

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Bascom
Mutual Telephone Company's Petition for
Designation as a High-Cost Rural
Competitive Eligible Telecommunications
Carrier

Case No. 21-0013-TP-UNC

**MOTION FOR WAIVER OF REQUIREMENT TO FILE FIVE-YEAR PLAN AND
MEMORANDUM IN SUPPORT OF BASCOM MUTUAL TELEPHONE COMPANY**

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JANUARY 5, 2021

**ATTORNEY FOR BASCOM MUTUAL TELEPHONE
COMPANY**

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BASCOM MUTUAL TELEPHONE COMPANY**

Under Rule 4901-1-12 and Rule 4901:1-6-02, Ohio Administrative Code, the Bascom Mutual Telephone Company moves for the waiver of a requirement of Rule 4901:1-6-09(B)(2) to include a five-year plan as part of the application in this proceeding. The reasons supporting the motion are set out in the accompanying memorandum.

Respectfully submitted,

/s/ Frank P. Darr

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Attorney for Bascom Mutual Telephone Company

**MEMORANDUM IN SUPPORT OF THE MOTION FOR WAIVER OF
REQUIREMENT TO FILE FIVE-YEAR PLAN OF
BASCOM MUTUAL TELEPHONE COMPANY**

I. Introduction

Bascom Mutual Telephone Company successfully bid for funding for expansion of broadband facilities in an auction supervised by the FCC under its Rural Digital Opportunity Fund program. The areas to be served under this funding are outside the area for which Bascom is currently identified as an eligible telecommunications carrier under section 214 of the Federal Communications Act. In order to receive the funding that it is conditionally awarded, Bascom must certify to the FCC that it has secured designation as an ETC for new areas by June 7, 2021. Under federal law, Ohio regulators are responsible for identifying ETCs. To secure status as an ETC in Ohio, the Public Utilities Commission of Ohio has incorporated the requirements of the FCC when that agency reviews ETC applications for carriers that are not otherwise subject to state review. One of those requirements, set out in the standard form for seeking ETC status, requires the filing of a five-year plan detailing proposed improvements or upgrades to the applicant's network throughout its proposed designated service area. In its recent announcement of RDOF winners, the FCC stated that it waived the requirement in its rules for the provision of a five-year plan in those instances in which the FCC certifies a carrier as an ETC. The underlying rationale for this waiver, which the FCC also granted in its treatment of Connect America Funding applicants in 2018, is that the substantial reporting requirements under the funding

programs render unnecessary the need for the five year plan. For the same reason, Bascom requests that the Commission waive the requirement that Bascom submit a five year plan.

II. The FCC has waived its requirement for auction winners securing ETC status to file a five year plan

On December 7, 2020, the FCC issued an announcement of RDOF auction winners. Public Notice, Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced, DA 20-1422 (FCC Dec. 7, 2020) (copy attached). In addition to setting out the winning bidders, the announcement also provided detailed instructions about the completion of the process for securing funding.

As part of the application process, the FCC requires that a successful bidder provide documentation that it has a high-cost ETC designation in all areas where the applicant will receive support by June 7, 2021. *Id.* at 7. Applicants subject to state jurisdictions to secure ETC status are directed to petition the relevant state commission for ETC designation, while those not subject to a state jurisdiction are directed to petition the FCC for ETC designation. *Id.* at 14.

In the announcement, the FCC also provided limited waivers for ETC filing requirements for petitions submitted to it. To that end, it continued waivers that it had previously extended of provisions of section 54.202 of the Commission's rules when it reviewed designations for ETC status for winners in the Connect America Fund Phase II auction. *Id.* at 14, n.71. In particular, the FCC waived the requirement that successful bidders submit the five-year plan required by section 54.202. *Id.*, citing *WCB Reminds Connect America Fund Phase II Auction Applicants of Process of Obtaining a Federal Designation, as an Eligible Telecommunications Carrier*, Public Notice, WC Docket No. 09-197, 33 FCC Rcd 6696, 6699-70 (July 7, 2018) ("2018 Waiver Order") (copy attached). The basis for the waiver is straight-forward: for fund recipients, the Commission had adopted more specific measures to track deployment. Additionally, the

Commission had waived annual reporting requirements because they were no longer needed to monitor use of the support for its intended purpose. 2018 Waiver Order at 6699.

III. The Commission has previously granted a waiver of the five-year plan requirement based on a similar FCC waiver

The Commission requires an applicant seeking ETC status demonstrate compliance with FCC rules concerning ETC status in an application that contains additional exhibits including a five-year plan. Rule 4901:1-6-09(B)(1) and (2). For good cause, however, the Commission may waive the requirement to file a five-year plan because Ohio statutes do not mandate the inclusion of a five-year plan. Rule 4901:1-6-02(E). A carrier seeking a waiver is required to file a motion setting out the period of time for which it is seeking the waiver and a detailed justification for the waiver. Rule 4901:1-6-02(F).

Under nearly identical circumstances to those presented by Bascom, the Commission has previously granted a waiver of the requirement to file a five-year plan twice. In petitions filed by recipients of Connect America Fund grants, the Commission found that the requirement to file a five-year plan was unnecessary and could be waived because the FCC reporting requirements were sufficient to demonstrate that the applicants were proceeding with the proper use of high cost funding. *In the Matter of the Petition Cincinnati Bell Extended Territories LLC for Designation as a Competitive Eligible Telecommunications Carrier within its Connect America Fund Phase II Auction Awarded Census Block Group*, Case No. 18-1685-TP-UNC, Finding and Order ¶ 34 (Feb. 6, 2019); *In the Matter of the Application of Mercury Wireless Indiana, LLC for Designation as a High-Cost Rural Competitive Eligible Telecommunications Carrier*, Case No. 18-1491-TP-UNC, Finding and Order ¶ 33 (Dec. 12, 2018).

