



PUBLIC NOTICE

Federal Communications Commission
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DA 19-535
June 7, 2019

CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR 611 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, June 21, 2019

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 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. To be authorized to receive the total 10-year support amounts listed in Attachment A, the long-form applicants identified in that attachment are required to submit acceptable 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 by the applicable deadline – **prior to 6:00 p.m. ET on Friday, June 21, 2019.**

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.¹ 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.² 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 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.³

Auction 903 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit appropriate documentation supporting such certification on or before February 25, 2019.⁴ We find good cause to waive this deadline for Tri-Co

¹ *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*).

² *134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 33 FCC Rcd 10967 (WTB and WCB 2018). Citynet LLC assigned its winning bids to Citynet West Virginia, L.C. We will post an updated list of long-form applicants that reflects this change.

³ See 47 CFR § 54.315(b)(6)(v).

⁴ 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *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*); see also *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5999, 6002-05, paras. 141, 149-56 (2016) (*Phase II Auction Order*).

Connections, LLC (Tri-Co Connections) in Pennsylvania and Plains Internet, LLC (Plains Internet) in Texas.⁵ Generally, the Commission's rules may be waived for good cause shown.⁶ 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.⁷ The Commission has 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 Because Tri-Co Connections filed its petition with the Pennsylvania Public Utility Commission within this 30-day time frame,⁹ we find Tri-Co Connections demonstrated due diligence and acted in good faith.¹⁰ Thus, there is good cause to waive the deadline.

Plains Internet filed a petition with the Public Utility Commission of Texas (Texas PUC) for a Lifeline ETC designation in Texas in 2016 and then submitted a petition for a Lifeline ETC designation with the Federal Communications Commission based on the belief that the Texas PUC did not have jurisdiction over its application.¹¹ Once it was announced that Plains Internet had been assigned Auction 903 support in Texas, Plains Internet resubmitted its ETC application with the Commission in November 2018.¹² After learning that the Texas PUC did have jurisdiction, Plains Internet submitted a new ETC designation application with the Texas PUC on December 3, 2018.¹³ Plains Internet claims that its ETC designation was then delayed “[d]ue to several requests for supplemental information.”¹⁴ Based on these circumstances, we find that Plains Internet acted diligently in attempting to obtain its ETC designation prior to the deadline and, accordingly, waive the Auction 903 ETC deadline. The late-filing of this ETC application 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 the long-form applicant was awarded support.¹⁵

Several winning bidders have notified us that they do not intend to pursue some of their winning bids.¹⁶ In Attachment B, we list these bidders and their relevant winning bids. Auction 903 support will

⁵ 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. Tri-Co Connections filed a petition for waiver of the ETC designation deadline on February 22, 2019 and Plains Internet filed a petition for waiver of the ETC designation deadline on February 15, 2019.

⁶ 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)).

⁷ *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).

⁸ *Id.*

⁹ Tri-Co Connections filed its ETC application with the Pennsylvania Public Utility Commission on September 27, 2018. Tri-Co Connections Petition at 2.

¹⁰ *See also Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, DA 19-394, at 9-10, paras. 31-32 (WCB May. 6, 2019) (May 2019 ETC Order); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, DA 19-226, at 9-10, para. 31 (WCB Mar. 28, 2019) (waiving the Auction 903 deadline for submitting proof of ETC designation for certain ETCs designated by the Wireline Competition Bureau).

¹¹ Plains Internet Petition at 3-4.

¹² *Id.* at 4.

¹³ *Id.*

not be authorized for their relevant winning bids. These bidders are in default and subject to forfeiture.¹⁷ We will refer these defaulting bidders 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.¹⁸ 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.¹⁹ Notwithstanding this limitation, the total base forfeiture will also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.²⁰ A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding.²¹ In other words, there shall be separate apparent violations for each census block group assigned in a bid. In addition, any applicant that failed to submit audited financial statements as required may also 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.²²

Commission staff is 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, 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, such long-form applicants 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.²⁴ **Prior**
(Continued from previous page) _____

¹⁴ *Id.* at 4-5.

¹⁵ See *May 2019 ETC Order* at 10, para. 32.

¹⁶ Farmers Mutual Telephone Company is included in both Attachments A and B because it has decided to pursue all but one of its bids in Minnesota. LTD Broadband LLC (LTD Broadband) is still pursuing its bids in Illinois, Iowa, and Minnesota. LTD Broadband's long-form application for these states is pending Commission staff review.

¹⁷ *Phase II Auction Order*, 31 FCC Rcd at 5984-85, 6016-94, paras. 104-05, 189-94.

¹⁸ *Id.* at 6000, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

¹⁹ *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.

²⁰ 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.

²¹ *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

²² *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).

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.

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

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, June 21, 2019**, 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

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 § 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.

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, June 21, 2019**. 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

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, June 21, 2019** – 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

Mark Wigfield, (202) 418-0253

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

Joanne Kim
(202) 263-1600

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.

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.

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
Chelsea Fallon, (202) 418-7991
Kirk Burgee, (202) 418-1599
Nathan Eagan, (202) 418-0991

**Office of Economics and Analytics,
Auctions Division**
(202) 418-0660

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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