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CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR 150 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel's Opinion Letters by Thursday, March 19, 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 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 applicants identified in that attachment are required to submit acceptable irrevocable standby 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 Thursday, March 19, 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.¹ 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.² 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.³

Eligible Telecommunications Carrier Designation. Auction 903 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit

¹ 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).

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

³ See 47 CFR § 54.315(b)(6)(v). We remind winning bidders that all Auction 903 support recipients will be subject to the Commission's National Security Supply Chain proceeding, including the rule that "no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain." 47 CFR § 54.9(a). The prohibition on using universal service funds applies "to upgrades and maintenance of existing equipment and services." Protecting Against National Security Threats to the Communication Supply Chain through FCC Programs et al., Report and Order et al., 34 FCC Rcd 11423, 11453, para. 77 (2019).

appropriate documentation supporting such certification on or before February 25, 2019.⁴ We find good cause to waive this deadline for Armstrong Telecommunications, Inc. (Armstrong) in Pennsylvania and Redwire, Inc. (Redwire) in Oklahoma.⁵ Generally, the Commission's rules may be waived for good cause shown.⁶ 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.⁷ The Commission has 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*.⁸ Because Armstrong filed its ETC petition with the Pennsylvania Public Utility Commission only one day after this 30-day time frame,⁹ we find Armstrong demonstrated due diligence and acted in good faith.¹⁰ Thus, there is good cause to waive the deadline.

Even though Redwire also did not file its ETC petition within the 30-day time-frame, we find Redwire's delay does not rise to the level of lack of good faith that should result in its default. Based on the totality of the circumstances, we find that Redwire's late-filed ETC designation did not delay the Commission's long-form application review process or the provision of voice and broadband services to consumers living in the areas where Redwire was awarded support. Other Auction 903 applicants filed their ETC designation applications with their respective state commissions after the 30-day good faith period, and did not delay the Commission's long-form review process. Redwire's circumstances did not

⁴ 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); 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); see also 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).

⁵ 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.

⁶ 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)).

⁷ 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).

⁸ *Id*.

⁹ Armstrong filed its ETC designation petition with the Pennsylvania Public Utility Commission on September 28, 2018. Armstrong Telephone, Inc. Petition for Waiver for CAF II Auction 903 Long-Form Application, at 1 (filed Feb. 14, 2019).

¹⁰ See Connect America Fund Phase II Auction Support for 2,121 Winning Bids Ready to be Authorized, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 19-1309 (WCB Dec. 20, 2019) (waiving the deadline for a long-form applicant that filed its ETC petition one day past the 30-day window).

¹¹ Redwire, Inc. Petition for Waiver of Deadline for ETC Designation (filed Oct. 22, 2019) (Redwire Petition for Waiver). Redwire filed its ETC petition with the Commission on February 15, 2019 and with the Oklahoma Corporation Commission on February 22, 2019. It determined based on a "more thorough review" of the relevant census blocks that its winning bids did not cover Tribal lands. *Id.* at 3-4.

¹² See, e.g., 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).

rise to the level of lack of good faith that previously led the Bureau to find in default a provisionally selected rural broadband experiments winner that had provided no explanation or defense of its failure to submit its ETC application to its respective state commission, as well as its failure to meet the associated Commission deadline to submit proof of ETC designation.¹³ Unlike that case, here Redwire did file an ETC application in advance of the deadline to submit its ETC designation proof; kept Commission staff apprised of its ongoing state ETC proceeding; and ultimately submitted an ETC designation from the Oklahoma Corporation Commission.

Defaults. ClearSKY Systems, Inc. (ClearSKY) has not pursued its winning bids. In Attachment B, we list the relevant winning bids. Auction 903 support will not be authorized for these winning bids. ClearSKY is in default and subject to forfeiture. We will refer ClearSKY to the Enforcement Bureau. The Commission expects all bidders to act in good faith and is taking voluntary defaults very seriously.

In the event of an auction default, a base forfeiture per violation of \$3,000 may be imposed. So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to five percent of the bidder's total assigned support for the bid for the support term. 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. A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding. In other words, there shall be separate apparent violations for each census block group assigned in a bid. A base forfeiture of \$50,000 may also be imposed for long-form applicants that failed to submit audited financial statements as required by the February 25, 2019 deadline. This forfeiture is also subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines.

Commission staff are 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' rules, the long-form applicants 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

¹³ 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).

¹⁴ Phase II Auction Order, 31 FCC Rcd at 5984-85, 6016-94, paras. 104-05, 189-94.

¹⁵ Id. at 6000, para. 143; Auction 903 Procedures Public Notice, 33 FCC Rcd at 1521, para. 315.

¹⁶ Phase II Auction Order, 31 FCC Rcd at 6000-01, para. 144; Auction 903 Procedures Public Notice, 33 FCC Rcd at 1521, para. 315. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A's winning bid includes 100 CBGs for \$100,000 over the 10-year support term. We may impose a base forfeiture of \$5,000 (5 percent of \$100,000) because otherwise the base forfeiture would be \$300,000 (\$3,000 x 100 CBGs), which is three times the entire bid amount. In contrast, if Bidder B's winning bid includes 100 CBGs for \$7,000,000 over the support term, we may impose a base forfeiture of \$300,000 (\$3,000 x 100 CBGs), which is 4.3 percent of the total bid.

¹⁷ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8); *Phase II Auction Order*, 31 FCC Rcd at 6000-01, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

¹⁸ Phase II Auction Order, 31 FCC Rcd at 6000, para. 144; Auction 903 Procedures Public Notice, 33 FCC Rcd at 1521, para. 315.

¹⁹ Phase II Auction Order, 31 FCC Rcd at 5984-85, para. 104-05; Auction 903 Procedures Public Notice, 33 FCC Rcd at 1519-20, para. 311.

model letter of credit provided in Appendix B of the *Phase II Auction Order*²⁰ by a bank that is acceptable to the Commission by **6:00 p.m. ET on Thursday, March 19, 2020.**²¹ **Prior to submitting their letters of credit, we encourage long-form 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/high-cost/funds/caf-phase-ii-auction/.**

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. 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.²³

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.²⁴

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.²⁵

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

Long-form applicants 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

²⁰ Phase II Auction Order, 31 FCC Rcd at 6045-49, App. B.

²¹ 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.

²² Phase II Auction Order, 31 FCC Rcd at 5991, para. 122.

²³ 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.

²⁴ Phase II Auction Order, 31 FCC Rcd at 5991, para. 122 & n.242.

²⁵ 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.

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 Thursday, March 19, 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 Stephen Snowman.

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 Thursday, March 19, 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. As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.²⁷

Any long-form applicant identified in Attachment A that fails to file the required documents²⁸ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on Thursday,**March 19, 2020 – will be in default on such bid(s) and subject to forfeiture.²⁹

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

Press Information

Office of Media Relations, (202) 418-0500

²⁶ 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.

²⁷ 47 CFR § 0.459.

²⁸ *Id.* § 54.313(b)(6)(v).

²⁹ 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.

General Universal Service Information

Wireline Competition Bureau,

Telecommunications Access Policy Division

Alexander Minard Lauren Garry Katie King Heidi Lankau (202) 418-7400

Universal Service Administrative Company

Stephen Snowman (202) 263-1600

Auction 903 Information

General Auction Information, Process, and Procedures

Post-Auction Rules, Policies, and Regulations

Office of Economics and Analytics,

Auctions Division (717) 338-2868

Rural Broadband Auctions Task Force

Michael Janson, (202) 418-0627 Kirk Burgee, (202) 418-1599

Jonathan McCormack, (202) 418-1065 Nathan Eagan, (202) 418-0991

Office of Economics and Analytics,

Office of Communications Business

Auctions Division (202) 418-0660

Opportunities (202) 418-0990

Small Businesses

Additional information for small and disadvantaged businesses

Braille, large print, electronic files, or audio format for people with disabilities

Accessible Formats

FCC Internet Sites www.fcc.gov/auction/903

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY) fcc504@fcc.gov

http://www.fcc.gov

http://www.fcc.gov/ocbo/

This Public Notice contains the following Attachments:

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

Attachment B: Bids in Default

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