IV. Bascom demonstrates good cause for granting the waiver

Under FCC rules, successful bidders in the RDOF auction such as Bascom will be subject to extensive annual reporting requirements to assure that they are using the funding they receive for the intended purpose of providing broadband facilities in unserved or underserved areas. 47 C.F.R. § 54.806(a) (cross-referencing annual reporting requirements under 17 C.F.R. § 54.313 and deployment and certification requirements under 47 C.F.R. § 54.516). Additionally, the FCC rules provide “non-compliance measures” if recipients fail to perform their grant-related obligations. 47 C.F.R. § 54.806(c). Under the rules applicable to RDOF grants, therefore, Bascom is subject to the same reporting requirements that carry penalties that the Commission found were sufficient to waive the requirement to file a five-year plan for Connect America Fund grantees. For the same reasons, the Commission should waive the requirement that Bascom file a five-year plan with its application in this case.

Respectfully submitted,

/s/ Frank P. Darr

Frank Darr

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, January 5, 2021.

/s/ Frank P. Darr

Frank Darr



PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, DC 20554

News Media Information: 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 20-1422
December 7, 2020

RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904) CLOSES

WINNING BIDDERS ANNOUNCED

FCC FORM 683 DUE JANUARY 29, 2021

AU Docket No. 20-34
WC Docket 19-126
WC Docket No. 10-90

1. By this Public Notice, the Rural Broadband Auctions Task Force, Office of Economics and Analytics (OEA), and Wireline Competition Bureau (WCB) announce that bidding in the Rural Digital Opportunity Fund Phase I auction (Auction 904) concluded on November 25, 2020. There were 180 winning bidders in the auction, with the 10-year support amount totaling \$9.23 billion and covering 5,220,833 locations in 49 states and one territory. Of the 5,295,771 locations in the 61,766 eligible census block groups, approximately 99% of the locations are covered by winning bids. While winning bids are for a range of performance tiers, winning bids for downstream speeds of at least 100 megabits per second (Mbps) cover 99.7% of these locations, with over 85% of locations covered by winning bids for Gigabit speed service.

2. Winning bidders are required to submit a post-auction application for support (FCC Form 683) no later than **January 29, 2021**. Winning bidders that wish to assign some or all of their winning bids to related entities must do so by **December 22, 2020**, using the Divide Winning Bids process described below.

I. WINNING BIDDERS

3. This Public Notice summarizes the results of the auction and provides winning bidders with important information, including FCC Form 683 filing requirements and support disbursement matters. Key information appears in the following attachments:

Attachment A: “Winning Bidders Summary” lists for each bidder: the state, the 10-year assigned support amount, and the number of locations assigned in winning bids.

Attachment B: “State Results Summary” lists for each state with eligible areas in Auction 904: the total 10-year assigned support, the number of locations assigned, and the number of bidders with winning bids.

Attachment C: “FCC Form 683: Application for Rural Digital Opportunity Fund Phase I Support – Instructions.”

4. A copy of this Public Notice will be sent to each qualified bidder via overnight delivery to the contact person at the contact address listed in each qualified bidder’s short-form application (FCC Form 183).

II. AUCTION RESULTS

5. Concurrent with the release of this Public Notice, the Commission is making available the detailed auction results and bidding information described below.

Online Map: An interactive visual representation of the auction results is available on the Auction 904 web page (www.fcc.gov/auction/904). On the interactive map available at this webpage, there are options for displaying all eligible areas and non-winning bids. Clicking on a state or winning bid listed on the right-hand side of the map will zoom the map to that area.

Results Data: An online viewer of results data and downloadable files that include the identities of bidders and all their submitted bids are now available in the FCC Auctions Public Reporting System (auctiondata.fcc.gov), for which there is a link on the Results tab on the Auction 904 web page (www.fcc.gov/auction/904).¹

6. Additionally, the Commission will soon make available certain, previously withheld information submitted in the applications to participate in the auction (FCC Forms 183). This information includes the state(s) and performance tier and latency combination(s) for which each applicant was found to be eligible.² The applications are viewable through the application search feature, which can be accessed through the Application Search tab on the Auction 904 web page.

III. POST-AUCTION PROCEDURES

7. Under the competitive bidding rules adopted in the *Rural Digital Opportunity Fund Order*, Auction 904 winning bidders must file a post-auction application for support, also referred to as FCC Form 683, consistent with all requirements of the long-form application process.³ FCC Form 683 has two discrete parts—the Divide Winning Bids portion and the long-form application portion. Each winning bidder is required to file an FCC Form 683 to become authorized to receive support. Prior to completing the long-form application portion, a winning bidder may divide its winning bids by assigning them to related entities, as described below.⁴ If a winning bidder assigns its winning bids to related

¹ Because bids in Auction 904 implied annual support amounts, the bids and results data in the FCC Auctions Public Reporting System are on an annual basis, in contrast to the 10-year total support amounts reported in Attachments A and B.

² We will continue to withhold from routine public inspection responses to the technical questions in Appendix A of the *Auction 904 Procedures Public Notice* and any supporting information; financial information for which confidential treatment was requested under the section 0.459(a)(4) abbreviated confidential treatment process; and any other information subject to a request for confidential treatment that has been granted or remains pending. See *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6129-30, para. 141 (2020) (*Auction 904 Procedures Public Notice*). Further, to prevent possible public dissemination of information related to bids or bidding strategies in Auction 107—an auction for flexible-use service licenses in the 3.7 GHz Band in which bidding is scheduled to commence on December 8—the data fields in which applicants identified specific spectrum bands that they proposed to use and spectrum access attachments will continue to be withheld from routine public inspection until the prohibition of certain communications in Auction 107 concludes. See 47 CFR 1.2105 (c); *Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107; Bidding in Auction 107 Scheduled to Begin December 8, 2020*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 8404, 8418, para. 44 (2020).

³ 47 CFR § 1.21004; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 696, para. 22 (2020) (*Rural Digital Opportunity Fund Order*).

⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6164-65, paras. 288-93.

entities, those entities will be required to file the long-form application portion of an FCC Form 683 for those winning bids, as described below. A winning bidder will be responsible for completing the long-form application portion of FCC Form 683 for any winning bids that it does not assign to a related entity.

