



# PUBLIC NOTICE

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## CONNECT AMERICA FUND PHASE II SUPPORT AUTHORIZED FOR FIVE NEW YORK WINNING BIDDERS

### WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB) authorizes Connect America Fund Phase II support for the New York winning bidders identified in Attachment A of this Public Notice.

For each of the winning bidders identified in Attachment A, we have reviewed the application information, including the letter(s) of credit and Bankruptcy Code opinion letter(s) from the long-form applicant's legal counsel.<sup>1</sup> Based on the representations and certifications in the relevant application, we authorize support for the winning bids listed in Attachment A.

In Attachment A, we also provide a state-level summary that provides for each long-form applicant included in this Public Notice: 1) the total support amount over 10 years and total number of locations that the long-form applicant is being authorized in New York, 2) the total number of locations to which the authorized support recipient must offer the required voice and broadband services for each performance tier and latency, and 3) the eligible census blocks included in the winning bids that are being authorized.<sup>2</sup>

Upon issuance of this Public Notice, the Universal Service Administrative Company (USAC) is directed and authorized to obligate and disburse from the Universal Service Fund the amounts identified in Attachment A to the long-form applicant associated with each study area specified in Attachment A. USAC will make disbursement payments to the account on file for the 498 ID associated with the study area code (SAC). The support will be disbursed in 120 monthly payments, which will begin at the end of this month.

Below, we provide a summary of the various obligations of authorized Connect America Fund Phase II New York support recipients. This summary is not comprehensive. Each support recipient is responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules.

*Summary of Obligations and Relevant Dates.* The following dates are applicable to the long-form applicants that are being authorized for support by this Public Notice.

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<sup>1</sup> 47 CFR § 54.315(b)(6)(v); *Connect America Fund Phase II Auction Support for 8 New York Winning Bidders Ready to Be Authorized*, WC Docket No. 10-90, Public Notice, DA 19-455 (WCB May 28, 2019).

<sup>2</sup> A New York winning bidder that deploys to fewer locations than determined by the CAM may have its total support reduced. See *Connect America Fund*, Order, 32 FCC Rcd 968, 988, para. 55 (2017) (*New York Auction Waiver Order*).

- **Annual reporting of location information.** New York winning bidders are required to file location information with USAC through the High-Cost Universal Broadband (HUBB) portal.<sup>3</sup> This information includes geolocation data for each qualifying location to which they are offering the requisite service and the technology the winning bidder is using to offer the requisite service to the qualifying locations. The requisite service is: at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas.<sup>4</sup> The locations must be in the eligible census blocks covered by the New York winning bidder's winning bids.<sup>5</sup>

The Commission has consistently encouraged carriers subject to defined deployment obligations and HUBB reporting obligations to report location data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.<sup>6</sup> While reporting on a rolling basis is encouraged, the first deadline for the long-form applicants being authorized in this Public Notice to submit their location data is **September 30, 2020**.<sup>7</sup> Support recipients must continue to report this information on or before the last business day of each **September** in each subsequent year until all build-out requirements are satisfied. For more information about the HUBB portal and reporting location data, visit <https://www.usac.org/hc/annual-requirements/hubb.aspx>.

- **Service milestones.** A New York winning bidder is required to complete construction and begin commercially offering service to 40 percent of the requisite number of the locations in the state by the end of the third year of funding and to an additional 20 percent in each subsequent year, with 100 percent by the end of the sixth year.<sup>8</sup> The service milestones for the New York winning bidders authorized by this Public Notice are as follows:

Percentage of Locations in the State	Service Milestone Deadline
40	July 14, 2022
60	July 14, 2023
80	July 14, 2024
100	July 14, 2025

<sup>3</sup> 47 CFR § 54.316(a)(4); *New York Auction Waiver Order*, 32 FCC Rcd at 988, 993, paras. 54, 69; *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6010-11, paras. 172-73 (2016) (*Phase II Auction Order*).

<sup>4</sup> 47 CFR § 54.316(a)(4); *Phase II Auction Order*, 31 FCC Rcd at 6010-11, paras. 172-73. See also *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, DA 18-1280 (WCB Dec. 20, 2018).

<sup>5</sup> See also *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*Location Guidance Public Notice*).

<sup>6</sup> *Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173.

<sup>7</sup> Location data are due by the last business day of the second calendar month following the relevant support year. 47 CFR § 54.316(c)(2); *New York Auction Waiver Order*, 32 FCC Rcd at 993, para. 69.

<sup>8</sup> 47 CFR § 54.310(c); *New York Auction Waiver Order*, 32 FCC Rcd at 988, para. 53.

By the last business day of the second calendar month following each relevant service milestone, a support recipient must file a certification in the HUBB portal that it has met its service milestone and is meeting the requisite public interest obligations.<sup>9</sup> Support recipients that are being authorized by this Public Notice must file their certifications in the HUBB portal by the last business day of each **September** following each service milestone.

If an ETC is unable to meet a service milestone, it must notify the Commission, USAC, State of New York, or Tribal government as appropriate, no later than ten business days after the applicable deadline.<sup>10</sup> If the ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it may also seek waiver of the service milestones.<sup>11</sup> The Commission has repeatedly warned Phase II support recipients, however, that it does not expect to routinely grant such waiver requests, emphasizing the difficulty of demonstrating good cause under circumstances where carriers fail to plan for contingencies that would prevent compliance with defined deployment obligations.<sup>12</sup>

- **Annual section 54.313 report.** The long-form applicants that are being authorized by this Public Notice will be required to file their first annual section 54.313 report by **July 1, 2020** and each subsequent year until the year after their support terms have ended.<sup>13</sup> Annual reports are filed with USAC.<sup>14</sup> Support recipients must complete the FCC Form 481 on USAC's website.<sup>15</sup> They must also test and certify compliance with relevant performance requirements in section 54.309 of the Commission's rules.<sup>16</sup> WCB, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology have adopted a uniform framework to measure and report on the performance of ETCs' service.<sup>17</sup>
- **Annual section 54.314 certification.** The first annual section 54.314 certification is due for the long-form applicants that are being authorized by this Public Notice by **October 1, 2020**.<sup>18</sup> We previously concluded that there was good cause to waive on our own motion the October 1, 2019

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<sup>9</sup> 47 CFR § 54.316(b)(4); *New York Auction Waiver Order*, 32 FCC Rcd at 993, para. 69.

<sup>10</sup> 47 CFR § 54.320(d).

<sup>11</sup> *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15700, para. 154 (2014) (*December 2014 Connect America Order*).

<sup>12</sup> *See Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1394, para. 35 (2018) (explaining that "it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term"); *id.* at 1394, para. 33 & n.88 (explaining that "the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver") (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15660, para. 40 & n.93).

<sup>13</sup> 47 CFR § 54.313; *New York Auction Waiver Order*, 32 FCC Rcd at 993, para. 70.

<sup>14</sup> *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order, 32 FCC Rcd 5944, 5948, para. 15 (2017) (determining that the Commission "will no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018"); 47 CFR § 54.313.

<sup>15</sup> *See Universal Service Administrative Company High Cost Forms*, FCC Form 481, <http://www.usac.org/hc/tools/forms.aspx>.

<sup>16</sup> 47 CFR § 54.309.

<sup>17</sup> *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*CAF Performance Measures Order*); 47 CFR § 54.313(a)(6).

<sup>18</sup> 47 CFR § 54.314; *New York Auction Waiver Order*, 32 FCC Rcd at 993, para. 70.

section 54.314 filing deadline with respect to the use of Auction 903 support.<sup>19</sup>

Pursuant to section 54.314 of the Commission's rules, if a support recipient was designated by a state, that state must certify on the support recipient's behalf "that all federal high-cost support provided . . . within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>20</sup>

If a support recipient was designated an ETC by the Federal Communications Commission, it must self-certify by filing a sworn affidavit executed by a corporate officer attesting to the relevant facts.<sup>21</sup> Certifications must be filed with both the Commission and USAC. ETCs may submit their certifications to USAC via its online filing system or by sending the appropriate certification sample letter (provided on USAC's website) via email or U.S. mail.<sup>22</sup> Certifications must also be submitted to the Commission's Office of the Secretary on or before **October 1<sup>st</sup>**. The submission should clearly reference WC Docket No. 14-58, ETC Annual Reports and Certifications.

All post-designation ETC-related filings must be submitted in good faith and include a certification that, to the best of the ETC's knowledge and belief, the information is complete and accurate.<sup>23</sup> In addition, ETCs have an on-going duty to correct or amend information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data are inaccurate, incomplete, or contain errors or anomalies.<sup>24</sup> The failure to timely file information may result in penalties in the form of a reduction in support.<sup>25</sup>

*Document Retention and Compliance Audits.* Under section 54.320 of the Commission's rules, recipients of high-cost support must retain, for at least ten years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the Commission (and any of its Bureaus or Offices) and to USAC, and to their respective auditors.<sup>26</sup> In addition, all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders, including verification of actual deployment to reported locations.<sup>27</sup>

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<sup>19</sup> *Connect America Fund Phase II Auction Support Authorized for 459 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 19-414, at 4-5 (WCB May 14, 2019).

<sup>20</sup> 47 CFR § 54.314(a).

<sup>21</sup> 47 CFR § 54.314(b).

<sup>22</sup> See Universal Service Administrative Company Certify: 54.314 Certification, <https://www.usac.org/hc/annual-requirements/certification/54314-certification.aspx> (last visited March 12, 2019).

<sup>23</sup> See, e.g., FCC Form 481 Officer Certification (requiring an officer of a petitioning entity to certify that he/she is "an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate"); see also 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading").

<sup>24</sup> See *Location Guidance Public Notice*, 31 FCC Rcd at 12910.

<sup>25</sup> 47 CFR §§ 54.313(j), 54.314(d), 54.316(c), 54.320.

<sup>26</sup> 47 CFR § 54.320(b).

<sup>27</sup> *Id.* § 54.320(a).

