

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

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

ORDER

Adopted: March 2, 2020

Released: March 2, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau, in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, grants Gila Local Exchange Carrier, Inc.'s (GLEC) and Fond du Lac Reservation Business Committee's (Fond du Lac) petitions for waiver of the letter of credit commitment letter deadline for the Connect America Fund Phase II auction (Auction 903).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, Auction 903 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.² On August 28, 2018, we 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 Connect America Phase II support.³

3. In the *Phase II Auction Order*, the Commission adopted a two-phased auction application process.⁴ In the first phase, entities seeking to participate in the auction must have filed a short-form application (FCC Form 183) by March 30, 2018 in which they provided specific information and

¹ Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90 (filed Dec. 26, 2019) (GLEC Petition); Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee Petition for Waiver (filed Jan. 22, 2020) (Fond du Lac Petition).

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*).

⁴ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5980, para. 92 (2016) (*Phase II Auction Order*).

certified, under penalty of perjury, their qualifications.⁵ Commission staff reviewed these applications and determined whether the applicants were qualified to bid in the auction.⁶ In the second phase of the process, each winning bidder or its assignee must file a more comprehensive long-form application (FCC Form 683), which Commission staff reviews to determine if a long-form applicant should be authorized to receive support for its winning bids.⁷ Any long-form applicant that defaults prior to being authorized to receive support, including by failing to meet the long-form application submission deadlines, is subject to a forfeiture.⁸

4. As part of this long-form application process, long-form applicants were required to submit a letter by November 5, 2018 from a bank that meets the Commission's requirements committing to issue an irrevocable standby letter of credit, in the required form, to the long-form applicant.⁹ Once we announce that the long-form applicant is ready to be authorized, it then has 10 business days to submit a letter of credit meeting the Commission's requirements that covers the first year of support at a minimum and an attorney bankruptcy opinion letter.¹⁰

5. *GLEC's Petition.* GLEC participated in Auction 903 and was assigned \$104,499 in total 10 years support to serve 29 locations in Arizona.¹¹ GLEC describes itself as "an Arizona-based [T]ribal corporation operating under the tradename Alluvion Communications."¹² GLEC filed a long-form application but did not submit a letter of credit commitment letter by the November 5, 2018 deadline. GLEC claims that it relied on the advice of a Commission staff member and mistakenly believed that it was not required to obtain a letter of credit.¹³ After GLEC was notified that it had missed the deadline, it submitted a letter of credit commitment letter from a qualified bank with its long-form application in January 2020.¹⁴ GLEC now seeks waiver of the November 5, 2018 deadline.

6. *Fond du Lac's Petition.* Fond du Lac participated in Auction 903 and was assigned \$55,010.80 in total 10 years support to serve 13 locations in Minnesota.¹⁵ Fond du Lac is owned by the Fond du Lac Band of Lake Superior Chippewa. Fond du Lac filed a long-form application but did not submit a letter of credit commitment letter by the November 5, 2018 deadline. Fond du Lac claims that it believed that it had fulfilled the letter of credit commitment letter requirement by submitting a letter of interest from a qualified bank with its short-form application.¹⁶ After Fond du Lac was notified that it had

⁵ 47 CFR § 54.315(a); *Phase II Auction Order*, 31 FCC Rcd at 5981-86, paras. 95-110; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1438-89, paras. 20-179.

⁶ *220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction; Bidding to Begin on July 24, 2018*, Public Notice, 33 FCC Rcd 6171 (WCB/WTB 2018) (*Auction 903 Qualified Bidders Public Notice*); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1512-20, paras. 289-313.

⁷ 47 CFR § 54.315 (b)-(c); *Phase II Auction Order*, 31 FCC Rcd at 5987-99, paras. 113-41.

⁸ *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45.

⁹ 47 CFR § 54.315(b)(3); *Auction 903 Closing Public Notice*, 34 FCC Rcd at 8262, para. 16.

¹⁰ 47 CFR § 54.315(b)(6)(v); *Auction 903 Closing Public Notice*, 34 FCC Rcd at 8264, paras. 17-18.

¹¹ *Auction 903 Closing Public Notice*, 33 FCC Rcd 8257, Attach. A.

¹² GLEC Petition at 2.

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 3.

¹⁵ *Auction 903 Closing Public Notice*, 33 FCC Rcd 8257, Attach. A.

¹⁶ Fond du Lac Petition at 1.

missed the deadline, it submitted a letter of credit commitment letter from a qualified bank with its long-form application in January 2020.¹⁷ Fond du Lac now seeks waiver of the November 5, 2018 deadline.

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.¹⁸ 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.¹⁹

8. We find good cause to grant GLEC's and Fond du Lac's petitions for waiver. Therefore, we waive the November 5, 2018 deadline for letter of credit commitment letters and accept GLEC and Fond du Lac's letter of credit commitment letters as timely-filed.

9. First, we find that special circumstances warrant deviation from the Commission's letter of credit commitment letter deadline. It is well-established precedent in the high-cost context and in other universal service programs that "confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission's rules."²⁰ Similarly, it is well-established precedent that "[p]ersons relying on informal advice given by Commission staff do so at their own risk."²¹ Moreover, Auction 903 participants had the responsibility to conduct due diligence regarding the Auction 903 requirements and obligations prior to participating in the auction.²² Nevertheless, for Auction 903 and 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."²³ Here, GLEC and Fond du Lac were able to obtain letters of credit commitment letters from qualified banks while Commission staff was still reviewing the other portions of GLEC's and Fond du Lac's otherwise timely filed applications.²⁴ Accordingly, even though GLEC and Fond du Lac missed the November 5, 2018 letter of credit commitment letter deadline, the oversight did not delay the

¹⁷ *Id.*

¹⁸ 47 CFR § 1.3.

