



PUBLIC NOTICE

Federal Communications Commission
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CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR 105 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel's Opinion Letters by Monday, May 18, 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 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, May 18, 2020.**

Viasat Carrier Services, Inc. Auction 903 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit appropriate documentation supporting such certification on or before February 25, 2019.¹ We find good cause to waive this deadline for Viasat Carrier Services, Inc. (Viasat).² Generally, the Commission's rules may be waived for good cause shown.³ 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.⁴ The Commission has explained that it would presume such good faith efforts when the

¹ 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*).

² 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. Viasat filed a petition for waiver of the ETC designation deadline on February 25, 2019.

³ 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)).

⁴ 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).

petitioner submitted its petition to the relevant authority within 30 days of the release of the *Auction 903 Closing Public Notice*.⁵ Because Viasat filed its petition with the Public Utility Commission of Oregon (Oregon PUC) within this 30-day time frame,⁶ we find Viasat demonstrated due diligence and acted in good faith.⁷ Thus, there is good cause to waive the deadline.

We are ready to authorize Viasat for 102 of its CAF Phase II winning bids in non-Tribal areas in the State of Oregon, leaving one package bid and five individual winning bids outstanding. On November 25, 2019, the Oregon PUC approved Viasat's application for designation as an ETC to receive CAF Phase II support.⁸ However, the Oregon PUC's order excluded Tribal lands from the ETC designation.⁹ The Oregon PUC's rules require that each Tribe in the proposed designated area indicate that it supports or does not oppose the grant of ETC designation within the specific Tribal lands.¹⁰ To date, Viasat has not received the required evidence from the Tribes. Thus, we find Viasat ready to authorize for only the winning bids covered by Viasat's ETC designation in the State of Oregon.¹¹

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.¹² 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.¹³ 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.¹⁴

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.

⁵ *Id.*

⁶ Viasat filed its ETC application with the Oregon PUC on September 26, 2018. Viasat Petition at 2.

⁷ See also *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, DA 19-394, at 9-10, paras. 31-32 (WCB May. 6, 2019) (May 2019 ETC Order); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, DA 19-226, at 9-10, para. 31 (WCB Mar. 28, 2019) (waiving the Auction 903 deadline for submitting proof of ETC designation for certain ETCs designated by the Wireline Competition Bureau).

⁸ See Public Utility Commission of Oregon, *Partial Stipulation Adopted with Exception; Second Partial Stipulation Adopted; Application Granted with Conditions; Partial Requirements Waiver Granted*, Order No. 19-405 (Nov. 25, 2019) (Viasat ETC Designation Order).

⁹ See Viasat ETC Designation Order at Appendix A, page 5 (subsection h).

¹⁰ See *id.*

¹¹ Once Viasat receives the relevant support or non-opposition from the Tribes in Oregon, Viasat may file an application with the Oregon PUC to expand its ETC designation and pursue the CAF Phase II support associated with its remaining winning bids.

¹² *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*).

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

¹⁴ See 47 CFR § 54.315(b)(6)(v).

Pursuant to section 54.315(b)(6)(v) of the Commission's 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 model letter of credit provided in Appendix B of the *Phase II Auction Order*¹⁵ by a bank that is acceptable to the Commission by **6:00 p.m. ET on Monday, May 18, 2020**.¹⁶ **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/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.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰

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.

¹⁵ *Phase II Auction Order*, 31 FCC Rcd at 6045-49, App. B. Fond du Lac Reservation Business Committee assigned its winning bids to Fond du Lac Communications, Inc. We will post an updated list of long-form applicants that reflects this change.

¹⁶ 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.

¹⁷ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

¹⁸ 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.

¹⁹ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

²⁰ 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.

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 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, May 18, 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, May 18, 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.²¹ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.²²

Any long-form applicant identified in Attachment A that fails to file the required documents²³ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on Monday, May 18, 2020** – will be in default on such bid(s) and subject to forfeiture.²⁴

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

²¹ 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.

²² 47 CFR § 0.459.

²³ 47 CFR § 54.313(b)(6)(v).

²⁴ *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**

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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

**Office of Economics and Analytics,
Auctions Division**
(717) 338-2868

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force
Michael Janson, (202) 418-0627
Kirk Burgee, (202) 418-1599
Nathan Eagan, (202) 418-0991
Jonathan McCormack, (202) 418-1065

**Office of Economics and Analytics,
Auctions Division**
(202) 418-0660

Small Businesses

Additional information for small and
disadvantaged businesses

**Office of Communications Business
Opportunities**
(202) 418-0990
<http://www.fcc.gov/ocbo/>

Accessible Formats

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

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC Internet Sites

<http://www.fcc.gov>
www.fcc.gov/auction/903

This Public Notice contains the following Attachments:

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

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