



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU ANNOUNCES THE APRIL 1, 2021 OPENING OF THE CONNECT AMERICA FUND PHASE II AUCTION ELIGIBLE LOCATIONS ADJUSTMENT PROCESS

### WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) announces the opening of the Eligible Locations Adjustment Process (ELAP) filing window to provide Connect America Fund (CAF) Phase II auction support recipients an opportunity to seek a reduction in their deployment obligations (and associated support) where the number of eligible locations is less than the number of funded locations in their Winning Bid Areas.<sup>1</sup> Participating Phase II auction support recipients (Participants) must submit all required information and certifications during a four-month filing window beginning **April 1, 2021** and ending **August 3, 2021**. After the close of this filing window, individuals, private entities, and governmental entities that meet eligibility criteria specified in the *Locations Adjustment Public Notice* (Stakeholders) may then file challenges to the completeness or accuracy of the information filed by a Participant.<sup>2</sup> Challenged locations will be adjudicated by the Bureau.

Below, we summarize requirements for the submission of Participant information in the ELAP module that is part of the High Cost Broadband Portal (HCBP).<sup>3</sup> Phase II auction support recipients that choose not to participate in this process or fail to meet requirements necessary to pass the Bureau's prima facie review must meet their original defined deployment obligations in the state by offering service to the collective number of funded locations specified in their bid award(s).<sup>4</sup>

<sup>1</sup> *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*); Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 10395 (2019) (*Locations Adjustment Public Notice*). The Office of Management and Budget (OMB) approved ELAP collections on November 4, 2020. Connect America Fund-Eligible Locations Adjustment Process, Notice of Action, OMB Control No: 3060-1279; *see also* Notice and Request for Comments, FR Doc. 2020-20383 (Sept. 16, 2020).

<sup>2</sup> *Locations Adjustment Public Notice*, 34 FCC Rcd at 10407-08, paras. 34-36. In this Public Notice, we refer to Participants and Stakeholders collectively as "ELAP Parties" or "Parties."

<sup>3</sup> The Bureau and USAC have frequently used the terminologies "High Cost Universal Broadband Portal (HUBB)" and "High Cost Broadband Portal (HCBP)" interchangeably, to describe USAC's portal for accepting high-cost broadband information. Because USAC has now created more than one module within the HCBP, we clarify that the HUBB, ELAP, and Performance Measures modules are separate modules housed within the HCBP.

<sup>4</sup> Long Form Applicants, Census Blocks, Locations, and Support, <https://www.fcc.gov/auction/903>; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5966, paras. 40, 46 (2016).

### Participant Filing Window

The Bureau establishes a four-month filing window to provide Participants with adequate time to prepare and submit ELAP information to the ELAP module.<sup>5</sup> During this filing window, Participants will have ample opportunity to prepare, submit, and certify the truth and accuracy of information relating to the number of eligible locations that they have identified in their service area, and to resubmit and recertify one or more files should a Participant need or want to do so.<sup>6</sup> Because USAC will start verifications of Participant submissions on a rolling basis based on the date of certification, we strongly advise Participants to submit complete and accurate information as quickly as possible so as to have adequate time to make necessary revisions and amendments. After the filing window closes, Participants cannot submit additional location information or make further modifications to their filings.

### ELAP Module in the HCBP to Receive Location Information

The Bureau, in conjunction with USAC, has developed an online ELAP module as part of the HCBP to receive Participants' location information.

Participants shall use the ELAP Data Collection Template, provided by USAC at <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>, to report geographic information about all qualifying locations plus any prospective locations (collectively, Eligible Locations). They may also use this template to identify locations that they have deemed to be non-qualifying. Participants shall separately submit their methodology and supporting evidence.<sup>7</sup>

An ELAP Module User Guide, is available for download at <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>, along with a recorded copy of the October 20, 2020 webinar and associated slides. Participants that have technical questions may directly contact USAC at [elap@usac.org](mailto:elap@usac.org) or at (844) 357-0408.

### Prima Facie Determination

The *Phase II Auction Reconsideration Order* and the *Locations Adjustment Public Notice* provide detailed information regarding the nature and type of information that should be included in Participant submissions. To summarize, Participants are requested to provide information regarding: 1) Eligible Location Information; 2) description of methodology or methodologies used to identify eligible locations and distinguish qualifying and non-qualifying locations; and 3) supporting evidence demonstrating that they took the actions described in their methodology.<sup>8</sup> Participants must also certify as to the accuracy and completeness of information provided. After the Participant filing window closes, the Bureau will release an order identifying those Participants that have satisfied their prima facie evidentiary

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<sup>5</sup> *Locations Adjustment Public Notice*, 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); *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390-92, paras. 23-28 (requiring Participants to submit, within one year after release of the Phase II auction closing public notice (released August 28, 2019), evidence of the total number of locations in the eligible areas in the state, but also directing the Bureau to "release a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both [Participants] and commenters"); *Wireline Competition Bureau Announces Delay in Initiation of CAF Phase II Auction Eligible Locations Adjustment Process*, Public Notice, 34 FCC Rcd 7493 (WCB 2020) (extending the Commission's deadline for completing Participant information collection to satisfy all relevant regulatory requirements).

