



# PUBLIC NOTICE

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## CONNECT AMERICA FUND PHASE II SUPPORT FOR A NEW YORK WINNING BIDDER READY TO BE AUTHORIZED

### Mid-Hudson Data Corp. Must Submit Letters of Credit and Legal Counsel's Opinion Letters by January 21, 2020

#### WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau announces that it is ready to authorize Connect America Fund Phase II support for Mid-Hudson Data Corp. (Mid-Hudson) in conjunction with the New York Broadband Program. To be authorized to receive the total 10-year support amount listed in Attachment A, Mid-Hudson is required to submit acceptable irrevocable stand-by letter(s) of credit and Bankruptcy Code opinion letter(s) from their legal counsel in accordance with the instructions provided below by the applicable deadline – **prior to 6:00 p.m. ET on January 21, 2020.**

On May 18, 2018, we announced 11 winning bidders for Connect America Fund Phase II support in the New NY Broadband Program Phase 3 auction, and we established the deadlines for winning bidders to submit their long-form applications for Connect America Fund Phase II support.<sup>1</sup> We have reviewed the long-form application associated with the winning bid for Mid-Hudson. Based on the representations and certifications in the 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 Mid-Hudson's winning bid identified in Attachment A.<sup>2</sup>

Commission staff is reviewing information that is submitted with long-form applications on a rolling basis. Accordingly, a long-form applicant that was not included in this Public Notice but that has submitted all of the required information will be included in a future Public Notice once Commission staff finalizes its review of the long-form application.

Pursuant to section 54.315(b)(6)(v) of the Commission's rules, no later than 10 business days after we release a public notice identifying long-form applicants that may be authorized to receive Connect America Fund Phase II auction support, such long-form applicants 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>3</sup> by a bank that is acceptable to the Commission,<sup>4</sup> in an

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<sup>1</sup> *Wireline Competition Bureau Announces FCC Deadlines for New York Broadband Program Winning Bidders*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 4922 (WCB 2018).

<sup>2</sup> *See Connect America Fund; ETC Annual Reports and Certifications*, Order, 32 FCC Rcd 968, 992, paras. 64-65 (2017) (*New York Auction Waiver Order*); 47 CFR § 54.315(b)(6)(v).

<sup>3</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6045-49, App. B (2016) (*Phase II Auction Order*).

amount equal to at least the first year of support in the state.<sup>5</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>6</sup>

An applicant may obtain multiple letters of credit to cover its bids in New York, 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 New York and defaults, a draw on *all* of the letters of credit covering *all* its bids in the state will be authorized.<sup>7</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>8</sup>

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**

Mid-Hudson must submit a letter(s) of credit and opinion letter(s) for each state where it has the winning bid 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 January 21, 2020**, at the following address: Universal Service Administrative Company (USAC), High Cost Program, CAF Phase II Auction NY LOC, 700 12th Street, NW, Suite 900, Washington, DC 20005. We recommend that Mid-Hudson 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 to [ConnectAmerica@fcc.gov](mailto:ConnectAmerica@fcc.gov) by the applicable deadline—**prior to 6:00 p.m. ET on January 21, 2020**. Mid-Hudson must provide this required information in two attachments. Such attachments will be treated as confidential trade secrets

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<sup>4</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>5</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

<sup>6</sup> *New York Auction Waiver Order*, 32 FCC Rcd at 992, paras. 65-65; 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, 5997, paras. 122, 135.

<sup>7</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

<sup>8</sup> 11 U.S.C. § 541; 47 CFR § 54.315(c)(3); *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125; *New York Auction Waiver Order*, 32 FCC Rcd at 992, para. 65.

and/or commercial information and withheld from routine public inspection.<sup>9</sup> As such, Mid-Hudson need not submit a section 0.459 confidentiality request for this information.<sup>10</sup>

If Mid-Hudson fails to file the required documents<sup>11</sup> for the identified winning bid by the applicable deadline – **prior to 6:00 p.m. ET on January 21, 2020** – it will be in default on such bid and subject to forfeiture.<sup>12</sup>

For additional information on this proceeding, contact Stephen Wang ([Stephen.Wang@fcc.gov](mailto:Stephen.Wang@fcc.gov)) or Dangkhua Nguyen ([Dangkhua.Nguyen@fcc.gov](mailto:Dangkhua.Nguyen@fcc.gov)) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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<sup>9</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>10</sup> 47 CFR § 0.459.

<sup>11</sup> 47 CFR § 54.313(b)(6)(v).

<sup>12</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45.

## ATTACHMENT A

## New York Winning Bidder Ready to Be Authorized

<b>Bidder Name</b>	<b>Study Area Code</b>	<b>Census Blocks Covered by Selected Bid</b>	<b>Locations Covered by Selected Bid</b>	<b>Total Estimated CAF Award</b>
Mid-Hudson Data Corp.	159040	73	459	\$640,296