



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU ANNOUNCES WINNING APPLICANTS FOR UNIENDO A PUERTO RICO FUND STAGE 2 COMPETITIVE PROCESS

**Applicants Must Submit Additional Information by 6 P.M. (ET) on November 17, 2020**

**WC Docket Nos. 18-143, 10-90**

1. By this Public Notice, the Wireline Competition Bureau (Bureau) announces the results of the Stage 2 competitive process of the Uniendo a Puerto Rico Fund.<sup>1</sup> Based on the completed applications received by the deadline on September 3, 2020, there are two winning applicants in Puerto Rico that are eligible for high-cost support, with the 10-year support amount totaling \$127.1 million covering 1,222,508 total locations in all 78 municipios.<sup>2</sup> All winning proposals are for performance tiers above the minimum performance standard of 25 megabits per second (Mbps) downstream speeds. More than two-thirds of the locations in Puerto Rico will have available downstream speeds of at least 100 Mbps, and over 31% of the locations will have available downstream speeds of 1 Gigabit per second.

### I. OVERVIEW

2. This Public Notice closes the competitive proposal process and provides winning applicants with important information, including additional filing and support disbursement requirements. Attachment A lists the winning applicant for each municipio, the annual support amount, and the number of locations assigned for the corresponding municipio.

3. A copy of this Public Notice will be sent to each winning applicant via overnight delivery to the contact person at the contact address listed in the applicant's application form (FCC Form 5634). The Bureau will authorize a winning applicant to begin receiving high-cost support only after the applicant has submitted and certified to its eligible telecommunications carrier (ETC) designation in the winning municipios, submitted letter(s) of credit from an eligible bank and a legal counsel opinion letter, and the Bureau approves the applicant's Disaster Preparation and Response Plan.

4. The Bureau will treat as confidential, and thus withhold, certain application information to protect each applicant's competitively sensitive information until at least after the winning applicants have been authorized to receive Stage 2 support.<sup>3</sup> After the winning applicants are authorized to receive

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<sup>1</sup> In the *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order, WC Docket Nos. 18-143, 10-90, 14-58, 34 FCC Rcd 9109 (Sept. 30, 2019) (*PR-USVI Stage 2 Order*).

<sup>2</sup> *Wireline Competition Bureau Released Updated List of Reserve Prices and Location Counts for the Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 Fixed Support Competitive Proposal Process*, Public Notice, 35 FCC Rcd 8228 (rel. Aug. 6, 2020) (*Reserve Prices Public Notice*).

<sup>3</sup> *The Uniendo a Puerto Rico Fund and Connect USVI Fund Notice and Filing Requirements and Other Procedures for Stage 2 Fixed Competitive Proposal Process*, Public Notice, 35 FCC Rcd 218, 232, para. 83 (2020) (*Procedures Public Notice*).

Stage 2 support, we no longer have a need to preserve the confidentiality of all application information, at which time we will make available certain application information consistent with our interest in a transparent competitive process.<sup>4</sup>

## II. ADDITIONAL INFORMATION REQUIRED FROM WINNING APPLICANTS

### A. Eligible Telecommunications Carrier Designation Orders and Certifications

5. Winning applicants listed in Attachment A are required to certify that they are an ETC throughout their service areas and to submit appropriate documentation supporting such certification to the Bureau.<sup>5</sup> The winning applicants must submit the required ETC certification from an officer of the company certifying that the applicant's high-cost ETC designation covers the relevant areas where the applicant will receive support as shown in Attachment A of this Public Notice. **The deadline for winning applicants to submit this required ETC certification is 6 p.m. ET on Tuesday, November 17, 2020, via e-mail to ConnectAmerica@fcc.gov.**

6. Each of the winning applicants listed in Attachment A have submitted a copy of their ETC designation orders. In the event the ETC designation order does not cover the relevant areas where an applicant will receive support as identified in Attachment A, the winning applicant must submit a new or updated ETC designation order that covers all relevant areas along with a certification from a company officer and other appropriate supporting documentation to the Bureau.<sup>6</sup> **The deadline for winning applicants to submit the new or updated ETC designation order, certification, and supporting documentation is 6 p.m. ET on January 29, 2021, via e-mail to ConnectAmerica@fcc.gov.**

### B. Irrevocable Letters of Credit and Bankruptcy Letter

7. Pursuant to section 54.1508(a) of the Commission's rules, the winning applicants identified in Attachment A 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 by a bank that is acceptable to the Commission **by 6:00 p.m. ET on Tuesday, November 17, 2020.**<sup>7</sup> A copy of the model letter of credit is attached as Attachment B to this Public Notice.<sup>8</sup>

8. The winning applicants must submit to the Universal Service Administrative Company (USAC) an irrevocable standby letter of credit at the appropriate value specified by the Commission from an acceptable bank that covers all areas where the applicant is seeking to be authorized.<sup>9</sup> Support recipients should also carefully review the letter of credit requirements in sections 54.1508 and 54.804(c) of the Commission's rules, and in the *PR-USVI Stage 2 Order, Procedures Public Notice*, and *LOC Waiver Order*, which are summarized below and available on the Commission's website:

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<sup>4</sup> *Procedures Public Notice*, 35 FCC Rcd at 233, para. 86.

