



PUBLIC NOTICE

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WCB ANNOUNCES CAF PHASE II SUPPORT RECIPIENTS MEETING STANDARDS FOR CONTINUING WITH THE ELIGIBLE LOCATIONS ADJUSTMENT PROCESS; THE OPENING OF THE STAKEHOLDER REGISTRATION PERIOD; EXTENSION OF DEADLINE FOR STAKEHOLDERS TO FILE CHALLENGES; IDENTIFICATION OF POTENTIALLY AFFECTED TRIBAL AUTHORITIES

WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (Bureau) announces it has completed its initial review of the information submitted by Connect America Fund (CAF) Phase II support recipients participating in the Eligible Locations Adjustment Process (ELAP) (Participants) and has determined that all Participants have satisfied the prima facie evidentiary standards for continuing with this process.¹

Individuals, non-governmental entities, and governmental entities that meet eligibility criteria specified in the *Locations Adjustment Order* (Stakeholders) may file challenges to the accuracy or completeness of one or more of these Participants' ELAP information.² As a condition of filing challenges, interested parties must successfully complete a registration process. The registration form is available through a link (<https://elap.universalservice.org/elapsv>) on the USAC ELAP resources page, <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>. Prospective Stakeholders will have until **Friday, March 25, 2022, 11:59 PM ET**, to initiate the registration process by submitting, in good faith, a complete form and associated certifications. Verified Stakeholders will then be permitted to file challenges for a full 90 days beginning **Friday, April 1, 2022, 12:01 AM ET, and ending Wednesday, June 29, 2022, 11:59 PM ET**. As of the opening of this challenge filing window, Participants and Stakeholders may access certain non-public information pursuant to the terms and conditions of the Protective Order.³

Prima Facie Determinations

ELAP provides CAF Phase II auction (Auction 903) support recipients an opportunity to seek a reduction in deployment obligations (and associated support) where the number of eligible locations in their supported areas is less than the number of funded locations.⁴ The Bureau required each Participant to submit location information for all qualifying locations within their supported areas in a state, a description of methodology(ies) employed to identify all qualifying locations, and relevant supporting

¹ *Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390-92, paras. 23-28 (2018) (*Phase II Auction Reconsideration Order*); *Connect America Fund*, WC Docket No. 10-90, Order, 34 FCC Rcd 10395 (2019) (*Locations Adjustment Order*).

² *Locations Adjustment Order*, 34 FCC Rcd at 10407-08, paras. 33-36.

³ *Connect America Fund*, WC Docket No. 10-90, Protective Order, 36 FCC Rcd 5605 (WCB 2021) (*ELAP Protective Order*).

⁴ *Phase II Auction Reconsideration Order*, 33 FCC Rcd 1380, 1390-92, paras. 23-28.

evidence (or show cause why such evidence need not or cannot be submitted).⁵ The Bureau established a four-month filing window beginning April 1, 2021, and ending August 3, 2021, for Participants to submit this information into the ELAP module and to certify the information's truth and accuracy.⁶ As summarized on the Commission's website at Connect America Fund Phase II auction page, <https://www.fcc.gov/auction/903>, at Summary of Eligible Locations Adjustment Process Prima Facie Participant Location Information twenty-seven (27) unique Participants submitted and certified ELAP information in a total of twenty-three (23) states and thirty-six (36) different Participant/State combinations.

The Bureau has determined that all Participants have submitted in good faith, properly formatted information in each of the three required categories, i.e., location information (eligible locations), a description of methodology that documents at least some of the steps taken to identify every location in the associated supported areas, and some supporting evidence.⁷ These Participants have also properly certified the truth and accuracy of their submissions. Accordingly, the Bureau finds that these Participants have satisfied their prima facie evidentiary burden for continuing with the ELAP process by filing the required information.

The Bureau cautions Participants that a prima facie decision is based on the minimal production of evidence (qualifying location information, methodology and supporting evidence) and not on the value or quality of evidence submitted. In making the decision that a Participant has met prima facie standards, the Bureau makes no representation regarding a Participant's satisfaction of its burden of persuasion and reserves the right to find, based on the totality of the evidence and even in the absence of stakeholder rebuttal, that certain Participants have failed to meet this burden based on the quality of evidence submitted.⁸ The Bureau may also make requests for clarification of information provided prior to the initiation of the Stakeholder challenge filing window and/or during the adjudication process.⁹

As previously explained in the *Locations Adjustment Order*, ELAP adjustments are subject to future verification.¹⁰ If the Bureau determines pursuant to verification that the Participant failed to report actual locations, the Bureau will add the missing locations to the Participant's defined deployment obligation; if the Participant is unable to demonstrate compliance with this adjusted defined deployment

⁵ *Locations Adjustment Order*, 34 FCC Rcd at 10401-07, para. 18-32.

⁶ Wireline Competition Bureau Announces the April 1, 2021 Opening of the Connect America Fund Phase II Auction Eligible Locations Adjustment Process, WC Docket 10-90, Public Notice, 36 FCC Rcd 5612 (WCB 2021) (*ELAP Participant Window Public Notice*); *Locations Adjustment Order*, 34 FCC Rcd at 10398, para. 8 (stating that the Bureau would provide Participants with at least a three-month timeframe to upload information, correct any errors identified through verification, and certify such information).

⁷ See *Locations Adjustment Order*, 34 FCC Rcd at 10401-404, paras. 18-23 (describing required submission of location information for all qualifying locations and voluntary submission of location for prospective and ineligible locations); *id.* at 10404-405, paras. 24-27 (describing requirements for a methodology submission); *id.* at 10406-07, paras.30-32 (describing requirements for supporting evidence).

⁸ *Id.* at 10400, para. 15 (explaining that the Participant carries the burden of persuasion and that the Bureau "will only modify a [P]articipant's defined deployment obligation to the extent that the [P]articipant produces adequate evidence demonstrating that it is more likely than not that the defined deployment obligation is greater than the number of actual locations within the state.").

⁹ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24 (directing the Bureau to adjudicate Participants' requests for adjustment of defined deployment obligations based on the preponderance of the evidence standard).

¹⁰ *Id.* at 1389, para. 23 (providing that all evidence submitted by Participants pursuant to the adjustment process would be subject to future audit and directing the Bureau to adopt parameters for such audits); *Locations Adjustment Order*, 34 FCC Rcd at 10412, para 49.

obligation, the Bureau will find the Participant in default and subject to default measures.¹¹ If it is determined that the Participant intentionally or negligently misrepresented the number of actual locations, the Bureau may also refer the case to the Commission's Enforcement Bureau for further investigation and possible forfeiture penalty.¹²

Availability of Participant Information

Consistent with its announcements in the *ELAP Participant Window Public Notice*, the Bureau is releasing the following information filed and certified by Participants in the ELAP module: the Participant's name, the study area code (SAC) where the location sits, the reported type of location (qualifying, nonqualifying, prospective), the geocoordinates of the location, the postal address (or other physical identification of location if postal address is unavailable), and the number of separate dwelling units as relevant, e.g., apartments. Public access to this information will allow interested parties to determine whether they want to file challenges to the completeness or accuracy of this information and to begin preparations for completing the registration and challenge process.¹³

Participant information is available on the Commission's website at the Commission's Phase II auction website, ELAP Tab, <https://www.fcc.gov/auction/903>. In addition, the Bureau, in conjunction with USAC, will make available for public use, an interactive public map (Map) populated with this information.¹⁴ This Map will provide prospective Stakeholders with a visual representation of these locations relative to important demographic boundaries, including state, county, Phase II auction supported areas, and Tribal Lands. This Map also will allow for the selective download of location information. This Map will be published on USAC's website on **Thursday, December 2, 2021** at <https://data.usac.org/publicreports/elap-map/>.

Stakeholder Registration Process

All prospective Stakeholders (individuals, non-governmental entities, and governmental entities) must complete a registration process designed to verify their identity and their direct interests in receiving broadband service in the relevant supported areas or in the case of a governmental entity, their indirect interests in constituents' receipt of services in such areas.¹⁵ The registration process and associated confidentiality procedures are explained below. Recognizing that registration involves numerous steps, USAC, in conjunction with the Bureau, will post as of the opening of the registration window a **registration guide (ELAP Stakeholder Registration Guide)**, designed to walk parties through the registration process. The ELAP Stakeholder Registration Guide is available on the USAC ELAP resources page, <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>. While this guide is designed to assist parties in completing the registration process, parties should also read the relevant Commission and Bureau documents related to the challenge process.¹⁶

Through the registration process, the Bureau will utilize a form in the ELAP module to collect from each prospective Stakeholder certain identifying (and contact) information, e.g., name, residential or business address, phone number, email address, and information establishing the basis for the prospective Stakeholder's interest in receiving broadband service, e.g., proof of residency, ownership, lease

¹¹ *Locations Adjustment Order*, 34 FCC Rcd at 10412, para 49.

¹² *Id.*

¹³ *ELAP Participant Window Public Notice*, 36 FCC Rcd at 5614; *see Locations Adjustment Order*, 34 FCC Rcd at 10409, paras. 37-41.