*Consequences for Non-Compliance.* A support recipient is subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement or other service requirements, or fails to fulfill any other term or condition of Phase II support.<sup>28</sup> These measures scale with the extent of non-compliance and include additional reporting, withholding of support, and support recovery.<sup>29</sup> A defaulting support recipient may also be subject to sanctions, including, but not limited to, potential revocation of ETC designations and suspension or debarment.<sup>30</sup>

*ETC Obligations.* All support recipients were required to obtain a high-cost ETC designation prior to being authorized for Phase II support, and thus should be familiar with ETC requirements. For example, all high-cost ETCs commit to serving the entire area covered by an ETC designation and must offer Lifeline voice and broadband service throughout such area to qualifying low-income consumers pursuant to the Lifeline program rules.<sup>31</sup> While a New York winning bidder that receives support was not required to obtain an ETC designation that was limited only to the eligible census blocks covered by its winning bids, it may only use its Phase II support to offer the required voice and broadband services to locations in eligible census blocks. If a New York broadband participant receiving Phase II support has obtained an ETC designation that covers more area than the eligible census blocks in its winning bids, that support recipient has the obligation to provide Lifeline services throughout its designated service area, including in areas where it cannot use its Phase II support.<sup>32</sup> A high-cost ETC may also be subject to state-specific requirements imposed by the state that designated it as an ETC.

*Discontinuance of Service and/or Relinquishment of Support.* It is a violation of Commission rules to receive universal service support if that support is not used to provide, maintain, and upgrade voice and/or broadband facilities and services in eligible areas or if the recipient is no longer offering supported services. A carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(a) of the Act and section 54.205 of the Commission's rules.<sup>33</sup> The ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). WCB will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.<sup>34</sup> The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at [hcorders@usac.org](mailto:hcorders@usac.org). A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.<sup>35</sup>

*Transfers of Control.* ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, or to engage in the sale of

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<sup>28</sup> 47 CFR §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

<sup>29</sup> 47 CFR §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-701, paras. 142-57; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

<sup>30</sup> 47 CFR § 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

<sup>31</sup> See 47 CFR §§ 54.101(d), 54.405(a); 47 CFR Subpart E.

<sup>32</sup> For example, some New York broadband program support recipients may have obtained an ETC designation for an entire census block group(s) that was covered by its winning bid(s) but may only use its Phase II support to offer service to locations in the eligible census blocks within the census block group(s).

<sup>33</sup> 47 U.S.C. § 214(a); 47 CFR § 54.205.

<sup>34</sup> 47 U.S.C. § 214(e)(4).

<sup>35</sup> 47 CFR § 63.71.

assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications.<sup>36</sup> Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.<sup>37</sup> More information is available on the Commission's website at <http://www.fcc.gov/general/transfer-control>.

*Price Cap Carrier Obligations.* Price cap carriers that serve the census blocks where a New York Broadband program recipient is not the incumbent price cap carrier has been authorized to receive support will no longer have a federal high-cost ETC obligation to continue to offer voice service in those census blocks pursuant to the forbearance granted in the *December 2014 Connect America Order*.<sup>38</sup>

*Transitioning Legacy Support.* WCB will soon update the list of census blocks where incumbent price cap carriers will continue to receive legacy support by removing the eligible census blocks that are covered by the winning bids in Attachment A.<sup>39</sup> Incumbent price cap carriers will no longer receive legacy support in the eligible census blocks covered by the winning bids in Attachment A beginning on the first day of the next month.<sup>40</sup>

For additional information on this proceeding, contact Stephen Wang ([Stephen.Wang@fcc.gov](mailto:Stephen.Wang@fcc.gov)) or Dangkhua Nguyen ([Dangkhua.Nguyen@fcc.gov](mailto:Dangkhua.Nguyen@fcc.gov)) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

This Public Notice contains the following Attachment:

Attachment A: Authorized Long-Form Applicants and Winning Bids

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<sup>36</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04.

<sup>37</sup> 47 CFR § 63.24.

<sup>38</sup> In the first month that support is disbursed to an authorized winning bidder that is not the incumbent price cap carrier, the incumbent price cap carrier will be immediately relieved of its federal high-cost ETC obligation to offer voice telephony in those specific census blocks. *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15663-71, paras. 50-70; see also 47 CFR § 54.201(d)(3). We will remove these census blocks from the list of census blocks where price cap carriers continue to have the federal high-cost ETC obligation to provide voice service. The "List of Census Blocks Subject to Federal High-Cost Voice Obligations" is available at <https://www.fcc.gov/encyclopedia/price-cap-resources>.

<sup>39</sup> Incumbent price cap carriers were also given the option of declining legacy support in each state that they serve. See *Wireline Competition Bureau Announces Universal Service Support Amounts Offered to Price Cap Carriers and Fixed Competitive Eligible Telecommunications Carriers after Authorization of Connect America Phase II Auction Support*, WC Docket No. 10-90, Public Notice, DA 19-174 (WCB Mar. 12, 2019).

<sup>40</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 19-8, at 5-6, paras. 14-15 (Feb. 15, 2019) (stating that price cap carriers will no longer receive legacy support for the census blocks where Auction 903 support is authorized beginning on the first day of the month after the Auction 903 support is authorized for those census blocks).