¹⁹ 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*).

²⁰ *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 . . ."). See also GLEC Petition at 3, 6 (explaining that it "mistakenly believ[ed] that because it did not intend to leverage funding for the expansion project, it was not required to obtain a letter of credit"); Fond du Lac Petition at 1 (explaining that it "was under the impression" that its letter of interest from a qualified bank that was submitted with its short-form application "satisfied" the long-form application commitment letter requirement).

²¹ See, e.g., *Request for Review of a Decision of the Universal Service Administrative Company by School for Language and Communication Development Glen Cove, New York et al.*, CC Docket No. 96-45 et al., Order, 17 FCC Rcd 15166, 15170 n.36 (WCB-TAPD 2002); *Request for Review of the Decision of the Universal Service Administrator by McAllen Independent School District McAllen, Texas et al.*, CC Docket No. 96-45 et al., Order, 15 FCC Rcd 2565, 2568 n.14 (WCB-TAPD 2000). See also GLEC Petition at 3 and Attach. C (claiming that Commission staff had provided advice that suggested it "had submitted all necessary financial documents and certifications").

²² *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1471-72, paras. 111-19.

²³ *Connect America Fund et al.*, Order, 34 FCC Rcd 7060 (WCB 2019) (*LTD Broadband Waiver Order*) (granting a petition for waiver of the Auction 903 Feb. 25, 2019 deadline for submitting audited financial statements for an

Commission's long-form application review process or the provision of voice and broadband service to consumers living in the areas where GLEC and Fond du Lac were awarded support.²⁵

10. Second, we find that it serves the public interest to grant GLEC's and Fond du Lac's waiver petitions. 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"²⁶ A letter of credit commitment letter facilitates this review by giving the Commission assurance that the long-form applicant will be able to obtain a letter of credit upon being deemed ready to authorize so that the Commission will be able to reclaim disbursed support if the long-form applicant becomes authorized and does not meet its obligations.²⁷ Because GLEC and Fond du Lac submitted their letter of credit commitment letters during the application review process, Commission staff still has the opportunity to fully evaluate GLEC's and Fond du Lac's qualifications in a timely fashion. We conclude that it will serve the public interest for Commission staff to take this opportunity to evaluate the qualifications of applicants that have otherwise substantially complied with the application deadlines, have expressed a willingness to serve the consumers in its winning bid areas, and have provided the required assurance that they will obtain a letter of credit that will protect the public's funds.²⁸ Had we found GLEC and Fond du Lac in default for missing the deadline, we may have precluded otherwise qualified applicants from being authorized to receive support, delaying the provision of voice and broadband service in these areas.²⁹

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applicant that had difficulty retaining and engaging an accountant), *Connect America Fund et al.*, Order, 34 FCC Rcd 3239 (WCB 2019) (*Casey Mutual Waiver Order*) (granting a petition for waiver of the Auction 903 letter of credit commitment letter deadline for an applicant that mistakenly believed it did not need a letter of credit). See also *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").

11. Our decision to grant GLEC's and Fond du Lac's petitions for waiver does not necessarily mean that GLEC and Fond du Lac will be found qualified to receive Auction 903 support. Our final decision about whether a long-form applicant is qualified to receive Auction 903 support will be based on a long-form applicant's entire application and will be announced in a future public notice. If we announce that GLEC and Fond du Lac are ready to be authorized, they will have 10 business days to submit a letter of credit and bankruptcy opinion letter meeting the Commission's requirements and will not be authorized to receive Auction 903 support until such documentation is deemed acceptable.

IV. ORDERING CLAUSES

12. 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.

13. IT IS FURTHER ORDERED that the petition for waiver filed by Gila Local Exchange Carrier, Inc. IS GRANTED as described herein.

14. IT IS FURTHER ORDERED that the petition for waiver filed by Fond du Lac Reservation Business Committee IS GRANTED as described herein.

15. 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

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²⁴ GLEC Petition at 3 (explaining that GLEC "acted with haste to secure a letter of credit commitment letter and short form irrevocable standby letter of credit from a qualified bank" after learning that it needed a letter of credit); Fond du Lac Petition at 1 (attaching a letter of credit commitment letter).

²⁵ Cf. *Connect America Fund et al.*, Memorandum Opinion and Order, 30 FCC Rcd 8967, 8968, para. 4 (2015) (finding that for the rural broadband experiments "[s]trict enforcement by the Bureau of the filing requirements adopted by the Commission was appropriate given the purpose of the rural broadband experiments and [the Commission's] commitment not to allow the rural broadband experiments to delay the offer of model-based support to price cap carriers"); *Connect America Fund et al.*, Order, 30 FCC Rcd 772, 774, para. 5 (WCB 2015) ("Denying the [rural broadband experiment] waiver requests and proceeding to identify next-in-line bidders fulfills the Commission's objective for the rural broadband experiments to inform key decisions that the Commission would be making regarding the design of the competitive bidding process that will occur in Phase II of the Connect America Fund, while not delaying implementation of Phase II").

²⁶ *Phase II Auction Order*, 31 FCC Rcd at 5980, para. 92.

²⁷ *Id.* at 5990, para. 120. See also *LTD Broadband Waiver Order*, 34 FCC Rcd at 7063, para. 10; *Casey Mutual Waiver Order*, 34 FCC Rcd at 3242-43, para. 11.

²⁸ See *Casey Mutual Waiver Order*, 34 FCC Rcd at 3242-43, para. 11.

²⁹ GLEC Petition at 6-7 (claiming that "because GLEC will be leveraging its existing network to extend service to areas covered by its winning bid, GLEC is uniquely positioned to rapidly deploy high speed broadband to underserved parts of Maricopa County in a manner that no other service provider can").

Wireline Competition Bureau