8. **Winning bidders that intend to file a long-form application covering all their winning bids are not required to participate in the Divide Winning Bids process.** Any winning bidder that does not submit the Divide Winning Bids portion of FCC Form 683 prior to 6:00 p.m. ET on December 22, 2020, must file a long-form application that covers *all* its winning bids. In such circumstances, the winning bidder must file the long-form application in its own name, be designated as the eligible telecommunications carrier (ETC) to serve the relevant areas, be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Rural Digital Opportunity Fund Phase I support.⁵

A. Divide Winning Bids Portion of FCC Form 683

9. Any winning bidder that intends to assign some or all its winning bids to related entities must do so by submitting the Divide Winning Bids portion of the FCC Form 683 during the Divide Winning Bids filing window. **The Divide Winning Bids filing window will open at 10:00 a.m. Eastern Time (ET) on Wednesday, December 9, 2020, and close at 6:00 p.m. ET on Tuesday, December 22, 2020.** During this period, a winning bidder will be able to log into the Auction Application System using the FCC Registration Number (FRN) that it used to file its short-form application and complete the Divide Winning Bids portion of FCC Form 683. The instructions in Attachment C explain how a winning bidder can assign its winning bids to related entities.

10. A winning bidder may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (i.e., July 15, 2020).⁶ The Auction Application System will not permit a winning bidder to assign its winning bids to another winning bidder. A related entity is an entity that is controlled by the winning bidder or is a member of (or an entity controlled by a member of) a consortium/joint venture of which the winning bidder is a member.⁷ Thus, if a holding company/parent company is a winning bidder in Auction 904, the winning bidder may designate one or more operating companies that it controls to complete the long-form application to receive Rural Digital Opportunity Fund support for some or all of the winning bids in a state. If a consortium/joint venture is a winning bidder in Auction 904, the entity may designate one or more members (or entities controlled by members of) the consortium/joint venture to complete the long-form application to Rural Digital Opportunity Fund support for some or all of the winning bids in a state.

11. A winning bidder may assign winning bids to more than one entity in a single state, but it cannot assign a single winning bid to more than one entity.⁸ Thus, a winning bidder may not split among multiple entities either: 1) eligible census blocks within a winning bid for an individual census block group, or 2) separate census block groups within a winning package bid.⁹

⁵ Subject to the limited exception described below for multiple operating companies operating in a state.

⁶ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 291.

⁷ *Id.* at 6164, para. 289.

⁸ *Id.* at 6164, para. 290.

⁹ For example, assume a winning bidder has three winning bids—package bid A, package bid B, and single bid (i.e., one census block group) C. The winning bidder could assign package bid A to one related entity, package bid B to another related entity, and single bid C to a third entity. The winning bidder could not assign some census block groups from package bid A to one related entity and then the remaining census block groups from package bid A to another entity. The entire package bid must be assigned to one related entity. Similarly, the winning bidder could not assign some eligible census blocks from single bid C to one entity and then the remaining eligible census blocks from single bid C to another related entity. The entire census block group covered by the single winning bid must be assigned to one related entity.

12. Each entity that is assigned a winning bid through the Divide Winning Bids process is the entity that must file the long-form application portion of FCC Form 683 in its own name. Except for one limited exception, that long-form applicant must be designated as the eligible telecommunications carrier to serve the relevant area(s), be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Rural Digital Opportunity Fund support.¹⁰

13. For administrative convenience, if a winning bidder is a holding/parent company that has multiple operating companies in a state and intends to assign its winning bids to multiple operating companies in a state, it may choose one of those entities to be the lead operating company.¹¹ In such circumstances, the winning bids should be assigned to that lead operating company, the long-form application should be filed in the name of the lead operating company, the letter of credit should be in the name of the lead operating company, and payments will be made to the study area code associated with the lead operating company. However, the long-form application must identify which operating companies will meet the public interest obligations for which census block groups and documentation must be submitted that demonstrates that each of the operating companies has an ETC designation covering the relevant census block groups. As decided in the *Rural Digital Opportunity Fund Order*, compliance with the service milestones will be determined on a statewide basis across all the relevant operating companies.¹²

14. A winning bidder that assigns some or all its winning bids to a related entity must make several certifications in the Divide Winning Bids portion of FCC Form 683. In particular, it must certify and acknowledge that it:

- has assigned the winning bids to related entities that were named in the short-form application or are newly formed,
- will inform each entity of its filing obligation and cause each entity to submit a timely FCC Form 683 long-form application,
- will be at risk for default if any of the related entities do not submit a timely FCC Form 683 long-form application, and
- will submit a timely FCC Form 683 long-form application for any of the winning bids that it did not assign to another entity.

B. Obligation to Apply for Support – Long-Form Application Portion of FCC Form 683

15. A winning bidder that retains any of its bids, as well as all entities that are assigned winning bids by a winning bidder, must electronically submit the long-form application portion of FCC Form 683 covering those bids prior to the close of the long-form application filing window. **The long-form application filing window will open at 10:00 a.m. ET on Thursday, January 14, 2021, and will close at 6:00 p.m. ET on Friday, January 29, 2021.** Certain additional information may be submitted to the Commission after this filing window closes, as described below. **The Auction Application System will open a filing window at 10:00 a.m. ET on Thursday, January 14, 2021 to permit applicants to submit this additional information by the relevant deadlines.**

1. Deadlines

16. Attachment C of this Public Notice provides instructions for completing the long-form application portion of FCC Form 683. These instructions are consistent with the Commission's

¹⁰ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 291.

¹¹ *Id.* at 6165, para. 292.

¹² *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

requirements fully described in section 54.804(b) & (c) of the Commission's rules and paragraphs 286 to 322 of the *Auction 904 Procedures Public Notice*.¹³ Below is a summary of the information that must be submitted by the applicable application deadlines:¹⁴

- **Information due prior to 6:00 p.m. ET on Friday, January 29, 2021:**
 - **Applicant information**, including legal classification (e.g., corporation, general partnership, etc.), jurisdiction of formation, address, contact information, and responsible individual
 - **Whether the applicant has already been designated as an eligible telecommunications carrier (ETC)** for all the eligible census blocks in a winning bid(s)¹⁵
 - If the applicant has already obtained a high-cost ETC designation that covers all the relevant areas in a state, it should submit the required ETC documentation and certification letter by this deadline so that Commission staff can expeditiously verify the applicant's ETC status in the state
 - If the applicant has obtained a high-cost ETC designation for only some of the relevant areas in a state, Commission staff will not verify the applicant's ETC status in a state until the applicant has submitted the required documentation and certification letter for *all* the relevant areas in the state
 - **Whether the applicant is required to submit audited financial statements** during the long-form application process and whether it seeks confidential treatment of those financial statements¹⁶
 - **Initial project overview(s)** describing at a high-level the applicant's intended technology and system design for each state with a winning bid.¹⁷ An applicant should not include any confidential trade secrets or commercial information in its overview(s), which will be made publicly available.
 - **Project funding description(s)** that explains how necessary construction will be funded in each state¹⁸
 - **Spectrum access description(s)** demonstrating that the applicant has sufficient access to spectrum in each state, if applicable¹⁹

¹³ 47 CFR § 54.804(b), (c); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6163-78, paras. 286-322; *see also Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 725-735, paras. 86-113.

