

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

In the Matter of
Telecommunications Carriers Eligible for
Universal Service Support
Connect America Fund
WC Docket No. 09-197
WC Docket No. 10-90

ORDER

Adopted: September 18, 2019

Released: September 18, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates Viasat Carrier Services, Inc. (Viasat) as an eligible telecommunications carrier (ETC) in eligible high-cost areas within Alabama, California, Florida, and West Virginia. Designation is conditioned upon and limited to Viasat's authorization to receive Connect America support awarded through the Connect America Fund Phase II auction (Auction 903) and effective only upon such authorization. In making this designation, the Bureau finds that Viasat meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules. The Bureau also waives, on its own motion, the requirement that Viasat submit proof of its ETC designation on or before February 25, 2019. The Bureau will release separate public notices regarding Auction 903 funding authorizations.

II. BACKGROUND

A. Connect America Fund Phase II Auction 903 Support

2. Auction 903 is one part of a multi-step process to comprehensively reform and modernize the high-cost component of the Universal Service Fund (USF). At the conclusion of this auction, 103 bidders won \$1.49 billion in support over 10 years to provide fixed broadband and voice services to over

1 See Attachment; see also Petition for Eligible Telecommunications Designation, WC Docket No. 09-197 (filed Feb. 19, 2019) (Viasat Petition).

2 See 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, Public Notice, 33 FCC Rcd 8257 (2018) (Auction 903 Closing Public Notice); see also Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (Phase II Auction Order).

3 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

4 Connect America Fund et al., WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011), aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

700,000 locations in high-cost areas in 45 states.<sup>5</sup> In order to become authorized to receive support, winning bidders must complete a post-auction application (long-form application) designed to ensure that winning bidders are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving USF support.<sup>6</sup> As part of this application, Auction 903 winning bidders must certify that their ETC designation covers all relevant census blocks and submit supporting documentation, including an ETC designation order.<sup>7</sup>

## **B. Requirements for FCC ETC Designation**

3. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>8</sup> Congress gives primary authority for ETC designations to state commissions.<sup>9</sup> The FCC has authority only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>10</sup> The petitioning carrier must demonstrate that the FCC has jurisdiction and may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”<sup>11</sup> The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.<sup>12</sup>

4. A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;<sup>13</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;<sup>14</sup> (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;<sup>15</sup> and (5) a certification that

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<sup>5</sup> See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257.

<sup>6</sup> 47 CFR § 1.21004; *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

<sup>7</sup> 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*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1519, para. 310 (2018) (*Auction 903 Procedures Public Notice*); see also *Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

<sup>8</sup> 47 U.S.C. § 254(e).

<sup>9</sup> *Id.* § 214(e)(2).

<sup>10</sup> *Id.* § 214(e)(6).

<sup>11</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*); 47 U.S.C. § 214(e)(6).

<sup>12</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

<sup>13</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

<sup>14</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

<sup>15</sup> An ETC’s “service area” is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC’s service area and an incumbent rural telephone company’s service area, the Commission has separately forbore from

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neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>16</sup>

5. In addition, petitioners must demonstrate their ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive high-cost support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high-cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.<sup>17</sup>

6. For petitioners seeking ETC designation for the purpose of becoming authorized to receive Auction 903 support, the Bureau waived the requirements that the petitioners submit a five-year service plan and proof of compliance with consumer protection and service quality standards, finding that the need for such requirements is obviated by specific service quality standards applicable to Auction 903 support recipients and specific reporting obligations relating to such standards.<sup>18</sup>

7. In addition, prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.<sup>19</sup> When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>20</sup> In the *Auction 903 ETC Public Notice*, the Bureau found that recipients of Phase II Auction support demonstrated their ability to offer service efficiently through the competitive bidding process and their ability to meet public interest obligations through their short- and long-form applications and thus, need not submit additional support in their petitions.<sup>21</sup>

### C. Petition for ETC Designation and Related Filings

8. Viasat seeks an ETC designation to become eligible to receive Auction 903 support in all CAF-eligible census blocks covered by its awards.<sup>22</sup> The Bureau released a public notice soliciting comments on Viasat's petition.<sup>23</sup>

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imposing such requirements on Auction 903 support recipients. *See Phase II Auction Order*, 31 FCC Rcd at 6006-6009, paras. 159-168.

