

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

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

ORDER

Adopted: January 27, 2020

Released: January 27, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) aligns program deadlines related to deployment and reporting obligations for authorized Connect America Fund Phase II auction support recipients. In particular, we find good cause exists to establish uniform deadlines for all recipients of CAF Phase II auction funding to reduce confusion and ensure continued compliance with these obligations and requirements. Moreover, waiving these requirements will significantly decrease the burden of program administration and align CAF Phase II program deadlines with deadlines for other universal service high-cost funding mechanisms, without imposing any new burdens. As a result of this waiver, service milestone deadlines for all CAF Phase II auction support recipients will fall at the end of the calendar year, and annual location filing and certification deadlines will fall on March 1.

II. BACKGROUND

2. To further the Commission’s progress toward closing the digital divide for all Americans, including those in rural areas of our country, the CAF Phase II auction 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. On August 28, 2018, the Bureau 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 CAF Phase II support. After these applications were reviewed and considered to be complete, and winning bidders or their assignees submitted an acceptable letter of credit and

1 See 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown”). See also Connect America Fund et al, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6010, n.358 (2016) (delegating authority to the Bureau to “specify the format of these required reports and adjust the timing of the submission, as necessary for administrative efficiency”).

2 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).

3 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).

accompanying Bankruptcy Code opinion letter, the Bureau released a public notice authorizing winning bidder or their assignee to receive CAF Phase II support.⁴

3. To date, the Bureau has authorized nearly \$1.2 billion in CAF Phase II funding, which will expand connectivity to 409,661 homes and businesses nationwide. The Bureau has made these funding authorizations on a rolling basis, issuing six public notices between May 2019 and October 2019.⁵ Additionally, the Bureau issued public notices in July and August authorizing eight carriers to receive just over \$55 million in total CAF Phase II support to serve locations in New York state.⁶ In each of these public notices, the Bureau has provided a summary of the obligations and relevant dates applicable to the carriers authorized in the respective release. The public notices also directed the Universal Service Administrative Company (USAC) to begin disbursement payments immediately.

4. Under the Commission's rules, certain deadlines applicable to CAF Phase II auction support recipients are based on the start of the funding year (i.e., when support payments to the recipients commenced). For example, a carrier receiving CAF Phase II auction support is required to complete construction and commercially offer service to 40% of its required locations in a state by the end of the third twelve-month period of funding authorization, an additional 20% in each subsequent year, and 100% by the end of the sixth year.⁷ Similarly, a CAF Phase II auction support recipient must annually report location information with USAC through the High-Cost Universal Broadband (HUBB) portal "by the last business day of the second calendar month following the relevant support years."⁸

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.⁹ 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.¹⁰

6. We find that special circumstances warrant waiver of sections 54.310(c), 54.316(b)(4) and 54.316(c)(2) of the Commission's rules. As explained above, the Bureau authorized CAF Phase II auction support recipients on a rolling basis and directed USAC to begin making disbursements immediately. By doing so, however, the Bureau created a patchwork of obligations and deadlines for each authorized carrier. For example, carriers authorized to receive support by the Bureau in May 2019 currently must offer service to 40% of the requisite locations in a state by May 13, 2022, with increases of 20% by May 13 each year thereafter until they reach full deployment. Conversely, support recipients authorized in October must offer service to 40% of the requisite locations in a state by October 9, 2022, with increases of 20% by October 9 each year thereafter until they reach full deployment. Carriers authorized in May also must report location data for the first time by July 31, 2020, as opposed to the

⁴ *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1512.

⁵ See e.g., *Connect America Fund Phase II Auction Support Authorized for 459 Winning Bids*, Public Notice, 34 FCC Rcd 3142 (WCB 2019); *Connect America Fund Phase II Auction Support Authorized for 856 Winning Bids*, Public Notice, 34 FCC Rcd 4725 (WCB 2019).

⁶ See *Connect America Fund Phase II Support Authorized for Five New York Winning Bidders*, Public Notice, 34 FCC Rcd 6094 (WCB 2019); *Connect America Fund Phase II Support Authorized for Five New York Winning Bidders*, Public Notice, 34 FCC Rcd 7118 (WCB 2019); see also *Connect America Fund*; ETC Annual Reports and Certifications, WC Docket Nos. 10-90, 14-58, Order, 32 FCC Rcd 968 (2017) (New York Auction Waiver Order).

⁷ 47 CFR § 54.310(c); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

⁸ 47 CFR § 54.316(c)(2).

⁹ 47 CFR § 1.3.

¹⁰ 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*).

December 31, 2020 deadline for carriers authorized in October to provide such data. Moreover, every carrier authorized in June, July, August and September has different deadlines for these requirements as well.

7. We recognize that the varied deadlines established as a result of the Bureau's rolling authorizations may create confusion amongst some support recipients as to the appropriate applicable deadlines. This may be particularly true given that many of the carriers authorized to receive CAF Phase II support, through both the CAF Phase II auction and New York's New NY Broadband Program, are receiving universal service funding for the first time and are unfamiliar with the Bureau's processes.¹¹ Though we recognize that it is well-established precedent in the high-cost and other universal service programs that confusion "does not establish special circumstances that warrant deviation from the Commission's rules,"¹² we note that in other auctions, Commission bureaus have granted waivers of post-auction filing deadlines when such waivers did not delay the auction process or interrupt the rapid deployment of broadband service.¹³ Here, we find that waiving the service milestone and reporting deadline rules on our own motion is warranted given the clarity it will provide to support recipients.

8. We similarly conclude that it is in the public interest to waive these rules for CAF Phase II support recipients through both the CAF Phase II auction and New York's New NY Broadband Program. As explained above, the Bureau's rolling authorizations have resulted in different interim service milestones, as well as location reporting and certification deadlines, for each group of authorized support recipients. These various deadlines require the Bureau to dedicate specific resources to ensuring that each support recipient meets its proper deadline. Moreover, the reporting and certification deadlines established for these CAF Phase II support recipients do not align with the same deadlines for other high-cost support mechanism recipients. For example, CAF Phase II model-based support recipients and rate-of-return carriers are required to both report location data and certify that they are meeting their buildout

¹¹ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, et al.*, WC Docket No. 08-71, et al., Order, DA 19-1227 (WCB rel. Dec. 2, 2019) (granting waivers to six petitioners due to confusion with HUBB requirements, particularly the required filings and certifications with the new system).

¹² *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, Memorandum Opinion and Order, 31 FCC Rcd 12012, 12014, para. 8 (2016); *Federal-State Joint Board on Universal Service et al.*, Order, 22 FCC Rcd 4946, 4949, para. 7 (WCB 2007); *Federal-State Joint Board on Universal Service et al.*, Order, 19 FCC Rcd 17493, 17494, para. 5 (WCB 2004). See also *Requests for Waiver by Freehold Regional High School District Englishtown, New Jersey et al.*, Order, 19 FCC Rcd 2983, 2985, para. 4 (WCB 2004) (denying a petition for waiver in the E-Rate context after finding that "[c]onfusion by an applicant's staff does not constitute special circumstances for a waiver . . ."); Casey Mutual Petition at 4 (noting that Casey Mutual's General Manager "did not understand a letter of credit commitment letter to be required for bidders who did not intend to borrow funds to finance their construction obligations").

¹³ 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) (granting 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").

milestones on March 1 of each year.¹⁴ Our action today therefore enables us to align the required deadlines not only of these CAF Phase II support recipients, but also of all high-cost support recipients. We find that the public interest will be served by establishing uniformity across all mechanisms, resulting in increased administrative efficiency and less burdensome oversight of the high-cost program. Instead, Commission staff will be able to focus on more intricate post-auction issues, as well as prepare for the upcoming Rural Digital Opportunity Fund auction, which will dedicate over \$20 billion to deploying high-speed broadband networks across the country.¹⁵