¹⁴ *Locations Adjustment Order*, 34 FCC Rcd at 10399, para. 10.

¹⁵ *Id.* at 10407-08, paras. 33, 34-36.

¹⁶ *Phase II Reconsideration Order*, 33 FCC Rcd 1380, 1390-92, paras. 23-28; *Locations Adjustment Order*, 34 FCC Rcd 10395 (2019).

management.¹⁷ The Bureau may also collect other kinds of information from governmental Stakeholders as necessary to identify the scope of their interests, such as information about jurisdiction boundaries of a governmental entity.¹⁸ As part of this process, prospective Stakeholders must certify that they do not hold a controlling interest in a direct competitor of the Participant that is being challenged and that they otherwise meet eligibility criteria set forth in the *Locations Adjustment Order*.¹⁹

Once the Stakeholder completes its registration form and certifies the truth and accuracy of this information, a commercial verifier will access it on a temporary and limited basis and only as necessary to complete registration. Based on the results obtained from the verifier, all associated certifications, and any additional relevant information or evidence voluntarily submitted by the prospective Stakeholder, the Bureau will make an affirmative determination of whether to allow the prospective Stakeholder to submit challenges to Participant information in the relevant states and will notify the prospective Stakeholder of this decision. If a prospective Stakeholder fails to successfully complete registration, it will not be permitted to file a challenge or access any non-public Participant information.²⁰

As further described in the **ELAP Stakeholder Registration Guide** mentioned above, the Bureau has established a Stakeholder registration process to protect certain types of information submitted by Stakeholders and Participants during the ELAP process.²¹ The Bureau has recognized that information submitted to complete verification as well as information submitted as part of a subsequent challenge may include competitively sensitive, proprietary, or Personally Identifiable Information (PII) and has therefore adopted procedures to protect this information.²² The Bureau has determined that it will treat all information submitted as part of the registration process as presumptively confidential, except as necessary to facilitate challenges.²³ Stakeholders must acknowledge and consent to the disclosure of certain identifying information to the relevant Participant and the linking of such information to the challenge evidence submitted.²⁴ Such information will be accessible to Participants only pursuant to the terms and conditions of the Bureau's Protective Order.²⁵ Likewise, confidential information filed by

¹⁷ *Id.* at 10408, para. 35.

¹⁸ *Id.*

¹⁹ *Id.* at 10407-08, para. 34. A “controlling interest” includes individuals or entities, or groups of individuals or entities, that have control of a direct competitor of the Participant under the principles of either *de jure* or *de facto* control. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis but generally, includes control sufficient to ensure an integral role in management decisions, including influence over the nature or types of services, the terms of such services, and the prices of such services. Generally, we define “controlling interest” for purposes of ELAP in the same way that it is defined in section 1.2110(c)(2) of the Commission’s rules. 47 CFR § 1.2110(c)(2).

²⁰ *Locations Adjustment Order*, 34 FCC Rcd at 10408, para. 35.

²¹ *Id.*

²² *Id.* at 10413, para. 53. PII is defined as information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Managing Information as a Strategic Resource, OMB Circular A-130, at 3, para. 33 (2016), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A130/a130revised.pdf>.

²³ *Locations Adjustment Order*, 34 FCC Rcd at 10412, 10413, paras. 50, 53.

²⁴ *Id.* at 10408, para. 36.

²⁵ *Connect America Fund*, WC Docket No. 10-90, Protective Order, 36 FCC Rcd 5605, 5608, para. 9 (WCB 2021). As is specified in this order, persons seeking access to confidential ELAP information must agree to “use this information solely for the preparation and conduct of [the ELAP] proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided [for in the Protective Order],” “[to] not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.” *Id.*

Participants will be made available to a Stakeholder only if the Stakeholder executes a Protective Order that will be made available through the ELAP system. However, some Stakeholders may wish to rely solely on the publicly available Participant location information published on the Commission's website and USAC's Map and file challenges to Participant information without executing a Protective Order.²⁶

Prospective Stakeholders *must* initiate the registration process by completing, in good faith, the registration form available through a link (<https://elap.universalservice.org/elapsv>) on the USAC ELAP resources page, <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>, by **Friday, March 25, 2022, 11:59 PM ET**, to be eligible to file challenges during the stakeholder challenge filing window. If a party fails to meet this deadline, it will not be permitted to file a challenge. **Information submitted to the Bureau or USAC outside of the ELAP module will not be considered unless the Bureau or USAC specifically authorizes supplementation.** In addition, the Bureau takes no responsibility for the publication of this information if submitted on a public platform, such as the Commission's Electronic Comment Filing System (ECFS).

Prospective Stakeholders that have technical questions may directly contact USAC at elap@usac.org or at (844) 357-0408.

The Bureau, as part of its continuing effort to advance digital equity for all,²⁷ including Indigenous and Native American authorities and persons who live in Tribal areas, people of color, persons with disabilities, persons who live in rural areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites participation in the Stakeholder challenge process.

Waiver of 90 Day Deadline for Stakeholders to Complete Challenge Process and Announcement of 90-day Stakeholder Challenge Window beginning Friday, April 1, 2022

In the *ELAP Public Notice*, the Bureau determined that prospective Stakeholders would have 90 days from the release of Participant ELAP information to establish their eligibility to file challenges, sign the Protective Order to access Participant non-public information (as warranted), and review and challenge Participants' evidence.²⁸ We waive this deadline, modifying and extending it consistent with

²⁶ In the sharing, maintenance, and use of ELAP information, USAC has been directed to comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security standards and requirements, such as the Privacy Act of 1974 (5 U.S.C. § 552a), relevant provisions in of the Federal Information Security Modernization Act of 2014 (The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002), was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. §§ 3551 et seq. *Id.* §§ 3551 et seq.), and Office of Management and Budget guidance. *Locations Adjustment Order*, 34 FCC Rcd at 10414, para. 56.

²⁷ Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151. The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

²⁸ *Locations Adjustment Order*, 34 FCC Rcd at 10399, para. 11 (providing that Stakeholders would have 90 days from the public release of the Participants' location information to establish their eligibility, access and review Participant information pursuant to the terms of the Bureau's Protective Order, and submit their challenges).

the timing of the Bureau's implementation of ELAP.²⁹ We note that the original ELAP timeline adopted for this process presumed that as of the release of this Public Notice, the Stakeholder filing window would open concurrent with the registration process. The Bureau and USAC have since experienced unanticipated technical obstacles to simultaneous implementation of both the registration process and stakeholder challenge window. Moreover, we find that, given the number of Participants, the wide geographic spread, and the number of documented locations, the provision of additional time to Stakeholders to evaluate this information and compare it against their own location information is warranted. Accordingly, for all these reasons, the Bureau finds good cause to waive the 90-day time frame for Stakeholders to complete their challenges.

The Bureau will open the Stakeholder challenge filing window on **Friday, April 1, 2022, 12:01 AM ET, and will permit Stakeholders to file and certify challenge information for a full 90 days, until Wednesday, June 29, 2022, 11:59 PM ET.** When it opens the Stakeholder challenge filing window, the Bureau will also permit Stakeholders and Participants to gain access to relevant confidential information pursuant to a Protective Order process centralized in the ELAP module. At this time, the Bureau and USAC will also provide additional guidance regarding the completion of this process, including the execution of the Protective Order.

Identification of Tribal Authorities that May Potentially Have Direct Interests in Participant's(s') Service Area(s)

The Bureau, in connection with the Commission's Office of Native American Affairs (ONAP) and USAC, encourages Indigenous and Native American authorities and persons who live in Tribal areas, meeting the general Stakeholder eligibility criteria specified above, to participate in the ELAP. We are mindful of the Commission's obligation to ensure that the appropriate Tribal government and Tribal regulatory authorities are notified of, and provided with an opportunity to consult with the Bureau on, processes that may affect service in Tribal Lands or that uniquely affect telecommunications compliance activities.³⁰ In this regard, we endeavor to identify affected Tribal authorities and associated entities in the relevant states that may have direct interests in ensuring service in eligible areas for which Participants' have sought modification of their defined deployment obligations. To this end, the Bureau is providing a list of potentially affected Tribal Authorities by State at FCC's website, at the ELAP tab, Phase II auction website, <https://www.fcc.gov/auction/903>.³¹

People with Disabilities: We ask that requests for accommodations be made as soon as possible to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

²⁹ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause there for is shown."). Good cause may be found "where particular facts would make strict compliance inconsistent with the public interest." *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Ne. Cellular Tel. Co.*, 897 F.2d at 1166. To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. *See, e.g., Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); *see also WAIT Radio*, 418 F.2d at 1155, 1157.

³⁰ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4081 (2000).

³¹ By publishing this list, we do not intend to discourage any other Tribal entity, authority, or member from taking part in this process as a Stakeholder to the degree that they may satisfy the requisite conditions and successfully complete the registration process.

For further information on this Public Notice, please contact Nissa Laughner, Attorney Advisor, at Nissa.Laughner@fcc.gov or Joseph (Joe) Sorresso, Program Analyst, Joseph.Sorresso@fcc.gov, both of the Telecommunications Access Policy Division, Wireline Competition Bureau.

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