<sup>16</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

<sup>17</sup> *See* 47 CFR § 54.202(a).

<sup>18</sup> *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 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2019).

<sup>19</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

<sup>20</sup> *See, e.g., Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

<sup>21</sup> *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6700-6701.

<sup>22</sup> Viasat petition at Ex. A-D; *see also* Connect America Fund Phase II: Assignments - Assigned Census Blocks, [https://auctiondata.fcc.gov/public/projects/auction903/reports/all\\_assigned\\_census\\_blocks](https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks). In the Attachment to this Order, the Bureau has summarized these awards, including the specific deployment obligations over the support term and the number of CAF-eligible census blocks included in the award.

<sup>23</sup> *Wireline Competition Bureau Seeks Comment on Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Auction Support*, Docket No. 09-197, Public Notice, 34 FCC Rcd 7 (WCB 2019).

9. In response, Hughes Network Systems, Inc. (Hughes) filed comments asserting that the Commission should treat Viasat's service certification "with skepticism," because, based on the ITU-T computational model for predicting network performance, voice services of geostationary satellite systems, like those offered by Viasat, can only reach a mean opinion score (MOS) of 3.72, and thus fall short of the Commission's latency requirements for high-latency bids, i.e., a MOS of 4 or higher (using the ITU P.800 standard).<sup>24</sup> Hughes also asserts that Viasat's petition is procedurally defective because the only information that Viasat provides in support of its service certification is an incorporation by reference of the technical information in its non-public CAF II long-form application.<sup>25</sup> Therefore, Hughes asserts Viasat's service certification cannot be meaningfully challenged by other parties.<sup>26</sup>

10. Viasat responds by asserting that geostationary satellite service is comparable to terrestrial voice service.<sup>27</sup> Viasat also states that the ITU-T computation upon which Hughes relies only predicts network performance and estimates MOS based on variable inputs, including non-latency related inputs that Hughes does not demonstrate "reflect actual conditions on Viasat's network—much less the conditions on the network Viasat will deploy in the future using CAF II support."<sup>28</sup> Accordingly, Viasat asserts, the computation cannot substitute for actual testing (which Viasat must perform in the future).<sup>29</sup>

11. Viasat also emphasizes that Commission rules do not require a petitioner to prove that its current network is capable of meeting service requirements and that under Commission precedent, an ETC designation cannot be conditioned on service to eligible areas in advance of designation.<sup>30</sup> Viasat further emphasizes that the Commission has already reviewed and accepted its short-form CAF Phase II application in which it was required to address the technical capabilities of the service and its network to meet high latency standards (among other performance requirements).<sup>31</sup>

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<sup>24</sup> Opposition of Hughes Network Systems, LLC, WC Docket 09-197 at 1-2 (filed Mar. 6, 2019) (Hughes Opposition); *see also Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6525-26, paras. 44-46 (WCB/WTB/OET 2018); *CAF Phase II Auction Order*, 31 FCC Rcd at 5960-61, para. 30. Hughes reiterates this assertion in its response to Viasat's reply. Letter from Jennifer Manner, Hughes Network Systems, LLC, to Marlene H. Dortch, FCC, WC Docket No. 09-197 at 1-2 (filed Mar. 21, 2019) (Hughes Response).

<sup>25</sup> Hughes Opposition at 2-3; *see also* Viasat Petition at 5-6.

<sup>26</sup> Hughes Opposition at 2-3. Hughes also raises, and then challenges the adequacy of, Viasat's statements supporting its service certification in ETC designation proceedings before state commissions. *Id.* at 3. Because, however, such information was not included in Viasat's ETC petition before the Commission, the Bureau declines to address such arguments.

