

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182

**ORDER**

**Adopted: August 9, 2019**

**Released: August 9, 2019**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau), in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, grants LTD Broadband LLC’s (LTD Broadband) petition for waiver of the February 25, 2019 deadline for filing audited financial statements for the Connect America Fund Phase II auction (Auction 903).<sup>1</sup>

**II. BACKGROUND**

2. To further the Commission’s progress toward closing the digital divide for all Americans, including those living in rural areas of our country, Auction 903 made available up to \$1.98 billion over 10 years to service providers that commit to offer voice and broadband services meeting certain requirements to fixed locations in unserved high-cost areas.<sup>2</sup> On August 28, 2018, we announced that there were 103 winning bidders in the auction, with the 10-year support amount totaling \$1.488 billion, and established the deadlines for winning bidders or their assignees to submit their long-form applications for Connect America Phase II support.<sup>3</sup>

3. In the *Phase II Auction Order*, the Commission adopted a two-phased auction application process.<sup>4</sup> In the first phase, entities seeking to participate in the auction must have filed a short-form application (FCC Form 183) by March 30, 2018 in which they provided specific information and certified, under penalty of perjury, their qualifications.<sup>5</sup> Commission staff reviewed these applications

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<sup>1</sup> Petition for Waiver (or Extension) of CAF II Deadline to Submit Audited Financial Statements, AU Docket No. 17-182, WC Docket No. 10-90 (filed Feb. 25, 2019) (LTD Broadband Petition).

<sup>2</sup> 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 (2018) (*Auction 903 Procedures Public Notice*).

<sup>3</sup> *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/WCB 2018) (*Auction 903 Closing Public Notice*).

<sup>4</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5980, para. 92 (2016) (*Phase II Auction Order*).

<sup>5</sup> 47 CFR § 54.315(a); *Phase II Auction Order*, 31 FCC Rcd at 5981-86, paras. 95-110; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1438-89, paras. 20-179.

and determined whether the applicants were qualified to bid in the auction.<sup>6</sup> In the second phase of the process, each winning bidder or its assignee must file a more comprehensive long-form application (FCC Form 683), which Commission staff is reviewing to determine if a long-form applicant should be authorized to receive support for its winning bids.<sup>7</sup> Any long-form applicant that defaults prior to being authorized to receive support, including by failing to meet the long-form application submission deadlines, is subject to a forfeiture.<sup>8</sup>

4. The Commission adopted the requirement, in the 2016 *Phase II Auction Order*, that all Auction 903 applicants submit financial statements, including balance sheets, net income, and cash flow, that have been audited by an independent certified public accountant.<sup>9</sup> The Commission concluded that the additional cost of obtaining audited financial statements is outweighed by the importance of assuring the financial health of auction support recipients.<sup>10</sup> To the extent an entity that had provided voice and broadband service for at least two years and does not already obtain an audit of its financial statements in the ordinary course of business, the Commission permitted that entity to wait until it was announced as a winning bidder to submit audited financial statements.<sup>11</sup> The Commission required winning bidders that took advantage of this option to submit audited financial statements no later than 180 days after the public notice identifying them as winning bidders, i.e., February 25, 2019.<sup>12</sup>

5. *LTD Broadband's Petition.* LTD Broadband participated in Auction 903 and was assigned \$1,193,419.40 in total 10 years support to serve 1,018 locations in Illinois, Iowa, and Minnesota.<sup>13</sup> LTD Broadband is not audited in the ordinary course of business and filed unaudited financial statements with its short-form application. LTD filed a long-form application but did not submit audited financials by the February 25, 2019 deadline, and seeks waiver of the deadline.

6. LTD Broadband explains that it is a small business with a limited number of employees and administrative resources. LTD Broadband argues that, although it has done everything under its control to submit timely information to demonstrate its technical and financial capabilities, its attempts to retain and engage accountants within the required time frame were unsuccessful. LTD suggested that recent changes in the tax code may be one reason for the apparent lack of available accounting resources for smaller companies like LTD during the past six months. LTD states that when it finally found accountants willing to audit its financials, none were able to complete the work by the February 25 deadline.<sup>14</sup> LTD Broadband submitted unaudited financial statements for 2018 on February 25, 2019 and audited financial statements on April 16, 2019, while its long-form application remained pending review by Commission staff.

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<sup>6</sup> 220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction; Bidding to Begin on July 24, 2018, Public Notice, 33 FCC Rcd 6171 (WCB/WTB 2018) (*Auction 903 Qualified Bidders Public Notice*); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1512-20, paras. 289-313.

<sup>7</sup> 47 CFR § 54.315 (b)-(c); *Phase II Auction Order*, 31 FCC Rcd at 5987-99, paras. 113-41.

<sup>8</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45.

<sup>9</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983, para. 101.

<sup>10</sup> *Phase II Auction Order*, 31 FCC Rcd at 5983, para. 101.

<sup>11</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, para. 102.

<sup>12</sup> 47 CFR § 54.315(b)(4); *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 103; *Auction 903 Closing Public Notice*, 34 FCC Rcd at 8263, para. 16.

<sup>13</sup> *Auction 903 Closing Public Notice*, 33 FCC Rcd 8257, Attach A. LTD Broadband notified the Commission that it did not intend to pursue its winning bids in Nebraska and Nevada. See *Connect America Funds Phase II Support for 611 Winning Bids Ready to Be Authorized*, DA 19-535, Attach. B (WCB/OEA June 7, 2019) (Listing bids in default).

<sup>14</sup> LTD Broadband Petition at 4-5.

### III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.<sup>15</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>16</sup> We find good cause to grant LTD Broadband's petition for waiver. Therefore, we waive the February 25, 2019 deadline for filing audited financial statements.