¹⁴ As discussed in Attachment C, certain applicant information may be automatically transferred from a winning bidder's short-form application (FCC Form 183) to its long-form application (FCC Form 683).

¹⁵ By June 7, 2021, the long-form applicant must obtain from all the relevant states or the Commission a high-cost ETC designation(s) that cover its winning bid areas and upload the required documentation and a certification letter to its FCC Form 683. 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

¹⁶ As noted below, the audited financial statements are due by June 7, 2021. 47 CFR § 54.804(b)(4); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80.

¹⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 302.

¹⁸ 47 CFR § 54.804(b)(2)(vi); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6174-75, para. 312; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727, para. 91.

¹⁹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6175, paras. 313-14.

- **Agreement information**, including information regarding any agreements relating to the applicant's participation in Auction 904²⁰
- **Ownership information**, including information regarding entities that have an ownership or other interest in the applicant and associated Commission-regulated businesses²¹
- **Various certifications**, including certifications regarding the applicant's compliance with statutory and regulatory requirements; financial and technical qualifications; available funds; compliance with the relevant public interest obligations and ETC requirements; and spectrum access, if applicable²²

17. We adopt a deadline of 70 days from the release of this Public Notice for long-form applicants to submit letter of credit commitment letters, as well as detailed technology and system design descriptions.²³

• **Information due prior to 6:00 p.m. ET on Monday, February 15, 2021:**

- **Letter of credit commitment letter(s)** for each applicable state from a qualified bank committing to issue an irrevocable stand-by letter of credit to the long-form applicant in the required form that covers the first year of support (at a minimum).²⁴ A long-form applicant with winning bids in multiple states may submit a single commitment letter that covers all of the relevant states as long as it is clear that the letter is applicable to the relevant states.
 - At a minimum, the letter must provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit in Appendix C of the *Rural Digital Opportunity Fund Order*.²⁵
 - The bank eligibility requirements are described in detail in paragraph 107 of the *Rural Digital Opportunity Fund Order* and section 54.804(c) of the Commission's rules.²⁶
- **Detailed technology and system design description(s)** for the approved technology for each applicable state, including a network diagram certified by a professional engineer.
 - Paragraphs 301 to 311 of the Auction 904 Procedures Public Notice provide detailed guidance on how an applicant can successfully meet this requirement.²⁷

²⁰ *Id.* at 6138, para. 173.

²¹ 47 CFR §§ 1.2112(a), 54.804(b)(2)(i); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 295; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 87.

²² See, e.g., 47 CFR § 54.804(b)(2)(ii), (iii), (v), (vii); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165-67, 6174-75, 6175-76, paras. 296-300, 312, 314.

²³ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, 6176, paras. 303, 315 (stating that this information would be due "[w]ithin the specified number of days after the release of the Auction 904 closing public notice").

²⁴ 47 CFR § 54.804(b)(3), (c)(2); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 315; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 106.

²⁵ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 315; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 106.

²⁶ 47 CFR § 54.804(c)(2); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

²⁷ 47 CFR § 54.804(b)(2)(iv); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167-74, paras. 301-11; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 90.

Further educational materials regarding this requirement will also be made available on the Auction 904 website, www.fcc.gov/auction/904.

- The professional engineer must certify that he or she has reviewed each state network diagram and that the network is capable of delivering, to at least 95% of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements.²⁸ For purposes of this requirement, while it is not necessary that the professional engineer certifying the network diagram have a Professional Engineer license, the certification should describe the professional engineer's qualifications such that the certifier's network design and performance expertise is apparent.
 - Wireless coverage maps should be submitted in ESRI Shapefile format. The component files (including the .SHP, .SHX, .DBF, and .PRJ files) should be uploaded in a single compressed .ZIP archive. Recommended standards and data fields will be made available on the Auction 904 website, www.fcc.gov/auction/904. Long-form applicants will see an error message when they upload the .ZIP archive to the long-form application, but the error will not prevent long-form applicants from submitting their applications provided that the submission occurs prior to the deadline and Commission staff should still be able to access the file. Commission staff will contact a long-form applicant after the filing deadline if there are any issues with the file. The FCC Form 683 attachment size limit is 10 MB.
- **Information due prior to 6:00 p.m. ET on Monday, June 7, 2021:**
 - **Documentation of high-cost ETC designation(s)** in all areas where the applicant will receive support, as described in paragraphs 316-317 of the *Auction 904 Procedures Public Notice*.²⁹ An applicant should also upload a .csv file of the census blocks that are covered by the ETC designation order.
 - **ETC certification letter(s)** from an officer of the applicant certifying that the long-form applicant's ETC designation(s) covers all the areas where the applicant will receive support.³⁰
 - If not provided with the FCC Form 183 short-form application by the long-form applicant or a related entity,³¹ **financial statements from the prior fiscal year (i.e., 2019) that have been audited by an independent certified public accountant**, including the balance sheets, statements of net income and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes.³² An applicant

²⁸ 47 CFR § 54.804(b)(2)(iv); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 301; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 90. Note that all performance requirements for broadband and voice services have to be met at peak periods. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6517-21, paras. 22-33 (WCB/WTB/OET 2018) (*CAF Performance Measures Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10116-10118, paras. 20-23 (2019) (*CAF Performance Measures Second Reconsideration Order*).

²⁹ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, paras. 316-17; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

³⁰ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

³¹ In this context, a related entity means the long-form applicant's parent/holding company or, if the long-form applicant is a member of a consortium or joint venture, the member of the consortium or joint venture that submitted financial statements with the short-form application.

can also submit fiscal year-end 2020 audited financial statements instead if they are available.

- The applicant must submit the audited financial statements of the entity that submitted its unaudited financial statements in the relevant FCC Form 183 short-form application or its own audited financial statements.³³
- Any applicant that fails to submit the audited financial statements as required by this deadline will be subject to a base forfeiture of \$50,000, which will be subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines.³⁴

18. Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Rural Digital Opportunity Fund public interest obligations if authorized to receive support. Commission staff will notify a long-form applicant if additional information is required. We expect long-form applicants to expeditiously complete their applications and respond in a timely manner to staff requests for additional or missing information.³⁵ If the application and the information with respect to each winning bid in a particular state is complete and the long-form applicant has demonstrated that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids for which the Commission is ready to authorize Rural Digital Opportunity Fund support.³⁶ If a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids that are considered in default.³⁷

- The applicant will have 10 business days from the release of the public notice indicating that the Commission is ready to authorize support to submit:
 - **Irrevocable standby letter of credit** for each state where the long-form applicant will be authorized to receive support. Long-form applicants should carefully review the letter of

(Continued from previous page) —————

³² 47 CFR § 54.804(b)(4); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80.

³³ Accordingly, if the long-form applicant is a member of a consortium, it should submit the audited financial statements of the consortium member that submitted its unaudited financial statements in FCC Form 183. If the long-form applicant is an operating company of a holding company that filed an FCC Form 183 on behalf of the long-form applicant, the long-form applicant should submit the audited financial statements of the holding company. A long-form applicant also has the option of submitting its own audited financial statements instead.

³⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

³⁵ See 47 CFR § 1.21004(b) ("The Commission may dismiss a winning bidder's application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. A winning bidder whose application is dismissed for failure to prosecute pursuant to this paragraph has defaulted on its bid(s)."); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 696, para. 22 (noting "the Commission will apply as appropriate any modifications to [the general competitive bidding rules] that it may adopt").

³⁶ 47 CFR § 54.804(b)(6)(v).

³⁷ A long-form applicant that defaults on a winning bid in a state may still be authorized to receive support for its remaining winning bids in that state.

credit requirements in section 54.804(c) of the Commission's rules and in the *Rural Digital Opportunity Fund Auction Order*,³⁸ which are summarized below:

- The initial letter of credit must cover the first year of support for the state, at a minimum.³⁹
- The letter(s) of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix C of the *Rural Digital Opportunity Fund Order*.⁴⁰
- The long-form applicant must be the entity that is named in the letter(s) of credit.⁴¹
- The letter(s) of credit must be issued by a qualified bank. The issuing bank eligibility requirements are described in section 54.804(c)(2) of the Commission's rules and in paragraph 107 of the *Rural Digital Opportunity Fund Order*.⁴²
- 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 its value is consistent with the Commission's rules. The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain service milestones as described in more detail in section 54.804(c)(1) of the Commission's rules.⁴³
- The letter of credit must remain open until the support recipient has certified that it offers the required service to 100% of the Connect America Cost Model (CAM)-determined location total in the state by the end of year six (or WCB's adjusted CAM location count if there are fewer locations) and the Universal Service Administrative Company (USAC) has verified that the build out obligation has been fulfilled.⁴⁴
- A list of common letter of credit errors is available at <https://www.fcc.gov/file/18256/download>.

³⁸ 47 CFR § 54.804(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-35, 773-77, paras. 96-113, Appx. C.

³⁹ 47 CFR § 54.804(c)(1); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

⁴⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

⁴¹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6164, para. 291.

⁴² 47 CFR § 54.804(c)(2); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, para. 107. WCB also issued guidance announcing that a non-U.S. bank that has a branch office located in New York City and that will accept a letter of credit draw certificate from USAC via overnight courier, in addition to in-person presentations, will be considered qualified to issue letters of credit if the bank also meets the Commission's other non-U.S. bank eligibility requirements. *Wireline Competition Bureau Provides Guidance Regarding the Eligibility of Non-United States Banks Issuing Letters of Credit for Universal Service Competitive Bidding Mechanisms*, WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 2804 (WCB 2020).

⁴³ 47 CFR § 54.804(c)(1)(i)-(vii); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-31, paras. 98-104.

⁴⁴ 47 CFR § 54.804(c)(1); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 731, para. 103. See also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55 (describing the service milestones and WCB's recalculation of location totals). More information about USAC's verification process is available at: <https://www.usac.org/high-cost/resources/fund-verification-reviews/>.

- **Letter of Credit Bankruptcy Opinion Letter(s)** from outside legal counsel regarding the treatment of the letter(s) of credit or its proceeds in a bankruptcy proceeding.⁴⁵ The letter must clearly state, 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.⁴⁶

19. Once Commission staff has determined that a long-form application is complete and the long-form applicant is financially and technically qualified, and the letter(s) of credit and accompanying opinion letter(s) have been received and approved, WCB will issue a public notice announcing the authorization of support for the winning bid(s) and directing USAC to begin disbursing support.⁴⁷ USAC will issue a new study area code to each long-form applicant for each state in which it is authorized to receive support. Long-form applicants will be notified of the new study area code prior to the authorization for support along with procedures for disbursing support. Monthly support disbursements will begin shortly after the authorization public notice has been released.

20. If an applicant is not authorized to receive support for a winning bid, it will be in default and subject to forfeiture for that winning bid as described below.

2. Forfeiture in the Event of Default

21. As described in the *Rural Digital Opportunity Fund Order*,⁴⁸ winning bidders or long-form applicants that have been assigned winning bids during the Divide Winning Bids stage will be subject to a forfeiture in the event of a default. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Rural Digital Opportunity Fund support, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise.

22. A winning bidder or long-form applicant that defaults will be subject to a base forfeiture per violation of \$3,000.⁴⁹ A violation is defined as any form of default with respect to the census block group. In other words, there shall be separate violations for each census block group assigned in a bid.⁵⁰ 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 15% of the bidder's total assigned support for the bid for the support term.⁵¹ Notwithstanding this limitation, the total base forfeiture will also be subject to

⁴⁵ 47 CFR § 54.804(c)(3); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177-78, para. 320; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 113.

⁴⁶ 11 U.S.C. § 541; 47 CFR § 54.804(c)(3); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 113.