<sup>27</sup> *See* Viasat Reply to Opposition, WC Docket 09-197, at 3 (filed Mar. 13, 2019) (Viasat Reply).

<sup>28</sup> Letter from John P. Janka and Matthew T. Murchison, Hughes Network Systems, LLC, to Marlene H. Dortch, FCC, WC Docket No. 09-197 at 3-4 (filed April 3, 2019) (Viasat Response). Viasat further states that the computation is not intended to measure "actual service quality," and that the computation "gives significant weight to low latency in a manner that makes it unsuited to evaluating satellite VoIP." *Id.* at 3.

<sup>29</sup> Viasat Response at 3. To underscore this point, Viasat notes that the ITU has "has repeatedly emphasized that actual conversational-opinion testing may result in a different MOS rating based on a variety of factors." *Id.* at 3.

<sup>30</sup> Viasat Reply at 4 (citing *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of The South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15169, 16173-74, paras. 2, 14 (2000)); Viasat Response at 4.

<sup>31</sup> Viasat Reply at 5. In its reply, Viasat also urges the Commission to "couple its rejection of Hughes's proposed testing requirements with a reaffirmation that state commissions cannot impose such requirements either, as doing so would exceed the authority of state commissions to designate ETCs under Section 214(e) of the Act and would be subject to the Commission's preemption authority." *Id.* at 5-6. Because this argument is unrelated to Viasat's federal ETC petition, we decline to address this request at this time.

### III. DISCUSSION

12. We find that Viasat satisfies the Commission's requirements for ETC designation and therefore designate Viasat as an ETC in the specified states, conditioned upon and limited to the high-cost areas where it is authorized to receive Auction 903 support and effective only upon such authorization. In these areas, Viasat must meet Connect America Phase II requirements, Lifeline requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.<sup>32</sup>

#### A. Commission Authority

13. Viasat demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. Viasat submits letters from each of the relevant state commissions declining jurisdiction over Viasat's ETC designation and directing Viasat to seek authorization from the FCC.<sup>33</sup> On this basis, we find that Viasat has demonstrated FCC authority to decide its petition.<sup>34</sup>

#### B. Eligibility Requirements

14. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that Viasat establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.<sup>35</sup>

15. *Compliance with the Service Requirements Applicable to Auction 903 Support.* We find that Viasat has met its requirement to certify that it will comply with service requirements applicable to the support that it receives.<sup>36</sup> This determination takes into account that, prior to being authorized to receive Auction 903 support, Viasat must certify and demonstrate, as part of its short- and long-form applications, the technical and financial ability to provide voice and broadband services meeting or exceeding CAF Phase II standards,<sup>37</sup> certify its commitment to meeting relevant public interest obligations,<sup>38</sup> and certify its compliance with all statutory and regulatory requirements for receiving the universal service support.<sup>39</sup> Moreover, once authorized, Viasat must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.<sup>40</sup>

16. In its opposition (and associated filings), Hughes challenges Viasat's service certification, asserting that no geostationary satellite system can meet the MOS 4 standard that the Commission has

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<sup>32</sup> 47 CFR § 54.202(a)(1)(i); *id.* § 54.101(d); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016) (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

<sup>33</sup> Viasat Petition at 3; *id.* at Ex. E-H.

<sup>34</sup> See *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

<sup>35</sup> Viasat Petition at 4-5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>36</sup> Viasat Petition at 4-7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

<sup>37</sup> 47 CFR §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

<sup>38</sup> *Id.* § 54.315(b)(2)(iii).

<sup>39</sup> *Id.* § 54.315(b)(2)(v).