8. First, we find that special circumstances warrant deviation from the Commission's audited financial statements deadline. Auction 903 participants had the responsibility to conduct due diligence regarding the Auction 903 requirements and obligations prior to participating in the auction.<sup>17</sup> Nevertheless, in the context of other auctions, Commission bureaus have granted waivers of post-auction long-form application filing deadlines "when minor, inadvertent, post-auction delinquencies did not disrupt the auction process, nor undermine the Commission's policy of facilitating rapid implementation of service to the public."<sup>18</sup>

9. In Auction 903, the Bureau granted Casey Mutual Telephone Company's (Casey Mutual) petition for waiver of the November 5, 2018 deadline for filing letter of credit commitment letters.<sup>19</sup> Casey Mutual was able to obtain a letter of credit commitment letter from a qualified bank while Commission staff was still reviewing the other portions of Casey Mutual's otherwise timely filed application. The Bureau concluded this did not delay the Commission's long-form application review process or the provision of voice and broadband service to consumers living in the areas where Casey Mutual was awarded support.<sup>20</sup> Similarly here, LTD Broadband was able to obtain and submit audited financial statements while Commission staff are still in the process of reviewing long-form applications and authorizing Auction 903 winners to begin receiving support. Accordingly, even though LTD Broadband missed the February 25, 2019 audited financials deadline, this did not delay the Commission's

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<sup>15</sup> 47 CFR § 1.3.

<sup>16</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)) (*Northeast Cellular*).

<sup>17</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1471-72, paras. 111-19. The Commission required an Auction 903 participant that did not submit audited financial statements with the short-form application to certify that the long-form applicant will submit its audited financial statements from the prior fiscal year within 180 days after being announced as a winning bidder. *Id.* at 1445, para. 44.

<sup>18</sup> See, e.g., *Request of Tallie Colville for Waiver of Auction 91 Form 301 Filing Deadline for Construction Permit for New FM Station, Diamond Lake, Oregon*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14216 (AD-MB 2011) (*Tallie Colville Order*) (granting a waiver of the long-form application filing deadline where the applicant explained that it "was not ready to submit the application by the filing deadline"); *Request of BKM Enterprises for Waiver of Auction No. 68 Form 301 Filing Deadline Application for Construction Permit for New FM Station, Perry, Florida*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 15221 (AD-MB 2007) (*BKM Enterprises Order*) (granting the petition for waiver of an applicant that submitted its long-form application late because the applicant did not understand that it was required to file a long-form application); *Silver Palm Communications, Inc.*, Order, 17 FCC Rcd 6606 (CWD-WTB 2002) (*Silver Palm Communications Order*) (granting the petition for waiver of an applicant that missed the deadline "due to inadvertence and unawareness that the long-form application was due"); *City Page & Cellular Services, Inc. d/b/a City Beepers et al.*, Order, 17 FCC Rcd 26109 (CWD-WTB 2002) (granted the petitions for waiver of seven applicants that claimed to miss the deadline "due to inadvertence and/or unawareness that the long-form applications were due").

<sup>19</sup> *Connect America Fund, Connect America Fund Phase II Auction*, WC Docket No. 10-90, AU Docket 17-182, Order, DA 19-428 (WCB May 15, 2019) (*Casey Mutual Waiver Order*).

<sup>20</sup> *Id.* at para. 10. Unlike the situation here, the Bureau found that enforcement of the filing requirements was appropriate for the rural broadband experiments, so as not to delay to the offer of support to price cap carriers or in order to identify the next-in-line bidders. See *id.* at note 10.

long-form review process or the provision of voice and broadband service to consumers in the areas for which LTD was awarded support.

10. Second, we find that it serves the public interest to grant LTD Broadband's waiver petition. The Commission adopted the long-form application filing process so that Commission staff could "conduct a more extensive review of the winning bidders' qualifications to receive support . . ."<sup>21</sup> LTD Broadband submitted unaudited financial statements for 2018 on February 25, 2019 and audited financial statements on April 16, 2019, during the application review process. Commission staff still had the opportunity to fully evaluate LTD Broadband's qualifications in a timely fashion, as was the case in the Casey Mutual decision.<sup>22</sup> We conclude that it will serve the public interest for Commission staff to take this opportunity to evaluate the qualifications of an applicant that has otherwise substantially complied with the application deadlines, has expressed a willingness to serve the consumers in its winning bid areas, and demonstrated the company's financial capabilities.<sup>23</sup> Had we found LTD Broadband in default for missing the deadline, we may have precluded an otherwise qualified applicant from being authorized to receive support, delaying the provision of voice and broadband service in these areas.<sup>24</sup>

11. Our decision to grant LTD Broadband's petition for waiver does not necessarily mean that LTD Broadband will be found qualified to receive Auction 903 support. Whether a long-form applicant is qualified to receive Auction 903 support will be announced in a future public notice. If we announce that LTD Broadband is ready to be authorized, it will have 10 business days to submit a letter of credit and bankruptcy opinion letter meeting the Commission's requirements and will not be authorized to receive Auction 903 support until such documentation is deemed acceptable.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

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<sup>21</sup> *Phase II Auction Order*, 31 FCC Rcd at 5980, para. 92.

<sup>22</sup> *Casey Mutual Waiver Order*, DA 19-428, at para. 11.

<sup>23</sup> LTD Broadband Petition at 5 (stating that it "has already commenced planning for buildout to the CAF II locations, and has already invested nearly \$200,00 in backbone upgrades and power backup systems").

<sup>24</sup> *Id.* at 6 (arguing that denial of its waiver request would "effectively ensure that the persons living in these rural, less-densely populated areas will continue without any broadband service for years to come").

13. IT IS FURTHER ORDERED that the petition for waiver filed by LTD Broadband LLC IS GRANTED as described herein.

14. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau