



PUBLIC NOTICE

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DA 22-1308

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AUTHORIZATION OF INVENTIVE WIRELESS OF NEBRASKA, LLC DBA VISTABEAM TO RECEIVE CONNECT AMERICA FUND (CAF) PHASE II AUCTION SUPPORT TRANSFERRED FROM COMMNET FOUR CORNERS, LLC

WC Docket No. 10-90

On April 8, 2022, the Wireline Competition Bureau (Bureau) approved a transfer of a domestic section 214 authorization between Commnet Four Corners, LLC (Commnet) and Inventive Wireless of Nebraska, LLC dba Vistabeam (Vistabeam) (together, Parties) in relation to the exchange of Connect America Fund (CAF) Phase II auction support and obligations associated with 176 census blocks in Wyoming (Assigned Blocks).¹ Consistent with this approval, the Bureau modifies the support and associated defined deployment obligations of Vistabeam and authorizes it to receive the CAF Phase II auction support associated with the Assigned Blocks, as described in more detail below.

In 2019, the Bureau authorized Commnet to receive, over a 10-year period, CAF Phase II auction support totaling \$2,446,067.40 to deploy supported services to 690 high cost locations in the Assigned Blocks (Study Area Code Number (SAC) 519017).² In addition, the Bureau authorized Vistabeam to receive a total \$3,734,455.40 to serve 1,354 locations in different census blocks in Wyoming (SAC 519021).³ On February 3, 2022, Commnet and Vistabeam filed a joint application, pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, for approval of a transaction whereby Vistabeam would assume all of Commnet's CAF Phase II auction obligations, and acquire the corresponding support associated with, the Assigned Blocks as well as

¹ See *Domestic 214 Application Granted for the Transfer of Certain Authorizations of Commnet Four Corners, LLC to Inventive Wireless of Nebraska, LLC*, WC Docket No. 22-52, DA 22-385 (WCB Apr. 8, 2022) (*Transfer Public Notice*); Application of Commnet Four Corners, LLC, Assignor, and Inventive Wireless of Nebraska, LLC dba Vistabeam, LLC, Assignee, for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 22-52 (Feb. 3, 2022) (*Transfer Application*), as supplemented, Letter from Stephen E. Coran, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-52 (Feb. 24, 2022) (*Supplement*).

² See *Connect America Fund Phase II Auction Support Authorized for 459 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3142, Attach. A (Authorized Long-Form Applicants and Winning Bids) at 3155 (WCB/OEA 2019) (*Commnet Authorization Public Notice*); *Transfer Application* at 3, Exh. A.

³ See *Connect America Fund Phase II Auction Support Authorized For 387 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 9406, 9413, Attach. A (Authorized Long Form Applicants and Winning Bids) at 9421 (WCB/OEA 2019) (*Vistabeam Authorization Public Notice*). Further, Vistabeam won the rights to provide service to 309 locations in Wyoming through Phase I of the Rural Digital Opportunity Fund (RDOF) Auction. See *Rural Digital Opportunity Fund Support Authorized For 5,657 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 22-280, Attach. A (Authorized Long Form Applicants and Winning Bids) at 109 (WCB/RBAFT Mar. 15, 2022).

“certain assets obtained with CAF II support.”⁴ On April 8, 2022, the Bureau approved the transaction, which was then consummated on August 22, 2022.⁵

As a condition of this authorization, Vistabeam assumes responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions on the ground in the Assigned Blocks that could negatively impact Vistabeam’s ability to meet its obligations in the future. Indeed, any carrier seeking authorization to receive high cost support pursuant to a section 214 transfer must conduct the proper due diligence prior to consummation of the transaction, and, in doing so, must assume all risks and consequences of noncompliance with CAF Phase II auction requirements, including default recovery of support and potential forfeiture penalties.⁶ Vistabeam retains its preexisting CAF Phase II auction obligations.⁷ Accordingly, Vistabeam must meet all administrative, performance, and CAF Phase II auction deployment obligations and deadlines associated with both the Assigned blocks and its preexisting supported area,⁸ including the requirement to deploy voice and broadband service meeting minimum standards to 40% of its defined deployment obligation by the end of 2022, 60% of all locations by the end of 2023, 80% by the end of 2024, and 100% by 2025.⁹ With respect to its preexisting CAF Phase II auction obligations, Vistabeam states that it “expects to meet the 40 percent buildout milestone well ahead of the three-year milestone deadline.”¹⁰

We find that Vistabeam has sufficiently demonstrated its managerial, financial and technological capabilities to meet its CAF Phase II auction obligations in the Assigned Blocks. In this regard, we find relevant Vistabeam’s successful completion of the Phase II application process for its preexisting blocks, which required the Bureau to assess audited financial statements, managerial experience, and technical capabilities and plans necessary to demonstrate that it could meet CAF Phase II obligations.¹¹ Consistent

⁴ See Transfer Public Notice at 2; Supplement, Attach. at paras. 4-5 (Additional Certification of Jeffrey Humiston, General Counsel of Commnet Four Corners, LLC); 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

⁵ Transfer Public Notice, DA 22-52; Letter to Marlene K. Dortch from Stephen E. Coran, Counsel for Inventive Wireless of Nebraska, LLC, WC Docket No. 22□52 (Aug. 22, 2022) (notifying the Commission of the consummation of this transaction).

⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1390, para. 25 (2018) (explaining that applicants must “conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications”); *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, para. 47 (2016) (*CAF Phase II Auction Report and Order*) (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

⁷ See *Vistabeam Authorization Public Notice*.

⁸ 47 CFR § 54.316(b)(4); *CAF Phase II Auction Report and Order*, 31 FCC Rcd at 6011, para. 174. The Bureau has provided a summary of the various obligations of authorized CAF Phase II auction support recipients in prior authorization public notices, including in the public notices authorizing Commnet and Vistabeam to receive CAF Phase II auction support. As stated in these public notices, the list is not intended to be comprehensive and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission’s rules. See *Commnet Authorization Public Notice*, 34 FCC Rcd at 3142-47; *Vistabeam Authorization Public Notice*, 34 FCC Rcd 9406, 9406-10.

⁹ *Connect America Fund; Connect America Fund Phase II Auction*, WC Docket No. 10-90, AU Docket Nos. 17-182, 20-108, Order, 35 FCC Rcd 109, 112-13, paras. 9-11 (WCB 2020) (aligning deployment milestones and reporting obligations for all CAF Phase II auction support recipients).

¹⁰ Transfer Public Notice at 3 (citing Transfer Application at 4).

¹¹ 47 CFR § 54.315. See generally *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (2018).

with the commitments made by Vistabeam in its CAF Phase II application, Vistabeam in its Transfer Application has committed to meeting all CAF Phase II auction performance and deployment requirements in the Assigned Blocks, attested to having the necessary managerial and operational expertise to meet buildout and performance obligations associated with the Assigned Blocks, and committed to remaining financially and technically capable of fulfilling these obligations.¹² Vistabeam further explains that economies of scale associated with the expansion of its service areas to the Assigned Blocks will ensure that Vistabeam will not need to incur additional debt obligations or otherwise substantially increase its costs.¹³

We also find that Vistabeam has met all prerequisites to authorization. The Wyoming Public Service Commission has expanded Vistabeam's Eligible Telecommunications Carrier (ETC) designation to cover the Assigned Blocks, thus, making Vistabeam eligible to receive universal service support.¹⁴ In addition, Vistabeam has obtained an irrevocable letter of credit securing the requisite amount of support for the acquired area and supported by a new Bankruptcy Opinion Letter.¹⁵

In sum, based on all of the above information and considerations and subject to the above limitations, we authorize Vistabeam to receive the support associated with the Assigned Census Blocks. We direct USAC to disburse to Vistabeam the CAF Phase II support from the Universal Service Fund previously associated with SAC 519017 that has not already been disbursed to Commnet as of the release of this public notice. Such support will be paid in monthly installments to the account on file for 498 ID 143031755. We also direct USAC to retroactively pay any support withheld from CommNet to Vistabeam.

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400.

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¹² See *Transfer Public Notice* at 3; *Transfer Application* at 6.

¹³ See *Transfer Public Notice* at 3; *Transfer Application* at 7.

¹⁴ *Application of Inventive Wireless of Nebraska, LLC d/b/a/ Vistabeam for Expansion of its Eligible Telecommunications Carrier Designation et al.*, Docket Nos. 62127-5-RA-22, 62122-5-RA-22, Order Granting ETC Designation and Approving Relinquishment (WY Public Service Commission Aug. 19, 2022). In this Order, the Wyoming Public Service Commission expanded Vistabeam's ETC authorization to include the Assigned Census Blocks and approved the relinquishment of Commnet's ETC designation for these areas).

¹⁵ 47 CFR § 54.315(c). Because Commnet did not demonstrate compliance with the optional 20% milestone, Vistabeam would normally need to obtain a Letter of Credit securing 36-months of support (36-month LOC), regardless of whether it chose to maintain separate obligations and support payments under two letters of credit (as here) or consolidate those obligations and support under one letter of credit. Vistabeam obtained a letter of credit for the Assigned Blocks equivalent to slightly more than 12-months of support (12-month LOC), which was approved in error. The Commission may waive its rules and requirements for "good cause shown." See 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 therefor is shown."). Good cause, in turn, 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). We find good cause under these particular circumstances, including, among other things, Vistabeam's reasonable reliance on the erroneous approval, to grant, *sua sponte*, a limited waiver of the letter of credit rules to allow Vistabeam to maintain a 12-month LOC until the Bureau determines whether Vistabeam has complied with its 40% milestone for the Assigned Blocks. Subsequently, Vistabeam must value the letter of credit pursuant to the letter of credit rules in place at that time.