⁴⁷ 47 CFR § 54.804(b)(6)(vi).

⁴⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 114-17; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, paras. 321-22.

⁴⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 census block groups for \$100,000 over the support term. We (continued....)

adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.⁵²

C. General FCC Form 683 Information

23. For both the Divide Winning Bids and long-form application portions of FCC Form 683, the application may be filed at any time after the relevant filing window opens until the filing window closes. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the relevant filing window closes.

24. **A winning bidder and/or long-form applicant must always click on the CERTIFY & SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 683 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff.** If a winning bidder or long-form applicant needs guidance or encounters technical difficulties in filing FCC Form 683, it may contact FCC Auctions Technical Support using the information in the Contact section, below.

D. Maintaining Accuracy of Information

25. Each long-form applicant must make all changes to its information in the Auction Application System using FCC Form 683. With the release of this Public Notice, long-form applicants are no longer required to maintain the accuracy and completeness of information furnished in their FCC Form 183 applications.

26. A long-form applicant will be permitted to make minor modifications to its application after the deadline for submitting applications.⁵³ Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or not available at the time the application was submitted.⁵⁴ If a long-form applicant makes a major modification to its application, the application will be denied.⁵⁵ In such an event, the long-form applicant will be subject to forfeiture. Major modifications include, but are not limited to, any changes in the ownership of the long-form applicant that constitute an assignment or transfer of control, any changes in the identity of the long-form applicant, or any changes in the required certifications.⁵⁶

E. Public Availability of FCC Form 683 Information

27. Information submitted in FCC Form 683 will generally be publicly available after Commission staff completes its review. Accordingly, a long-form applicant should take care not to include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its application. However, consistent with the Commission's limited information procedures in place for Auction 904, certain information will be withheld from routine public inspection even after support is authorized. **To ensure that the information described below is afforded such**

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would impose a base forfeiture of \$15,000 (15% of \$100,000) because otherwise the base forfeiture would be \$300,000, three times the entire bid amount (\$3,000 x 100 census block groups). In contrast, if Bidder B bids to serve 50 census block groups for \$1,000,000 over the support term, we would impose a base forfeiture of \$150,000 (\$3,000 x 50 census block groups), which is 15% of the total bid.

⁵² See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵³ 47 CFR § 54.804(b)(6)(iii).

⁵⁴ *Id.*

⁵⁵ *Id.* § 54.804(b)(6)(iv).

⁵⁶ *Id.*

confidential treatment, a long-form applicant must upload the information to FCC Form 683 using the appropriate attachment “type” as described in the instructions in Attachment C.

28. Information related to a long-form applicant’s detailed technology and system design description, its project funding description, and its letter of credit will be treated as confidential and will be withheld from public inspection.⁵⁷ The Commission will treat long-form applicants that submit this information as having made a request to treat this information as confidential trade secrets and/or commercial information. As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.

29. Moreover, a long-form applicant may request confidential treatment of its audited financial statements directly on FCC Form 683, using an abbreviated process under section 0.459(a)(4) of the Commission’s rules. The applicant need not submit a separate section 0.459 confidentiality request with its FCC Form 683.⁵⁸

30. Nevertheless, if a request for public inspection under section 0.461 is made for the long-form applicant’s audited financial statements, detailed technology and system design description, project funding description, or letter of credit, the long-form applicant will be notified and then must justify the continued confidential treatment of the information if it objects to the disclosure.⁵⁹

31. A long-form applicant may include with its FCC Form 683 a request that any other information submitted in its application not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission’s rules.⁶⁰ Requests for confidential treatment of information other than that discussed above will not be routinely granted.

IV. OTHER IMPORTANT INFORMATION

A. Maintaining Prohibition on Certain Communications

32. Section 1.21002 of the Commission’s rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, an applicant “is prohibited from communicating with any other applicant in any manner the substance of its own, or one another’s, or any competing applicant’s bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.”⁶¹ As explained more fully in the *Auction 904 Procedures Public Notice*, this prohibition took effect as of the short-form application filing deadline, i.e., July 15, 2020, at 6:00 p.m. ET, and extends until the deadline for filing the long-form application portion of FCC Form 683, i.e., **January 29, 2021, at 6:00 p.m. ET.**⁶²

⁵⁷ *Id.* § 0.459; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6130, 6168, 6175, paras. 141 n.325, 303 n.516, & 314 n.542. A long-form applicant’s high-level initial project overview will be made publicly available. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 302. For the Connect America Phase II auction, a winning bidder’s letter of credit from a qualified bank was treated as confidential trade secrets and/or commercial information and thus withheld from routine public inspection. *See Connect America Fund Phase II Auction Support for 962 Winning Bids Ready to Be Authorized; Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel’s Opinion Letters by March 13, 2019*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 955, 956 (WCB/OEA 2019). For the same reasons, we will withhold an applicant’s letter of credit commitment letter, letter of credit, and bankruptcy opinion letter.

⁵⁸ 47 CFR § 0.459(a)(4).

⁵⁹ *Id.* § 0.461

⁶⁰ *Id.* § 0.459.

⁶¹ *Id.* § 1.21002(b).

⁶² *See Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6132, para. 151.

33. **This prohibition applies to all short-form applicants regardless of whether such applicants became qualified bidders or actually bid.**⁶³ We also emphasize that, for purposes of this prohibition, an “applicant” includes the entity filing the application, each entity capable of controlling the applicant, and each entity that may be controlled by the applicant or by an entity capable of controlling the applicant.⁶⁴

34. With the release of this Public Notice, the Commission has made public auction-related information which previously would have been subject to the prohibition on certain communications.⁶⁵ Parties are reminded, however, that “bids or bidding strategies” encompasses more than information about bids submitted during the bidding portion of the auction. How an applicant participates in an auction is subject to the prohibition and includes, for example, a winning bidder filing a long-form application for support.⁶⁶ As noted in the *Auction 904 Procedures Public Notice*, information within the scope of the prohibition includes “subject matters that could convey cost or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.”⁶⁷ We note that proxy bid instructions, which may reflect such information, remain non-public.