<sup>6</sup> *Locations Adjustment Public Notice*, 34 FCC Rcd at 10389, para. 7.

<sup>7</sup> The acceptable file types and sizes are detailed in the ELAP Module User Guide at 6-7, <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/eligible-locations-adjustment-process-elap/>.

<sup>8</sup> *Locations Adjustment Public Notice*, 34 FCC Rcd at 10401-07, para. 18-32.

requirements to move forward with the process (Prima Facie Order) and will direct USAC to create and populate a publicly available map (Public Map) with only those Participants' relevant information.<sup>9</sup>

#### **Participant Information that Will Be Made Available to the Public**

In the *ELAP Order*, the Bureau recognized that certain information submitted during ELAP could reveal competitively sensitive information regarding Participants' future deployment plans.<sup>10</sup> The Bureau also recognized that information filed by Stakeholders could contain competitively sensitive, proprietary, or Personally Identifiable Information (PII).<sup>11</sup> Accordingly, the Bureau indicated that it would treat portions of ELAP submissions as presumptively confidential, except for information that is generally publicly available and that is necessary to facilitate challenges.<sup>12</sup>

The Bureau has directed USAC to publish on the Public Map, 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 relevant units. The Bureau may also publish all or part of this information in its Prima Facie Order.

We find that public access to the limited categories of information described above is essential to the ELAP challenge process. It will allow potential Stakeholders to begin preparing challenges to the completeness and accuracy of Participants' submissions.<sup>13</sup> The Bureau will announce, after the release of its Prima Facie Order, a deadline for potential Stakeholders to notify USAC of their intention of filing a challenge, as well as the subsequent opening of the stakeholder filing window for submitting challenges. The Bureau will also provide guidance on processes that potential Stakeholders must complete to establish eligibility to participate in ELAP.<sup>14</sup>

#### **Access to Confidential Information**

All presumptively confidential information may be accessed by ELAP Parties as necessary to facilitate the challenge process. To protect the business and personal interests of ELAP Parties, the Bureau permits Parties to submit information requested by the Bureau subject to the terms and conditions of a Protective Order.<sup>15</sup> The Bureau has adopted a Protective Order in the above-captioned docket that gives Parties appropriate access to relevant submissions while setting appropriate limits on access and use.<sup>16</sup> 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

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<sup>9</sup> *Id.* at 10399, para. 10.

<sup>10</sup> *Id.* at 10412-13, para. 50.

<sup>11</sup> *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>.

<sup>12</sup> *Locations Adjustment Public Notice*, 34 FCC Rcd at 10412, 10413, paras. 50, 53.

<sup>13</sup> *Id.* at 10409, paras. 37-41.

<sup>14</sup> To become eligible to submit such challenges, potential Stakeholders that are individuals or entities must successfully demonstrate a direct interest in receiving broadband service within one or more relevant study areas and must certify that they do not hold a controlling interest in a direct competitor of the challenged Participant(s). *Id.* at 10407-08, paras. 34-36. Government entities may submit challenges based on their interest in constituents receiving supported broadband service. *Id.* at 10407, para. 33.

<sup>15</sup> *Id.* at 10412, 10413, paras. 50, 53.

<sup>16</sup> *Id.*

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.”<sup>17</sup>

**Participants Must Not Submit Third-Party Confidential Information**

Participants are reminded that they are bound by all applicable federal and state restrictions on the disclosure of private and confidential third-party information.<sup>18</sup> The submission of such information is not reasonably necessary for Participants to fulfill their submission obligations or to carry their burden of persuasion and proof. Accordingly, Participants must not submit information about third parties that contains PII, whether obtained from subscribers or other sources (including public records), or that is otherwise treated as private or confidential under federal and state laws. Moreover, if Participants discover that such third-party information has been inadvertently submitted into the ELAP module, they must immediately take corrective action.

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

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-0626 or at TTY (202) 418-0484 or Joseph Sorresso at (202) 418-7431 or at TTY (202) 418-0484.

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<sup>17</sup> *Connect America Fund*, WC Docket No. 10-90, Protective Order, DA 21-318, para. 9 (WCB rel. Mar. 16, 2021).

<sup>18</sup> *See, e.g.*, 47 U.S.C. § 222; 47 U.S.C. § 552(b)(6) (protecting information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy”); *Id.* § 552(b)(4) (protecting “trade secrets and commercial or financial information obtained from a person and privileged or confidential”).