



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 22-638

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CONNECT AMERICA FUND PHASE II AUCTION SUPPORT FOR ONE WINNING BID READY TO BE AUTHORIZED

**Listed Auction 903 Long-Form Applicant Must Submit Letter of Credit and
Legal Counsel's Opinion Letter by June 29, 2022**

**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 bid 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 applicant identified in that attachment is required to submit an acceptable irrevocable stand-by letter of credit and Bankruptcy Code opinion letter from their legal counsel for the state where they have the winning bid that is ready to be authorized in accordance with the instructions provided below by the applicable deadline – **prior to 6:00 p.m. ET on June 29, 2022.**

Viasat Carrier Services, Inc. Each Auction 903 long-form applicant was required either to certify that it is an eligible telecommunications carrier (ETC) in all winning bid areas or, as to those areas for which it had not yet been designated as an ETC, to certify that it would submit a certification of its status as an ETC in each such area and the relevant documentation supporting that certification prior to being authorized to receive such support.¹ On November 25, 2019, the Public Utility Commission of Oregon (Oregon PUC) approved Viasat's application for designation as an ETC to receive Connect America Fund

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 1507, para. 297 (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*); see generally 47 USC 254(e) (“[O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support.”).

(CAF) Phase II support for 102 CAF Phase II Auction winning bids that covered only non-Tribal areas.² Viasat was subsequently authorized to receive CAF Phase II auction support in those areas.³

Viasat could not, however, provide the required ETC certification with respect to one package bid and five other winning bids, each of which include census blocks on Tribal lands.⁴ 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.⁵ Viasat filed a petition with the Oregon PUC on February 24, 2021, requesting waiver of the rule for those areas in which no Tribe objected.⁶ On August 24, 2021, Viasat filed a subsequent supplemental application with the Oregon PUC to expand Viasat's ETC designation to include three census blocks overlapping lands of two Tribes (Burns Paiute Tribe and the Celilo) that did not object.⁷ On October 21, 2021, the Oregon PUC granted Viasat's revised ETC petition and expanded Viasat ETC's designation to include these three census blocks.⁸

As explained below, we find good cause in these circumstances to waive the rule that defines the default violation with respect to any area covered by a winning bid as a default on that entire winning bid. This will enable us to authorize support for some eligible census blocks even though the winning bidder has not received ETC designation for all of the eligible census blocks covered by the winning bid. We thus are ready to authorize CAF Phase II support for Viasat in those three census blocks within census block groups (CBGs) it won in Auction 903 where it has been designated as an ETC by the Oregon PUC.⁹

The Commission adopted CBGs containing one or more eligible census blocks as the minimum geographic area for bidding in Auction 903.¹⁰ As explained in the *Auction 903 Procedures Public Notice*, each bid in the auction represents an "offer to serve the eligible census blocks within the specified CBG at the indicated performance tier and latency, for a total amount of annual support that is at least the implied

² 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). On December 1, 2020, the Oregon PUC expanded Viasat's designation to include the areas of two Tribes that supported Viasat after the original designation. See Public Utility Commission of Oregon, Order No. 20-462 (Dec. 1, 2020) (granting Viasat's first supplemental application seeking to expand its designation to include census blocks overlapping lands of the Coquille Indian Tribe and the Confederated Tribes of Siletz Indians).

³ *Connect America Fund Phase II Auction Support Authorized for 169 Winning Bids*, Public Notice, 35 FCC Rcd 5489 (WCB 2020).

⁴ See Viasat ETC Designation Order. However, the Oregon PUC's order excluded Tribal lands from the ETC designation. See *id.* at Appendix A, page 5 (subsection h).

⁵ See *id.*

⁶ Supplement to Application for Designation to Expand Viasat Carrier Services Inc.'s Designated Service Area to Include Specific Tribal Lands, UM 1970, at 1 (filed Feb. 24, 2021) (Viasat Oregon First Supplement). Viasat received the required support from two Tribes, one formal and one informal objection, and did not receive a response from five Tribes. See Confederated Tribes of Warm Springs, Oregon, Letter to Megan Decker, Chair, Oregon PUC, et al., UM 1970 (Mar. 16, 2021).

⁷ Supplement to Application for Designation to Expand Viasat Carrier Services Inc.'s Designated Service Area to Include Specific Tribal Lands, UM 1970, at 1 (filed Aug. 25, 2021) (Viasat Oregon Second Supplement).

⁸ Public Utility Commission of Oregon, Order No. 21-349 (Oct. 25, 2021) (adopting the Oregon PUC staff recommendation to extend Viasat's designation to include census blocks overlapping lands of the Burns Paiute Tribe and the Celilo Tribe for the purpose of receiving CAF-II support).

⁹ The additional census blocks are 410259602001840, 410659708001028, and 410659708001327. *Id.* at 3; Viasat Oregon Second Supplement, Exhibit A.

¹⁰ *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1436-37, para. 18.

support amount of the bid.”¹¹ Viasat’s winning bids represent a binding obligation to serve all of the eligible census blocks covered by the bid, but Viasat cannot receive support in an area in which it is not an ETC pursuant to statute.¹²

In establishing its procedures for Auction 903, the Commission explained that a winning bidder is subject to forfeiture if it defaults on its winning bid or is disqualified for any reason prior to the authorization of support.¹³ For Auction 903, a violation is defined as any form of default with respect to the winning bid for the minimum geographic unit eligible for bidding—i.e., a CBG.¹⁴ In other words, because Viasat is ineligible for support in some of the Tribal land census blocks covered by its winning bid, absent a waiver, Viasat would be in default with respect to *all* areas covered by the bid, including the census blocks in which it qualified as an ETC.

On our own motion, considering the special circumstances presented in the instant case, we find good cause to waive the requirement that a default violation encompass the entire bid, and we authorize support on a per-census-block basis for the census blocks in which Viasat is otherwise eligible.¹⁵ Good cause justifying a waiver may be found “where particular facts would make strict compliance inconsistent with the public interest.”¹⁶ Waiver of the Commission’s rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁷ We find that here that, given the special circumstances that resulted in Viasat’s inability to obtain an ETC designation for the entire area covered by its winning bid, deviating from the rule that otherwise requires a default violation to encompass the entire bid is warranted and the public interest will be served by authorizing support in the census blocks where Viasat is eligible.¹⁸ Viasat made an extensive and sustained effort to qualify as an ETC for all of the census blocks subject to its winning bids. This is not an instance of a winning bidder choosing not to serve certain census blocks in a CBG it won because it now concludes that it would not be technically or financially feasible to do so. Rather, Viasat explains that it has been unable to secure the support or non-opposition of Tribes to its designation as an ETC in certain census blocks because a Tribe advised Viasat that it is “moving forward with broadband services themselves” in those areas¹⁹ and the PUC cannot designate it as an ETC for areas covering any Tribal lands without the Tribes’ consent.²⁰ Moreover, the FCC’s Office of Native Affairs and Policy

¹¹ *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1498, para. 223.

¹² 47 USC § 254(e).

¹³ *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1520, para 314. See 47 CFR § 1.21004(a) (“A winning bidder . . . that for any reason is not subsequently authorized to receive support has defaulted on its bid.”).

¹⁴ As explained in the Auction 903 Technical Guide, a winning bid must cover at least one CBG, the minimum geographic area for bidding. See CAF-II Technical Guide, Section 6.14 at p. 15. *Auction 903 Procedures Public Notice* at 1521, para. 315.

¹⁵ 47 CFR § 1.3.

¹⁶ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ *Id.*

¹⁸ See Supplement to Application for Designation to Expand Viasat Carrier Services Inc.’s Designated Service Area to Include Specific Tribal Lands, UM 1970, at 1 (filed Aug. 25, 2021) (Viasat Oregon Second Supplement). Viasat has had on-going discussions with various tribes in Oregon to request these Tribes provide the Oregon PUC’s notice of support or non-opposition to Viasat’s ETC designation application as required by Oregon law. Viasat provided additional information about its proposed service areas to the Tribes and had consultations with Tribal leaders. Viasat Oregon Second Supplement at 1.

¹⁹ Viasat Oregon Second Supplement at 1.

²⁰ See Oregon PUC, Staff Report, Docket No. UM 1970, p. 2-3 (Oct. 8, 2021) (“FCC Staff informed OPUC Staff that the FCC’s Office of Native Affairs and Policy (ONAP) conducted two separate outreach efforts to the federally (continued....)”).

conducted its own outreach to the Tribes in these areas and found similar challenges. Accordingly, we find that Viasat engaged in good faith efforts to secure Tribal assent, to comply with the Oregon PUC's requirement in this regard, and to be designated as an ETC in these areas in a timely manner.

Moreover, providing support for only a portion of an area covered by a winning bid in Auction 903 is not inconsistent with the purposes of the auction's bidding procedures. For Auction 903, the minimum geographic area available for bidding did not reflect any fundamental feature of the support being offered but instead was a mechanism to facilitate bidding and the conduct of the auction. As the Commission explained when it proposed to adopt CBGs as the minimum geographic area for bidding, bidding on CBGs rather than, for example, individual census blocks, reduced the number of items available for bid by almost an order of magnitude.²¹ By reducing "the number of records that a bidder would have to enter, manage, and ensure the accuracy of" throughout the auction, the adoption of CBGs as the minimum geographic area simplified the auction for bidders and facilitated participation.²² Likewise, affording bidders the opportunity to place bids on packages of CBGs was provided as a bidding convenience and did not convey any advantage in terms of performance over bids made on individual CBGs.²³ Although the Commission chose to aggregate eligible census blocks as the minimum geographic area for bidding in the auction, CAF Phase II support is awarded on a per location basis and compliance with the terms of the support is measured at the level of individual states.²⁴ Accordingly, we are now ready to authorize CAF Phase II support for Viasat in those census blocks where it has been designated as an ETC by the Oregon PUC.

With respect to the areas covered by its winning bids in Oregon in which Viasat has not received ETC designation, we find Viasat in default. The fact that Viasat's failure to obtain ETC designation is a result not of its own negligence but of its inability to get assent from Tribal entities does not absolve it from liability for forfeiture for its default in those areas. In Attachment B, we list relevant census blocks groups and associated winning bids. CAF Phase II support will not be authorized in these areas. For its default for those areas, we refer Viasat to the Enforcement Bureau for consideration of the appropriate action in this circumstance.

In the event of an auction default, a base forfeiture per violation of \$3,000 may be imposed.²⁵ 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.²⁶ Notwithstanding this limitation, the total base forfeiture will also be

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 recognized Oregon Tribes whose lands were covered by Viasat's winning bids in the CAF-II auction. ONAP reached out only to those Tribes from which Viasat had failed to obtain a meaningful response. First, ONAP staff reached out to each of the Tribes repeatedly, primarily by phone, over the course of February and March 2020. Second, ONAP resumed outreach efforts in July 2020, reaching out to each of the remaining Tribes repeatedly by both email and telephone into October 2020. Two Tribes responded to ONAP's extended outreach efforts by submitting letters of support to the Oregon PUC, two never responded to ONAP's multiple emails and voicemails, and the remainder acknowledged ONAP's outreach but, to the best of ONAP's knowledge, did not follow up with the Oregon PUC.").

²¹ See *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238, 6241, para. 12 (2017) (36,000 CBGs vs. 300,000 census blocks).

²² *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1436-37, para. 18.

²³ See *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1502, para. 239.

²⁴ *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1435, para. 15.

²⁵ *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

²⁶ *Phase II Auction Order*, 31 FCC Rcd at 6000-01, para. 144; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1521, para. 315.

subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.²⁷ In this case, however, the imposition of any forfeiture with respect to Viasat's default should take into consideration that Viasat has been authorized for support in portions of the winning bids in question.

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 CAF Phase II support.²⁸ 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.²⁹ We have reviewed the long-form application associated with the winning bid identified in Attachment A. Based on the representations and certifications in the relevant long-form application, we are prepared to authorize support, subject to submission of the required letter of credit and Bankruptcy Code opinion letter, for the winning bid identified in Attachment A.³⁰

Pursuant to section 54.315(b)(6)(v) of the Commission's rules, the long-form applicant identified in Attachment A that may be authorized to receive CAF 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*³¹ by a bank that is acceptable to the Commission by **6:00 p.m. ET on June 29, 2022**.³² **Prior to submitting their letter of credit, we encourage the long-form applicant to view and share with their issuing bank 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.³³ 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.³⁴

²⁷ 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.

²⁸ *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*).

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

³⁰ See 47 CFR § 54.315(b)(6)(v). The support amounts indicated on Attachment A have been proportionally reduced from the awarded support amount to reflect the defaulted blocks.

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

³² 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.

³³ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

³⁴ 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.

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.³⁵

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.³⁶

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

The long-form applicant identified in Attachment A of this Public Notice must submit a letter of credit and opinion letter for the state where it has a winning bid 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 of credit and opinion letter 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 June 29, 2022**, 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 the 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 June 29, 2022**. 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.³⁷ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.³⁸

³⁵ *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 & n.242.

³⁶ 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.

³⁷ If a request for public inspection under section 0.461 is made for the long-form applicant's letter of credit or a 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.

³⁸ 47 CFR § 0.459.

If the long-form applicant identified in Attachment A fails to file the required documents³⁹ for the identified winning bid by the applicable deadline – **prior to 6:00 p.m. ET on June 29, 2022** – the applicant will be in default on this bid and subject to forfeiture.⁴⁰

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

General Universal Service Information

Wireline Competition Bureau, Telecommunications Access Policy Division

Suzanne Yelen
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
Audra Hale-Maddox, (202) 418-0794
Jonathan McCormack, (202) 418-1065

Office of Economics and Analytics, Auctions Division

(202) 418-0660

³⁹ 47 CFR § 54.313(b)(6)(v).

⁴⁰ *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. 3 14-15; *Auction 903 Closing Public Notice* at 9-10.

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 Applicant and Bid

Attachment B: Bids in Default

-FCC-