<sup>40</sup> *Id.* § 54.313 (requiring annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40 (describing reporting obligations of Auction 903 support recipients).

adopted for high-latency bids.<sup>41</sup> We reject Hughes's argument, which is premised on numerous assumptions and speculation that are not directly applicable to Viasat's certification. We note that WCB, WTB, and OET recently rejected this same contention, also raised by Hughes, when considering challenges to the *Performance Measures Order*, explaining that the computational model relied upon by Hughes to make its categorical statements about the latency capabilities of satellite systems is no substitute for actual network testing.<sup>42</sup> Such a finding is consistent with Viasat's response to Hughes's categorical contention in this proceeding concerning the service Viasat intends to provide.<sup>43</sup> For these reasons, we decline to reconsider this contention here.

17. We also reject Hughes's contention that this petition should be dismissed because Hughes cannot independently scrutinize the technical information contained in Viasat's long-form application.<sup>44</sup> We emphasize that Viasat's interrelated obligations under section 54.201(d)(1), to offer the services supported by universal service, and under 54.202(a)(1), to certify at the time of its application that it will comply with the service requirements applicable to the support that it receives, in this context, are commitments to a future action on a future network. We expect the petitioner to review and assess its technical and financial capabilities to provide such certification, but we have not required ETC petitioners to submit documentation or proof of such review and assessment as a condition of granting federal high-cost ETC designations. As Viasat is required to provide only a certification as part of its ETC petition, and not to demonstrate its capability to provide service as certified, we do not believe it is necessary to provide the public (or Hughes specifically) the opportunity to review the non-public technical information in Viasat's long-form application in order to act on Viasat's ETC petition.<sup>45</sup> In this regard, we note that the ETC designation process is separate from and serves a different purpose than the authorization process and post-authorization accountability measures, including performance testing; the ETC process establishes a petitioner's general eligibility for receiving USF support and imposes certain statutory and regulatory obligations but does not duplicate the Bureau's multifaceted, objective, and consistent process for evaluating Auction 903 long-form applications or future performance.<sup>46</sup>

18. *Compliance with Service Requirements Applicable to Lifeline Services.* Viasat commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.<sup>47</sup>

19. *Offering the Supported Services Using a Carrier's Own Facilities.* Viasat certifies that it is a facilities-based provider of broadband and voice services.<sup>48</sup>

20. *Advertising Supported Services.* Viasat commits to advertising the availability of the supported services and related charges using media of general distribution.<sup>49</sup> We emphasize that, as part

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<sup>41</sup> Hughes Opposition at 1-2.

<sup>42</sup> See *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, DA 19-911, at para. 15 (WCB/WTB/OET Sept. 12, 2019).

<sup>43</sup> Viasat Reply at 3-4.

<sup>44</sup> Hughes Opposition at 2-3.

<sup>45</sup> *Id.* at 3.

<sup>46</sup> *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, 33 FCC Rcd 6696 (WCB July 10, 2018).

<sup>47</sup> Viasat Petition at 5.

<sup>48</sup> *Id.* at 5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>49</sup> *Id.* at 6; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

of this commitment, Viasat must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.<sup>50</sup>

21. *Ability to Remain Functional in Emergency Situations.* Viasat states that it can remain functional in emergency situations. Viasat states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.<sup>51</sup>

22. *Anti-Drug Abuse Act Certification.* Viasat submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>52</sup>

### C. Public Interest Analysis

23. We conclude that Viasat participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, ETC designations in areas where a petitioner is authorized to receive CAF Phase II Auction support serve the public interest. Through participation in the auction bidding and application processes, Viasat demonstrates that it can offer voice and broadband services in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas. Moreover, granting Viasat's petition will serve the interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in areas eligible for Auction 903 support.

24. Accordingly, based on the information, representations, and certifications in its petition, we find that Viasat has met all applicable conditions and prerequisites for ETC designation and conditionally grant its petition.

### D. Regulatory Oversight

25. Under section 254(e) of the Act, Viasat must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>53</sup> Under section 214(e) of the Act, Viasat must provide supported services throughout its service area.<sup>54</sup> When authorized to receive high-cost support, Viasat must file an annual certification that all federal high-cost support received 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>55</sup> The Commission conditions future support awarded through the high-cost program on the filing of such certification.<sup>56</sup>

26. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>57</sup> In addition,

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<sup>50</sup> 47 CFR § 54.405.