<sup>5</sup> *Id.* at 257, para. 145.

<sup>6</sup> See 47 CFR § 54.315(b)(5); *Procedures Public Notice*, 35 FCC Rcd at 257, para. 145.

<sup>7</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 § 54.1508(c).

<sup>8</sup> See also *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9211-15, App. C; *Procedures Public Notice*, 35 FCC Rcd at 263-67, App. B.

<sup>9</sup> 47 CFR § 54.804(c)(1). The Bureau issued an order waiving the letter of credit value rules adopted for the support recipients of the Uniendo a Puerto Rico Fund and the Connect USVI Fund, and directed support recipients to follow the letter of credit value rules adopted for the Rural Digital Opportunity Fund. *The Uniendo a Puerto Rico Fund and Connect USVI Fund*, Order on Reconsideration and Order, 35 FCC Rcd 8211, 8222-23, paras. 29-34 (WCB 2020) (*LOC Waiver Order*). An applicant may obtain multiple letters of credit for a state. However, because compliance is determined at the territory-level, the Bureau will authorize a draw on all the letters of credit covering all the proposals in Puerto Rico if a support recipient defaults. 47 CFR § 54.1508(b), (e).

<https://www.fcc.gov/uniendo-puerto-rico-and-connect-usvi-fund-stage-2>. Prior to submitting their letters of credit, we also encourage the winning applicants 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>.

- The letter(s) of credit must cover the first year of support for all winning areas of Puerto Rico, at a minimum. The minimum amount of the first letter of credit is determined by adding up the annual support listed in Attachment A for each winning proposal. An applicant may obtain multiple letters of credit to cover all the winning areas in Puerto Rico, but compliance with service milestones will be reviewed on a territory-wide basis. Accordingly, if a support recipient chooses to obtain a letter of credit for each proposal in Puerto Rico and defaults, a draw on all the letters of credit covering all of the proposals in Puerto Rico will be authorized.
- The letter(s) of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Attachment B to this Public Notice.<sup>10</sup>
- The support recipient must be the entity that is named in the letter(s) of credit.
- The letter(s) of credit must be issued by a qualified bank. The issuing bank eligibility requirements are described in section 54.1508(c) of the Commission's rules.
- The support recipient shall maintain the letter(s) of credit in an amount equal to, at a minimum, one year of support until the USAC has verified deployment to 100 % of the determined location total. The support recipient may obtain new letter(s) of credit or renew its existing letter(s) of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones.
- The letter(s) of credit must remain open until the support recipient has certified that it has met the final service milestone and the USAC has verified that the build out obligation has been fulfilled.

9. In addition, a winning applicant will be 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 applicant's bankruptcy estate, or the bankruptcy estate of any other applicant-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.<sup>11</sup> The letter(s) of credit and opinion letter(s) submitted to the USAC must reference the relevant municipio(s) as listed in Attachment A.

10. The original of the letter of credit and opinion letter must be submitted to USAC **prior to 6:00 p.m. ET on Tuesday, November 17, 2020**—at the following address: Universal Service Administrative Company, High Cost Program, ATTN: Christina Cunningham, 700 12th Street, NW, Suite 900, Washington, DC 20005. We recommend that each winning applicant send the originals of both the letter of credit and the opinion letter by means of delivery requiring signature. We also recommend that a winning applicant provide USAC with a courtesy copy of the letter of credit and opinion letter via e-mail to [hcinfo@usac.org](mailto:hcinfo@usac.org).

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<sup>10</sup> See also *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9211-15, App. C; *Procedures Public Notice*, 35 FCC Rcd at 263-67, App. B.

<sup>11</sup> 47 CFR § 1508(d); *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9152, para. 78; see also 11 U.S.C. § 541; 47 CFR § 54.315(c)(3).

11. A copy of the letter of credit and opinion letter must also be submitted to the Bureau via e-mail to [ConnectAmerica@fcc.gov](mailto:ConnectAmerica@fcc.gov) **prior to 6:00 p.m. ET on Tuesday, November 17, 2020**. An applicant must provide this required information in two attachments. The file name for each attachment should readily identify the attachment as the letter of credit or the opinion letter. The documentation will be treated as confidential trade secrets and/or commercial information and withheld from routine public inspection.<sup>12</sup>

12. If the winning applicant identified in Attachment A fails to file the required documents<sup>13</sup> for any of the identified winning proposals **prior to 6:00 p.m. ET on Tuesday, November 17, 2020** the applicant will be in default on such proposal(s) and subject to forfeiture.

### **C. Updating the Disaster Preparation and Response Plan**

13. Applicants also must submit a Disaster Preparation and Response Plan (DPRP) that commits to the methods and procedures that the applicant will use, during the period for which it receives Stage 2 support, to prepare for and respond to disasters in Puerto Rico.<sup>14</sup> The Stage 2 support for each winning applicant identified in Attachment A will not be authorized until the Bureau approves the DPRP submitted by the winning applicants.<sup>15</sup> A winning applicant has the obligation to provide the Bureau with an updated DPRP within ten business days of making any material change, and for as long as it receives Stage 2 support. The failure to update the DPRP may result in withholding of support or disqualification from future participation in the Commission's competitive competitions.<sup>16</sup>

14. By future public notice, the Bureau will authorize support for specific winning proposals for which all requirements, including submission of the letter of credit and opinion letter, have been met.

## **III. OTHER IMPORTANT INFORMATION**

### **A. Maintaining Prohibition on Certain Communications**

15. The *PR-USVI Stage 2 Order* prohibits, subject to specified exceptions, an applicant from communicating with any other applicant in any manner the substance of its own, or one another's, or any competing applicant's bids or bidding strategies, until support is authorized.<sup>17</sup> As explained more fully in the *Procedures Public Notice*, this prohibition took effect as of the application filing deadline, i.e., September 3, 2020, at 6:00 p.m. ET, and extends until the winning applicants are authorized to receive support.<sup>18</sup>

16. We also emphasize that, for purposes of this prohibition, an "applicant" includes the entity filing the application, each entity capable of controlling the applicant, and each entity that may be controlled by the applicant or by an entity capable of controlling the applicant.<sup>19</sup> The prohibition of "communicating in any manner" includes public disclosures, private communications, and indirect or

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<sup>12</sup> If a request for public inspection under section 0.461 is made for an applicant's letter of credit or attorney opinion letter, the 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>13</sup> 47 CFR § 54.313(b)(6)(v).

<sup>14</sup> *Id.* at 9174-76, para. 134-38.

<sup>15</sup> *Id.* at 9174-75, paras. 134-35. The Bureau will approve the disaster plan if it is "complete and thoroughly addresses how the carrier will meet each of the criteria [the Commission] identif[ied]." *Id.*

<sup>16</sup> 47 CFR § 54.1515(c).

<sup>17</sup> *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9133-34, para. 39.

<sup>18</sup> *Procedures Public Notice*, 35 FCC Rcd at 243, para. 87 (adopting prohibition against certain communications identical to 47 CFR § 1.21002(b)).

<sup>19</sup> *See* 47 CFR § 1.21002(a).

implicit communications, as well as express statements of proposals and application strategies.<sup>20</sup> Consequently, an applicant must take care to determine whether its communications pertaining to the Stage 2 competitive process may reach another applicant.

## B. Default

17. As described in the *PR-USVI Stage 2 Order*,<sup>21</sup> winning applicants will be subject to a forfeiture in the event of a default prior to authorization to receive support. A winning applicant will be considered in default and will be subject to forfeiture if it fails to meet the document submission deadlines, is found ineligible or unqualified to receive Stage 2 support, and/or otherwise defaults on its winning proposal(s) or is disqualified for any reason prior to the authorization of support.<sup>22</sup> Any such determination shall be final, and a winning applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise.

18. In the event of a default, a base forfeiture per violation of \$3,000 may be imposed.<sup>23</sup> So that this base forfeiture amount is not disproportionate to the amount of a winning applicant's proposal, the Commission has limited the total base forfeiture to five percent of the applicant's total assigned support for the proposal for the support term.<sup>24</sup> Notwithstanding this limitation, the total base forfeiture will also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.<sup>25</sup> A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding.<sup>26</sup> In other words, there shall be separate apparent violations for each municipio. In addition, the Bureau may employ next-in-line procedures to select another qualified applicant if a winning applicant defaults prior to authorization of support.<sup>27</sup>

## IV. CONTACT INFORMATION

19. Contact Information Table:

### FCC Email & Webpages

[ConnectAmerica@fcc.gov](mailto:ConnectAmerica@fcc.gov)  
<http://www.fcc.gov>

### General Uniendo a Puerto Rico Fund and Connect USVI Fund Questions

**Wireline Competition Bureau**  
**Telecommunications Access Policy Division**  
 Alex Minard  
 Rebekah Douglas  
 Dangkhua Nguyen  
 (202) 418-0660

<sup>20</sup> *Id.*

<sup>21</sup> *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9152-53, paras. 81-83. *See also Procedures Public Notice* 35 FCC Rcd at 242-43, paras. 136-38.

<sup>22</sup> *Id.*

<sup>23</sup> *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9152-53, para. 81; *Procedures Public Notice* 35 FCC Rcd at 242, para. 137.

<sup>24</sup> *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9153, para. 82; *Procedures Public Notice* 35 FCC Rcd at 242, para. 138.

<sup>25</sup> *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8); *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9153, para 82 & n.297; *Procedures Public Notice* 35 FCC Rcd at 242, para. 137.

<sup>26</sup> *Procedures Public Notice* 35 FCC Rcd at 242, para. 137.

<sup>27</sup> *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9153, para. 84.

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[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

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