35. Moreover, the prohibition of “communicating in any manner” includes public disclosures, private communications, and indirect or implicit communications, as well as express statements of bids and bidding strategies.⁶⁸ Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

B. High-Cost Eligible Telecommunications Carrier Designations

36. As noted above, by Monday, June 7, 2021, the long-form applicant must have obtained from either the relevant state authority or, where such authority lacks jurisdiction, from the Commission, a high-cost ETC designation(s) that covers its winning bid areas. The long-form applicant must submit for each state the required documentation and a certification letter from an officer.⁶⁹ Long-form

⁶³ An entity that submits an application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the long-form application filing deadline.

⁶⁴ 47 CFR § 1.21002(a).

⁶⁵ In addition, the combination of publicly available short-form application information and bidding information made available today effectively makes public the information that can be derived from such sources, including the potential assignee(s) of each winning bid. Accordingly, we clarify that the prohibition does not apply to information about the selection of assignees for winning bids in the Divide Winning Bids process.

⁶⁶ 47 CFR § 1.21004; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 155 (“communicating, among other things, how an applicant will participate . . . would convey bids or bidding strategies and would thus be prohibited”).

⁶⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 156.

⁶⁸ *Id.*; *see generally Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170 et al., Report and Order et al., 30 FCC Rcd 7493, 7577, para. 199 (2015) (explaining that similar section 1.2105(c) language prohibiting communicating bids or bidding strategies “in any manner” bars “communicating bids or bidding information, either directly or indirectly”); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the “substance” of Cascade’s bids or bidding strategies).

⁶⁹ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316.

applicants subject to state jurisdiction must petition the relevant state commissions for ETC designation and should follow state rules and requirements to apply for designation(s).⁷⁰ Long-form applicants not subject to state jurisdiction must petition the Commission for designation(s) as described in the *ETC Public Notice*.⁷¹ Petitioners for FCC designation do not need to include a list of census blocks with their ETC petition but should certify they will serve all blocks for which the long-form applicant has or will seek an award of support in that state.⁷²

37. In the event a long-form applicant determines that it will be unable to obtain the necessary ETC designations within 180 days, it should upload a petition for waiver of the deadline to its FCC Form 683 and in AU Docket No. 20-34. The Commission has found that it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete.⁷³ A waiver of the 180-day deadline would be appropriate if, for example, the applicant (or an associated entity) has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. When considering waivers of the 180-day deadline for obtaining ETC designation, we will presume that an entity acted in good faith if the entity files its ETC application **within 30 days** of the release of this Public Notice.⁷⁴

C. Public Interest Obligations and Annual Reporting Requirements

38. To ensure that Rural Digital Opportunity Fund support meets the Commission's public interest objectives, a long-form applicant that has received notice from the Commission that it is authorized to receive Rural Digital Opportunity Fund support will be subject to a variety of obligations, including service requirements, service milestones, reporting, and record retention requirements.⁷⁵ This includes the requirement that support recipients test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients' service.⁷⁶

⁷⁰ 47 U.S.C. § 214(e)(2).

⁷¹ *Id.* at § 214(e)(6); *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, Public Notice, WC Docket No. 09-197 et al., 33 FCC Rcd 6696 (WCB 2018) (*ETC Public Notice*). As described in this public notice, the Commission places the burden of proof upon the petitioner seeking a Commission ETC designation to demonstrate that the Commission has jurisdiction. *Id.* at 6696-97. We extend to Auction 904 winners the same waivers of section 54.202 of the Commission's rules for the reasons described in the *ETC Public Notice* and the same presumption that designation will serve the public interest. *See id.* at 6699-6700; 47 CFR § 54.202.

⁷² Petitioners may, in addition to seeking a high-cost designation in winning bid areas, seek a Lifeline-only ETC designation in areas not eligible for high-cost support for the limited purpose of becoming eligible to receive only Lifeline support in such areas. When doing so, they must submit with their ETC application a map or other information delineating these Lifeline-only areas, and other information specifically required by the Commission's Lifeline rules. *See, e.g., Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 09-197 & 10-90, Order, 34 FCC Rcd 10533 (WCB 2019); 47 CFR § 54.202(a)(4)-(6).

⁷³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81.

⁷⁴ *Id.*

⁷⁵ *See, e.g.,* 47 CFR §§ 54.313, 54.314, 54.316, 54.320, 54.802, 54.805, 54.806; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082-86, 6127-29, paras. 15-21, 135-39 (providing a high-level summary of the relevant public interest obligations and high-cost ETC obligations).

⁷⁶ 47 CFR § 54.313(a)(6). *See also, CAF Performance Measures Order*, 33 FCC Rcd 6509. Further modifications were made to the performance measures requirements in subsequent reconsideration orders. *See Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081 (WCB/WTB/OET 2019) (*CAF Performance Measures First Reconsideration Order*); *CAF Performance Measures Second Reconsideration Order*, 34 FCC Rcd 10109.

39. An Auction 904 support recipient will be subject to non-compliance measures if it fails or is unable to meet the service milestones or other service requirements, or fails to fulfill any other term or condition of Rural Digital Opportunity Fund support.⁷⁷ As described in the *Rural Digital Opportunity Fund Order* and the *CAF Performance Measures Order*, these measures will scale with the extent of non-compliance, and include additional reporting, withholding of support, support recovery, and drawing on the support recipient's letter of credit if the support recipient cannot pay back the relevant support by the applicable deadline.⁷⁸ A support recipient may also be subject to other sanctions for non-compliance with the terms and conditions of Rural Digital Opportunity Fund support, including, but not limited to, the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.⁷⁹

40. We also remind applicants that all Auction 904 support recipients will be subject to the Commission's National Security Supply Chain proceeding, including the rule that "no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain."⁸⁰ The prohibition on using universal service funds applies "to upgrades and maintenance of existing equipment and services."⁸¹

D. Access to the Bidding System

41. The bidding system will remain accessible to Auction 904 qualified bidders until 3:00 p.m. ET on Thursday, December 10, 2020. Bidders should download any files they wish to save from the bidding system before that time.

E. Return of SecurID® Tokens

42. The SecurID® tokens distributed to qualified bidders are tailored to Auction 904 and will not function in future auctions. The Commission will send each bidder, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return its SecurID® tokens. Each bidder should return its SecurID® token(s) to the Commission for recycling.

