



# PUBLIC NOTICE

Federal Communications Commission  
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## CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR 6 WINNING BIDS READY TO BE AUTHORIZED

**Listed Auction 903 Long-Form Applicant Must Submit Letters of Credit and  
Legal Counsel's Opinion Letters by Monday, November 2, 2020**

**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 (Bureaus) 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 applicant 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 Monday, November 2, 2020.**

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

*Eligible Telecommunications Carrier Designation.* Auction 903 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) throughout their service territory and to submit appropriate documentation supporting such certification on or before February 25, 2019.<sup>4</sup> We find good cause to waive this deadline for Velocity.net Communications, Inc. (Velocity.net)

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<sup>1</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 and WCB 2018) (*Auction 903 Closing Public Notice*).

<sup>2</sup> *134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 33 FCC Rcd 10967 (WTB and WCB 2018).

<sup>3</sup> See 47 CFR § 54.315(b)(6)(v).

<sup>4</sup> 47 CFR § 54.315(b)(5); see also *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*); *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*).

in Pennsylvania.<sup>5</sup> Generally, the Commission's rules may be waived for good cause shown.<sup>6</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, and 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*.<sup>7</sup> Even though Velocity.net did not file its ETC petition within the 30-day time-frame,<sup>8</sup> we find Velocity.net's delay does not rise to the level of lack of good faith.<sup>9</sup>

Velocity.net states that it "has worked diligently to obtain an ETC designation from the [Pennsylvania Public Utility Commission]. . . submit[ing] its petition to the [Pennsylvania Public Utility Commission] to request ETC Designation on November 27, 2018."<sup>10</sup> The Pennsylvania Public Utility Commission also states that Velocity.net has acted in "good faith by demonstrating its willingness to work with the [Pennsylvania] Commission to [address a variety of its questions and concerns]."<sup>11</sup> Velocity.net did file an ETC application with the state in advance of the deadline to submit its ETC designation proof; kept Commission staff apprised of its ongoing state ETC proceedings; and ultimately submitted an ETC designation from the Pennsylvania Public Utility Commission. Therefore, based on the totality of the circumstances, we find that Velocity.net's late-filed ETC designation did not improperly delay the Commission's long-form application review process or the provision of voice and broadband services to consumers living in the areas where Velocity.net was awarded support.

*Audited Financial Statements.* Auction 903 applicants were also required to submit financial statements that have been audited by an independent certified public accountant.<sup>12</sup> An entity that had provided voice and broadband service for at least two years and did not already obtain an audit of its financial statements in the ordinary course of business is permitted to wait until it was announced as a winning bidder to submit audited financial statements.<sup>13</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

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<sup>5</sup> 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.

<sup>6</sup> 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)).

<sup>7</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).

<sup>8</sup> *See* Velocity.Net's Petition for Waiver of the ETC Deadline (filed Apr. 7, 2020) (Velocity.net ETC Petition for Waiver).

<sup>9</sup> *See Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 34 FCC Rcd 2934, 2942-43, paras. 31-32 (WCB 2019) (waiving the CAF II auction deadline for submitting proof of ETC designation, including for a petitioner that filed its applications days before the deadline); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 34 FCC Rcd 1966, 1974-75, para. 31 (WCB 2019) (waiving the CAF II auction deadline for submitting proof of ETC designation, including for two petitioners that filed applications a month before the deadline); *but see Connect America Fund, Rural Broadband Experiments*, 31 FCC Rcd 853 (WCB 2015) (denying petition for waiver due to no evidence of extraordinary circumstances or good faith efforts and finding petitioner in default).

<sup>10</sup> Velocity.Net's ETC Petition for Waiver at 4.

<sup>11</sup> Letter from Tiffany L. Tran, Associate Counsel, Pennsylvania Public Utility Commission at 1 (filed Feb. 22, 2019).

<sup>12</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983, para. 101.

<sup>13</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, para. 102.

notice identifying them as winning bidders, i.e., February 25, 2019.<sup>14</sup> Velocity.net filed a long-form application but did not submit audited financials by the February 25, 2019 deadline, and seeks waiver of the deadline.<sup>15</sup> Velocity.net explains that it is not audited in the ordinary course of business and filed reviewed financial statements with its short-form application.<sup>16</sup> Velocity.net further states that because there was a delay in obtaining its ETC designation, “[its] accountants had not yet completed Velocity.net’s audited financial statements . . . .”<sup>17</sup>

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>18</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>19</sup> In this instance, Velocity.net was ultimately able to obtain and submit audited financial statements prior to the conclusion of the long-form application review process. Accordingly, even though Velocity.net missed the long-form audited financials deadline, Commission staff is still able to complete review of Velocity.net’s long-form application.<sup>20</sup>

Second, we find that it serves the public interest to grant Velocity.net’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> Velocity.net submitted reviewed financials and ultimately audited financial statements during the application review

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<sup>14</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>15</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 Apr. 3, 2020) (Velocity.net Audited Financials Petition for Waiver).

<sup>16</sup> Velocity.net Audited Financials Petition for Waiver at 3-4.

<sup>17</sup> *Id.*

<sup>18</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>19</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>20</sup> *Connect America Fund, Connect America Fund Phase II Auction*, WC Docket No. 10-90, AU Docket 17-182, Order, 34 FCC Rcd 7060 (WCB 2019) (granting petition for waiver of the Auction 903 filing deadline when applicant submitted audited financials during staff’s review of long-form application).

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

process. We conclude that it will serve the public interest for Commission staff to evaluate the qualifications of an applicant that has expressed a willingness to serve the consumers in its winning bid areas and demonstrated the company's financial capabilities during ongoing application review. Had we found Velocity.net 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.

Pursuant to section 54.315(b)(6)(v) of the Commission's rules, the long-form applicant identified in Attachment A that may be authorized to receive Connect America Fund Phase II auction support, 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*<sup>22</sup> by a bank that is acceptable to the Commission by **6:00 p.m. ET on Monday, November 2, 2020**<sup>23</sup> **Prior to submitting their letters of credit, we encourage the long-form applicant 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

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<sup>22</sup> *Phase II Auction Order*, 31 FCC Rcd at 6045-49, App. B.

<sup>23</sup> 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.

<sup>24</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

<sup>25</sup> 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.

<sup>26</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

<sup>27</sup> 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.

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**

The long-form applicant 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 Monday, November 2, 2020**, 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 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 Monday, November 2, 2020**. 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.<sup>28</sup> As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.<sup>29</sup>

If the long-form applicant identified in Attachment A fails to file the required documents<sup>30</sup> for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on Monday, November 2, 2020** – the applicant will be in default on such bid(s) and subject to forfeiture.<sup>31</sup>

### **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

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<sup>28</sup> 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.

<sup>29</sup> 47 CFR § 0.459.

<sup>30</sup> 47 CFR § 54.313(b)(6)(v).

<sup>31</sup> *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.

<b>Press Information</b>	Office of Media Relations, (202) 418-0500
<b>General Universal Service Information</b>	<b>Wireline Competition Bureau, Telecommunications Access Policy Division</b> Alexander Minard Lauren Garry Katie King Heidi Lankau (202) 418-7400  <b>Universal Service Administrative Company</b> Stephen Snowman (202) 263-1600
<b>Auction 903 Information</b> General Auction Information, Process, and Procedures	<b>Office of Economics and Analytics, Auctions Division</b> (717) 338-2868
Post-Auction Rules, Policies, and Regulations	<b>Rural Broadband Auctions Task Force</b> Michael Janson, (202) 418-0627 Kirk Burgee, (202) 418-1599 Audra Hale-Maddox, (202) 418-0794 Jonathan McCormack, (202) 418-1065  <b>Office of Economics and Analytics, Auctions Division</b> (202) 418-0660
<b>Small Businesses</b> Additional information for small and disadvantaged businesses	<b>Office of Communications Business Opportunities</b> (202) 418-0990 <a href="http://www.fcc.gov/ocbo/">http://www.fcc.gov/ocbo/</a>
<b>Accessible Formats</b> Braille, large print, electronic files, or audio format for people with disabilities	<b>Consumer and Governmental Affairs Bureau</b> (202) 418-0530 or (202) 418-0432 (TTY) <a href="mailto:fcc504@fcc.gov">fcc504@fcc.gov</a>
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This Public Notice contains the following Attachments:

Attachment A: Ready to Authorize Long-Form Applicant and Bids

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