9. For these reasons, we first waive section 54.310(c) of the Commission’s rules for recipients of CAF Phase II support through both the CAF Phase II auction and New York’s New NY Broadband Program. Section 310(c) requires these support recipients to complete deployment to 40% of their supported locations by the end of the third year of support, and an additional 20% of supported locations per year thereafter. As a result of this waiver, however, we will consider January 1, 2020 to be the commencement of the deployment timeline for all of these CAF Phase II support recipients, rather than the release date of the Bureau’s authorization public notice.¹⁶ Thus, the service milestones for all CAF Phase II auction support recipients will be as follows:

Percentage of Locations in a State	Service Milestone Deadline
40	December 31, 2022
60	December 31, 2023
80	December 31, 2024
100	December 31, 2025

10. We next waive the related deadline imposed by section 54.316(b)(4) of the Commission’s rules. Under this section, recipients of CAF Phase II support awarded through a competitive bidding process must file certifications that they have met their interim service milestones and are meeting the requisite public interest obligations by the last business day of the second calendar month following each relevant service milestone.¹⁷ Given the changes to the service milestone deadlines we adopt, this deadline would fall at the end of February each year. However, as explained above, recipients of CAF Phase II model-based support, as well as rate-of-return carriers receiving both A-CAM and legacy support, must file these certifications by March 1 of each year.¹⁸ Accordingly, to establish uniformity among all high-cost support recipients, we require these CAF Phase II support recipients to file the certifications required by section 54.316(b)(4) by March 1 following each service milestone.

11. Additionally, we waive the deadline requirement of section 54.316(c)(2) for these recipients of CAF Phase II support. This section requires the submission of location data, on an annual basis, by the “last business day of the second calendar month following the relevant support years.”¹⁹ With the adoption of the revised service milestones above, recipients of CAF Phase II support awarded through a competitive bidding process would be required to submit location data by the end of February

¹⁴ 47 CFR §§ 54.316(b)(1)-(3), (c)(1).

¹⁵ See *Rural Digital Opportunity Fund; Connect America*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019).

¹⁶ See *supra* para. 6. Carriers will still get 120 equal monthly payments from the date of authorization.

¹⁷ 47 CFR § 54.316(b)(4).

¹⁸ 47 CFR §§ 54.316(b)(1)-(3).

¹⁹ 47 CFR § 54.316(c)(2).

each year. However, as with the certification requirements, we note that CAF Phase II model-based support recipients and rate-of-return carriers are required to submit their required location data by March 1 of each year.²⁰ Thus, to align the reporting deadlines of all recipients of high-cost support, we require recipients of CAF Phase II support through both the CAF Phase II auction and New York's New NY Broadband Program to submit their first annual location report by March 1, 2021, and require them to file location information by March 1 in each year thereafter.²¹

12. Finally, we clarify that the action we take here today supersedes any established deadlines in the Bureau's authorization public notices to date. We expect these CAF Phase II support recipients to familiarize themselves with the contents of this order and with all the obligations and responsibilities required as a result of receiving universal service funding.²² Though the service milestone and reporting deadlines for these carriers will be slightly delayed as a result of this waiver, we note that our action does not in any way delay the ongoing disbursement of monthly support to these carriers. It is our hope that continuing to disburse the support authorized by the Bureau will create an opportunity for these carriers to get a head start on building out the broadband networks they have committed to deploying.

IV. ORDERING CLAUSES

13. 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.

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

²⁰ 47 CFR § 54.316(c)(1).

²¹ Long form applicants that have not yet been authorized by the Bureau to begin receiving support at the time of this waiver will be subject to the same deadlines, and we do not expect the adjusted deadlines to affect their ability to meet their milestones.

²² We note that the Commission recently adopted revised performance measures for recipients of CAF high-cost universal service support. *See Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, FCC 19-104 (rel. Oct. 31, 2019). While the schedule for pre-testing and testing established by the Commission was linked to a carrier's deployment obligations, the commencement of the mandated testing start date for CAF II auction support recipients established by the Commission is January 1, 2023. *See id.* at para. 81. Because these carriers are required to have built to 40% of their requisite locations in a state by this time, we do not anticipate that the slight delay of deployment obligations that we adopt above will have any impact on a recipient's ability to comply with the performance measure requirements.