<sup>51</sup> Viasat Petition at 7; 47 CFR § 54.202(a)(2).

<sup>52</sup> Viasat Petition at 8; 47 CFR § 1.2002.

<sup>53</sup> 47 U.S.C. § 254(e).

<sup>54</sup> *Id.* § 214(e).

<sup>55</sup> 47 CFR § 54.314(b).

<sup>56</sup> *Id.*

<sup>57</sup> See *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.<sup>58</sup>

27. We find that reliance on Viasat's commitments to meet these and other regulatory requirements, as well as representations and commitments made in its petition, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Viasat satisfies its obligation under section 214(e) of the Act to provide supported services throughout its respective designated service areas.

28. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC.<sup>59</sup> Viasat must provide such records and documentation to the Commission and USAC upon request.<sup>60</sup> If Viasat fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke Viasat's ETC designation.<sup>61</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>62</sup>

#### **E. Waiver of Deadline for Submitting Proof of ETC Designation**

29. Auction 903 winning bidders were required to certify that they are ETCs in all bid areas and to submit appropriate documentation supporting such certification on or before February 25, 2019 (Auction 903 ETC deadline).<sup>63</sup> The Bureau finds, on its own motion, good cause to waive this deadline for Viasat in these four states.<sup>64</sup> 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.<sup>65</sup> 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

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<sup>58</sup> 47 CFR § 54.422(b)(3); *see also id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it will comply with all federal Lifeline certification procedures).

<sup>59</sup> 47 U.S.C. §§ 220, 403.

<sup>60</sup> 47 CFR § 54.417.

<sup>61</sup> *Id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

<sup>62</sup> *See* 47 U.S.C. § 503(b).

<sup>63</sup> 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); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *see also Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

<sup>64</sup> The Commission has delegated to the Bureau the authority to grant waivers of the filing deadline. *See Phase II Auction Order*, 31 FCC Rcd at 603, n.315; *see also* 47 C.F.R. §§ 0.91(p) (functions of the Wireline Competition Bureau), 0.291 (delegation of authority to the Wireline Competition Bureau).

<sup>65</sup> *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). The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public

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*Auction 903 Closing Public Notice*.<sup>66</sup> Viasat filed its petitions with the relevant local authorities within this 30-day time frame, thus demonstrating due diligence in meeting its filing deadline.

#### IV. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that Viasat IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE STATES SPECIFIED HEREIN FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE CONNECT AMERICA PHASE II AUCTION. These designations are contingent upon Viasat becoming authorized to receive such support, are limited to those areas where support is authorized, and are effective only upon authorization.

31. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the deadline specified in section 54.315(b)(5) of the Commission's rules, 47 CFR § 54.315(b)(5), IS WAIVED to the extent described above.

32. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the relevant state commissions and to the Universal Service Administrative Company.

33. 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

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interest. *See Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Deadlines can only be waived under "unusual or compelling circumstances." *Id.* at 126 (citation omitted).

<sup>66</sup> *See Auction 903 Closing Public Notice*, 33 FCC Rcd at 8268-69, para. 35.

## ATTACHMENT

Winning Bidder	State(s)	Number of Census Blocks <sup>67</sup>	Number of Supported Locations
Viasat Inc.	AL	1,753	9,075
Viasat Inc.	CA	4,804	18,795
Viasat Inc.	FL	2,122	9,859
Viasat Inc.	WV	1,593	7,057

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<sup>67</sup> Consistent with the requirements specified for completion of the long-form application and as described above in this Order, we define the designated service area for the bid area based on the published list of CAF-eligible census blocks associated with the winning bids of Viasat's parent company, Viasat, Inc., thus superseding any discrepancies in the petition's descriptions of such areas. See Connect America Fund Phase II: Assignments - Assigned Census Blocks, [https://auctiondata.fcc.gov/public/projects/auction903/reports/all\\_assigned\\_census\\_blocks](https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks).