



PUBLIC NOTICE

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

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DA 19-1309

Released: December 20, 2019

CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR 2,121 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel's Opinion Letters by Friday, January 10, 2020

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

By this Public Notice, the Rural Broadband Auctions Task Force, Wireline Competition Bureau, and the Office of Economics and Analytics (Bureaus) announce they are ready to authorize Connect America Fund Phase II auction (Auction 903) support for the Auction 903 winning bids identified in Attachment A of this Public Notice. The Bureaus, on their own motion, grant a brief, limited waiver of section 54.315(b)(6)(v) of the Commission's rules due to the upcoming federal holidays.¹ We find good cause to waive section 54.315(b)(6)(v) due to the special circumstance that banks will likely be closed during the federal holidays in December 2019 and January 2020. A limited waiver will serve the public interest by allowing the ready to authorize applicants in this Public Notice sufficient time to obtain and to submit an irrevocable stand-by letter(s) of credit and Bankruptcy Code opinion letter(s) from their legal counsel for each state where they have winning bids that are ready to be authorized, in accordance with the instructions provided below, **prior to 6:00 p.m. ET on Friday, January 10, 2020.**

On August 28, 2018, we announced that there were 103 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for Connect America Fund Phase II support.² On October 30, 2018, after an opportunity for winning bidders to assign some or all of their winning bids to related entities, we announced that there were 134 long-form applicants.³ We have reviewed the long-form applications associated with each of the winning bids identified in Attachment A. Based on the representations and certifications in each relevant long-form application, we

¹ The Commission's rules require ready to authorize applicants to submit their respective letters of credit no later than 10 business days after we release a public notice identifying long-form applicants that may be authorized to receive Connect America Fund Phase II auction support. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6045-49, App. B (2016) (*Phase II Auction Order*). Generally, the Commission's rules may be waived for good cause 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. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations 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); *Northeast Cellular*, 897 F.2d at 1166. Waiver of a filing deadline in the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

² *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, Public Notice, 33 FCC Rcd 8257 (WTB and WCB 2018) (*Auction 903 Closing Public Notice*).

³ *134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 33 FCC Rcd 10967 (WTB and WCB 2018).

are prepared to authorize support, subject to submission of the required letter(s) of credit and Bankruptcy Code opinion letter(s), for each of the winning bids identified in Attachment A.⁴

Wisper Waiver. Auction 903 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) throughout their service territory and to submit appropriate documentation supporting such certification on or before February 25, 2019.⁵ We find good cause to waive this deadline for Wisper ISP, Inc. (Wisper) in Oklahoma.⁶ Generally, the Commission's rules may be waived for good cause shown.⁷ The Commission has found that waiver of this deadline is appropriate when an ETC designation proceeding is not yet complete by the deadline despite the good faith efforts of the long-form applicant, and explained that it would presume such good faith efforts when the petitioner submitted its petition to the relevant authority within 30 days of the release of the *Auction 903 Closing Public Notice*.⁸ Even though Wisper did not file its ETC petition within the 30-day time-frame, we find Wisper's delay does not rise to the level of lack of good faith that should result in its default, for the reasons discussed below.

In an opposition to Wisper's petition for waiver, Conexon, an intervenor in the state designation proceeding, argues the Bureau should deny the petition due to Wisper's lack of due diligence and good faith in pursuing its application before the Oklahoma Corporation Commission (OCC).⁹ In support of its arguments, Conexon relays several issues from the state proceeding.¹⁰ Conexon further challenges Wisper's reliance in its waiver petition on a prior Bureau decision to grant a petition for waiver of the ETC deadline in the rural broadband experiments and suggests that instead a different prior Bureau denial of the same deadline should "compel the same result" here.¹¹ Wisper disputes Conexon's various allegations and states that it "reasonably believed that its ETC application would be approved in sufficient time to meet the FCC's February 25, 2019 deadline."¹²

⁴ See 47 CFR § 54.315(b)(6)(v).

⁵ 47 CFR § 54.315(b)(5); see also *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 at 1519, para. 315 (2018) (*Auction 903 Procedures Public Notice*); *Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

⁶ Wisper ISP, Inc. Petition for Waiver of the ETC Deadline (filed Feb. 25, 2019) (Wisper Petition for Waiver). The Commission has delegated to the Wireline Competition Bureau the authority to grant waivers of the filing deadline. See *Phase II Auction Order*, 31 FCC Rcd at 6003, para. 153 & n.315.

⁷ 47 CFR § 1.3. 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. 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)).

⁸ See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8268, para. 35 (citing *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53).

⁹ See Conexon Opposition to Wisper ISP, Inc. Petition for Waiver of Deadline for ETC Designation, at 4-16 (filed June 12, 2019) (Conexon Opposition); Conexon Reply to Wisper's Opposition of Conexon, LLC to Petition of Waiver of Deadline for ETC Designation, at 3-8 (filed Aug. 14, 2019) (Conexon Reply).

¹⁰ Conexon Opposition at 5-6 (accusing Wisper of pursuing a strategy of delay and misrepresentation of its performance obligations in the state proceeding); at 7 (noting Wisper received a rebuke from the OCC Administrative Law Judge during the state proceeding); at 8 (alleging Wisper deliberately chose to wait three months after the presumptive 30-day deadline to file); at 8-15 (disputing Wisper's criticisms of Conexon's actions during the state proceeding); see also Conexon Reply at 3-6.

¹¹ See Conexon Opposition at 4-5 (citing *Connect America Fund, Rural Broadband Experiments*, 31 FCC Rcd 853 (WCB 2016) (finding Electric Power Board of Chattanooga did not provide evidence of good faith in support of its petition for waiver of the ETC deadline)), and 15-16 (citing *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 13 Provisionally Selected Bids is Ready to Be Authorized*, 30 FCC Rcd 5038,

(continued....)

Based on the totality of the circumstances, we find that Wisper's late-filed ETC designation did not delay the Commission's long-form application review process or the provision of voice and broadband services to consumers living in the areas where Wisper was awarded support. As we found in Auction 903, other applicants filed their ETC designation applications with their respective state commissions after the 30-day good faith period, and did not delay the Commission's long-form review process.¹³ Wisper's circumstances did not rise to the level of lack of good faith that previously led the Bureau to find in default a provisionally selected rural broadband experiments winner that had provided no explanation or defense of its failure to submit its ETC application to its respective state commission, as well as its failure to meet the associated Commission deadline to submit proof of ETC designation.¹⁴ Unlike that case, here Wisper did file an ETC application with the state in advance of the deadline to submit its ETC designation proof; kept Commission staff apprised of its ongoing state ETC proceedings, including in Oklahoma; and ultimately submitted an ETC designation from the OCC.

Finally, Wisper timely submitted proof of ETC designation in Kansas¹⁵ and in Missouri.¹⁶ We accept as valid and timely submitted those states' designations.

Westfield Gas & Electric Light Department Default. Westfield Gas & Electric Light Department notified us that it does not intend to pursue one of its winning bids, listed in Attachment B, and therefore Auction 903 support will not be authorized for that bid.¹⁷ Westfield Gas & Electric Light Department is in default for that bid and subject to forfeiture.¹⁸ We will refer this defaulting bidder to the Enforcement Bureau. The Commission expects all bidders to act in good faith and is taking voluntary defaults very seriously.

In the event of an auction default, a base forfeiture per violation of \$3,000 may be imposed.¹⁹ 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.²⁰ Notwithstanding this limitation, the total base forfeiture will also be

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5039 (WCB 2015) (finding Skybeam acted in good faith by filing its ETC application within 14 days of being announced and the state scheduled a meeting to consider the application after the deadline).

¹² See Wisper ISP, Inc. Supplement to Petition for Waiver of the ETC Deadline at 1-2 (filed Apr. 26, 2019); see also generally, Reply of Wisper ISP, Inc., to Opposition of Conexon, LLC (filed June 26, 2019).

¹³ See also *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 34 FCC Rcd 2934, 2942-43, paras. 31-32 (WCB 2019) (waiving the CAF II auction deadline for submitting proof of ETC designation, including for a petitioner that filed its applications days before the deadline); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 34 FCC Rcd 1966, 1974-75, para. 31 (WCB 2019) (waiving the CAF II auction deadline for submitting proof of ETC designation, including for two petitioners that filed applications a month before the deadline).

¹⁴ See *Connect America Fund, Rural Broadband Experiments*, 31 FCC Rcd 853 (WCB 2015) (denying petition for waiver due to no evidence of extraordinary circumstances or good faith efforts and finding petitioner in default).

¹⁵ Conexon urges the Commission to declare Wisper in default in Kansas because the ETC designation issued to Wisper was "premised on Wisper's erroneous understatement of broadband speeds." Conexon Opposition at 17-18. Kansas subsequently issued a corrected designation order, which Wisper submitted to the FCC prior to being found ready to authorize, properly stating Wisper's obligation to offer 100/20 Mbps as opposed to 25/3 Mbps. See 47 CFR § 54.315(b)(6)(iii) ("An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties.").

¹⁶ Conexon notes it has filed an appeal with the Missouri Court of Appeals raising various procedural and substantive issues related to the Missouri Public Service Commission's grant of ETC status to Wisper, but the state's jurisdiction does not appear to be in dispute nor does there appear to be any stay of the ETC designation. Conexon Opposition at 18; see also 47 U.S.C. § 214(e)(2).

¹⁷ Westfield Gas & Electric Light Department is included in both Attachments A and B because it has decided to pursue all but one of its bids in Massachusetts.

subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.²¹ A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding.²² In other words, there shall be separate apparent violations for each census block group assigned in a bid.

Commission staff are reviewing information that is submitted with long-form applications on a rolling basis. Accordingly, a long-form applicant that was not included in this Public Notice but that has submitted all of the required information will be included in a future Public Notice once Commission staff finalizes its review of the long-form application.

Pursuant to section 54.315(b)(6)(v) of the Commission's rules, the long-form applicants identified in Attachment A that may be authorized to receive Connect America Fund Phase II auction support, must submit an irrevocable stand-by letter(s) of credit, 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*²³ by a bank that is acceptable to the Commission by **6:00 p.m. ET on Friday, January 10, 2020**.²⁴ **Prior to submitting their letters of credit, we encourage long-form applicants to view and share with their issuing banks the Letter of Credit Common Errors List available on USAC's website: <https://www.usac.org/hc/funds/caf-phase-ii-auction.aspx>.**

A separate letter(s) of credit must be submitted for each state where the long-form applicant has winning bids that are ready to be authorized in an amount equal to at least the first year of support in the state.²⁵ 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.²⁶

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¹⁸ *Phase II Auction Order*, 31 FCC Rcd at 5984-85, 6016-94, paras. 104-05, 189-94.

¹⁹ *Id.* at 6000, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

²⁰ *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 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.

²¹ 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.

²² *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

²³ *Phase II Auction Order*, 31 FCC Rcd at 6045-49, App. B.

²⁴ The Commission's rules list specific requirements for a bank to be acceptable to the Commission to issue the letter of credit. Those requirements vary for United States banks and non-U.S. banks. See 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5992-97, paras. 126-33.

²⁵ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

²⁶ 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 47 CFR §

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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 winning bids in a state and defaults, a draw on *all* of the letters of credit covering *all* of the bids in the state will be authorized.²⁷

In addition, a long-form applicant is required to provide with the letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the long-form applicant's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.²⁸

By future public notice, we will authorize support for specific winning bids for which all requirements, including submission of the letter of credit and opinion letter, have been met.

Details concerning the next steps are set forth below.

Instructions for Submission of Letter of Credit and Opinion Letter

Long-form applicants identified in Attachment A of this Public Notice must submit a letter(s) of credit and opinion letter(s) for each state where it has winning bids identified in Attachment A. The minimum amount of the first letter of credit for each state is determined by adding up the first year of support listed in Attachment A for each winning bid in the state. The letter(s) of credit and opinion letter(s) submitted to the Universal Service Administrative Company (USAC) must reference the relevant study area code as listed in Attachment A.

The original of the letter of credit and opinion letter must be submitted to USAC by the applicable deadline—**prior to 6:00 p.m. ET on Friday, January 10, 2020**, at the following address: Universal Service Administrative Company (USAC), High Cost Program, CAF Phase II Auction LOC, 700 12th Street, NW, Suite 900, Washington, DC 20005. We recommend that each long-form applicant send the originals of both the letter of credit and the opinion letter by means of delivery requiring signature. These documents may be sent to the attention of Joanne Kim.

A copy of the letter of credit and opinion letter must also be submitted in the FCC Auction System by the applicable deadline—**prior to 6:00 p.m. ET on Friday, January 10, 2020**. An applicant must provide this required information in two attachments. The letter of credit attachment should be uploaded using the "Letter of Credit" attachment type, and the opinion letter attachment should be uploaded using the "Letter of Credit Opinion Letter" attachment type. Each attachment must be uploaded within the applicant's long-form application to each relevant winning bid identified in Attachment A of this public notice. Such attachments will be treated as confidential trade secrets and/or commercial information and withheld from routine public inspection.²⁹ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.³⁰

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54.315(c)(1); *Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1405, para. 64; *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

²⁷ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

²⁸ 11 U.S.C. § 541; 47 CFR § 54.315(c)(3); *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1520, para. 313.

²⁹ If a request for public inspection under section 0.461 is made for the long-form applicant's letter of credit or attorney opinion letter, the long-form applicant will be notified and then must justify the continued confidential treatment of the information if it objects to the disclosure. 47 CFR §§ 0.459, 0.461.

³⁰ 47 CFR § 0.459.

Any long-form applicant identified in Attachment A that fails to file the required documents³¹ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on Friday, January 10, 2020** – will be in default on such bid(s) and subject to forfeiture.³²

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

Office of Media Relations, (202) 418-0500

General Universal Service Information

**Wireline Competition Bureau,
Telecommunications Access Policy Division**

Alexander Minard
Lauren Garry
Katie King
Heidi Lankau
(202) 418-7400

Universal Service Administrative Company

Stephen Snowman
(202) 263-1600

Auction 903 Information

General Auction Information, Process, and
Procedures

**Office of Economics and Analytics,
Auctions Division**

(717) 338-2868

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force

Michael Janson, (202) 418-0627
Kirk Burgee, (202) 418-1599
Nathan Eagan, (202) 418-0991
Jonathan McCormack, (202) 418-1065

**Office of Economics and Analytics,
Auctions Division**

(202) 418-0660

³¹ 47 CFR § 54.313(b)(6)(v).

³² *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; *Auction 903 Closing Public Notice* at 9-10.

Small Businesses

Additional information for small and disadvantaged businesses

Office of Communications Business

Opportunities
(202) 418-0990

<http://www.fcc.gov/ocbo/>

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

FCC Internet Sites

<http://www.fcc.gov>

www.fcc.gov/auction/903

This Public Notice contains the following Attachments:

Attachment A: Ready to Authorize Long-Form Applicants and Bids

Attachment B: Bids in Default

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