The Commission has found that it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete.<sup>65</sup> A waiver of the 180-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state and the state’s next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. When considering waivers of the 180-day timeframe for obtaining ETC designation, we will presume that

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<sup>59</sup> An entity that submits an application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the long-form application filing deadline.

<sup>60</sup> 47 CFR § 1.21002(a).

<sup>61</sup> *Id.*; *see generally Updating Part 1 Competitive Bidding Rules*, Report and Order et al., 30 FCC Rcd 7493, 7577, para. 199 (2015) (explaining that similar section 1.2105(c) language prohibiting communicating bids or bidding strategies “in any manner” bars “communicating bids or bidding information, either directly or indirectly”); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the “substance” of Cascade’s bids or bidding strategies).

<sup>62</sup> 47 CFR § 54.315(b)(5); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310.

<sup>63</sup> 47 U.S.C. § 214(e)(2).

<sup>64</sup> 47 U.S.C. § 214(e)(6); *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, Public Notice, DA 18-714 (WCB July 10, 2018). As described in the public notice, the Commission places the burden of proof upon the petitioner seeking a Commission ETC designation to demonstrate that the Commission has jurisdiction. *Id.* at 1-2.

<sup>65</sup> *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53.

an entity acted in good faith if the entity files its ETC application **within 30 days** of the release of this Public Notice.<sup>66</sup>

### **C. Public Interest Obligations and Annual Reporting Requirements**

36. To ensure that Phase II support meets the Commission's public interest objectives, a long-form applicant that has received notice from the Commission that it is authorized to receive Phase II support will be subject to a variety of obligations, including service requirements, service milestones, reporting, and record retention requirements.<sup>67</sup> This includes the requirement that Auction 903 support recipients test and certify compliance with the relevant performance requirements in accordance with the uniform framework to measure and report on performance that was adopted by WCB, WTB, and the Office of Engineering and Technology.<sup>68</sup>

37. An Auction 903 support recipient will be subject to non-compliance measures if it fails or is unable to meet the service milestones or other service requirements, or fails to fulfill any other term or condition of Phase II support.<sup>69</sup> As described in the *December 2014 Connect America Order*, the *Phase II Auction Order*, and the *CAF Performance Measures Order*, these measures will scale with the extent of non-compliance, and include additional reporting, withholding of support, support recovery, and drawing on the support recipient's letter of credit if the support recipient cannot pay back the relevant support by the applicable deadline.<sup>70</sup> A support recipient may also be subject to other sanctions for non-compliance with the terms and conditions of Phase II support, including, but not limited to, the Commission's existing enforcement procedures and penalties, potential revocation of ETC designations, and suspension or debarment.<sup>71</sup>

### **D. Location Total and Support Adjustment Process**

38. If a Phase II support recipient cannot identify enough locations in the eligible census blocks in its winning bids to meet its statewide obligation, it will have one year from the release of this Public Notice to file evidence of the total number of locations in those census blocks, including geolocation data of all the locations it was able to identify.<sup>72</sup> The support recipient's filing will be subject to review and comment by relevant stakeholders and an audit. If the support recipient demonstrates that the number of actual, on-the-ground locations is lower than the number estimated by the Connect America Cost Model, its state location total will be adjusted, and its support will be reduced on a pro rata basis.<sup>73</sup> If a support recipient finds that the number of actual locations has increased, its location total and

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<sup>66</sup> *Id.*

<sup>67</sup> *See, e.g.* 47 CFR §§ 54.309, 54.310(c), 54.313, 54.314, 54.316, 54.320; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1433-36, 1473, paras. 12-17, 121 (providing a high-level summary of the relevant public interest obligations and high-cost ETC obligations).

<sup>68</sup> *Connect America Fund*, WC Docket No. 10-90, Order, DA 18-710 (WCB/WTB/OET July 6, 2018) (*CAF Performance Measures Order*).

<sup>69</sup> 47 CFR §§ 54.315(c)(4), 54.320.

<sup>70</sup> *Id.* §§ 54.315(c)(4), 54.320; *CAF Performance Measures Order* at 23-25, paras. 60-67; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15694-701, paras. 142-57 (2014) (*December 2014 Connect America Order*).

<sup>71</sup> 47 CFR § 54.320(c); *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

<sup>72</sup> *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-91, paras. 23-28.

<sup>73</sup> *Id.* at 1389, para. 23.

support will not be increased.<sup>74</sup> We will release a public notice seeking comment on the implementation of this process.

**E. Return of SecurID® Tokens**

39. The SecurID® tokens distributed to qualified bidders were tailored to Auction 903 and will not work for future auctions. Each bidder should return its SecurID® tokens to the Commission for recycling. The Commission will send each bidder, along with the copy of this Public Notice, a pre-addressed, stamped envelope for returning the SecurID® tokens.

**F. Contact Information**

40. For further information, contact:

**Technical Support**

Electronic Filing  
Auction Application System and CAF II Bidding  
System (Hardware/Software Issues)

**FCC Auctions Technical Support Hotline**

(877) 480-3201, option nine; or (202) 414-1250  
(202) 414-1255 (TTY)  
Hours of service: 8:00 a.m. – 6:00 p.m. ET,  
Monday through Friday

**Press Information**

Mark Wigfield, (202) 418-0253

**General Universal Service Information**

**Wireline Competition Bureau,  
Telecommunications Access Policy Division**  
Alex Minard  
Heidi Lankau  
Katie King  
(202) 418-7400

**Auction 903 Information**

General Auction Information, Process, and  
Procedures

**Auctions and Spectrum Access Division**  
(717) 338-2868

Post-Auction Rules, Policies, and Regulations

**Rural Broadband Auctions Task Force**  
Chelsea Fallon, (202) 418-7991  
Kirk Burgee, (202) 418-1599  
Nathan Eagan, (202) 418-0991

**Small Businesses**

Additional information for small and  
disadvantaged businesses

**Wireless Telecommunications Bureau  
Auctions and Spectrum Access Division**  
Mark Montano  
(202) 418-0660

**Office of Communications Business  
Opportunities**  
(202) 418-0990  
<http://www.fcc.gov/ocbo/>

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<sup>74</sup> *Id.* at 1390, para. 26.

**Accessible Formats**

Braille, large print, electronic files, or  
audio format for people with disabilities

**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**FCC Internet Sites**

<http://www.fcc.gov>  
[www.fcc.gov/auction/903](http://www.fcc.gov/auction/903)

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