F. Contact Information

43. For 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

Anne Veigle, (202) 418-0500

⁷⁷ 47 CFR §§ 54.804(c)(4), 54.320, 54.806.

⁷⁸ *Id.* §§ 54.804(c)(4), 54.320, 54.806; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64.

⁷⁹ 47 CFR § 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 716, para. 63.

⁸⁰ 47 CFR § 54.9(a).

⁸¹ *Protecting Against National Security Threats to the Communication Supply Chain through FCC Programs et al.*, WC Docket No. 18-89 et al., Report and Order et al., 34 FCC Rcd 11423, 11453, para. 77 (2019).

General Universal Service Information**Wireline Competition Bureau,
Telecommunications Access Policy Division**

Alex Minard
Heidi Lankau
Lauren Garry
Ian Forbes
(202) 418-7400

General Auction Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 904 Information

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force

Michael Janson, (202) 418-0627
Kirk Burgee, (202) 418-1599
Jonathan McCormack, (202) 418-1065
Audra Hale-Maddox, (202) 418-0794

**Office of Economics and Analytics
Auctions Division**

Mark Montano
Daniel Habib
(202) 418-0660

Small Businesses

Additional information for small and
disadvantaged businesses

**Office of Communications Business
Opportunities**

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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

www.fcc.gov
www.fcc.gov/auction/904

- FCC -



PUBLIC NOTICE

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DA 18-714

Released: July 10, 2018

WCB REMINDS CONNECT AMERICA FUND PHASE II AUCTION APPLICANTS OF THE PROCESS FOR OBTAINING A FEDERAL DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

WC Docket Nos. 09-197, 10-90

This Public Notice reminds participants in the Connect America Fund Phase II (CAF Phase II) auction (Auction 903) about the process for obtaining designation as an eligible telecommunications carrier (ETC) by the Federal Communications Commission (FCC or Commission) where a state lacks jurisdiction to do so.¹ Successful bidders must submit proof of their ETC designation in all supported areas within 180 days of the Commission's announcement of their winning bids.² In order to assist auction participants, we summarize and, where necessary, waive, the FCC's ETC designation process for winning bidders.³

FCC Jurisdiction Under Section 214(e)(6) of the Communications Act of 1934, as Amended

Congress gives primary authority for ETC designations to state commissions.⁴ The FCC has authority only when "a common carrier [is] providing telephone exchange service and exchange access

¹ Carriers subject to state jurisdiction must petition state commissions for ETC designation. 47 U.S.C. § 214(e)(2). Carriers seeking a designation relating to an auction application should not submit their petitions for ETC designation to the Commission (or the relevant state commission(s), if applicable) until after the release of the Auction Closing Public Notice. 47 CFR § 1.21002.

² *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, 5999, para. 141 (2016) (*Phase II Auction Order*); 47 CFR § 54.315(a)(3), (b)(5); *see also* 47 U.S.C. § 254(e) (providing that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support"). To meet this deadline (or qualify for waiver of this deadline), the Commission expects winning bidders to submit their petitions for ETC designation to the appropriate authority within 30 days of the Commission's announcement of their winning bids. *See Phase II Auction Order*, 31 FCC Rcd at 6002, para. 152. If a winning bidder fails to do so, it is subject to forfeiture liability for an auction default. *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1521-22, paras. 314-316 (2018) (*Phase II Auction Procedures Public Notice*).

³ *See* Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (delegating FCC ETC designation authority to the Common Carrier Bureau) (*Section 214(e)(6) Public Notice*); *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau, and Other Organizational Changes*, Order, 17 FCC Rcd 4672 (2002) (renaming the Common Carrier Bureau, the Wireline Competition Bureau); *see also* *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Report and Order*).

⁴ *See* 47 U.S.C. § 214(e)(2). Carriers subject to state jurisdiction should follow state rules and requirements to apply for designation.

that is not subject to the jurisdiction of a State commission.”⁵ The FCC places the burden of proof upon the petitioner seeking an FCC ETC designation to demonstrate that the FCC has jurisdiction.⁶

Non-Tribal Lands. Petitioners seeking an FCC ETC designation to serve non-Tribal lands must submit “an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”⁷ The statement may take the form of a “duly authorized letter, comment, or order, from the relevant state regulatory commission or a court of competent jurisdiction, indicating that the state lacks authority to designate the carrier.”⁸ Carriers cannot rely on jurisdictional statements in past orders relating to different carriers or simply challenge the state commission’s jurisdiction in their petition directly.⁹ If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.¹⁰

Tribal Lands. Petitioners seeking an FCC ETC designation to serve Tribal lands may petition the FCC directly so long as they have not initiated an ETC designation proceeding before the relevant state commission.¹¹ The petition must accurately describe and demonstrate that the specific geographic area satisfies the definition of Tribal lands adopted for this purpose¹² and provide fact-specific support for FCC jurisdiction, including citations to relevant case law, statutes, and treaties.¹³ Generalized statements of FCC jurisdiction are insufficient and will result in dismissal of the petition.¹⁴

Service Requirements

Section 214(e)(1) of the Communications Act of 1934, as amended (Act) requires all ETCs to offer, throughout their designated service areas, all services that the Commission designates for high-cost universal service support pursuant to section 254(c) of the Act, “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹⁵ Carriers must also advertise the availability of such services (and the charges thereof) using media of general distribution.¹⁶

⁵ *Id.* § 214(e)(6).

⁶ *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*).

⁷ *Phase II Auction Order*, 31 FCC Rcd at 6004, para. 154 (quoting *2000 Tribal Order*, 15 FCC Rcd at 12214, para. 7).

⁸ *2000 Tribal Order*, 15 FCC Rcd at 12264, para. 113.

⁹ *See id.*

¹⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7112, para. 183 (2014).

¹¹ *2000 Tribal Order*, 15 FCC Rcd at 12268-69, para. 126.

¹² *Id.* at 12268, para. 125 (requiring petitioners seeking FCC ETC designation for service provided on Tribal lands to describe the specific geographic areas they wish to serve and to demonstrate that such areas satisfy the definition of Tribal lands); *see also id.* at 12218-19, paras. 17-18 (defining Tribal lands to include “reservation” and “near reservation,” as those terms are defined under BIA’s regulations); 25 CFR § 20.1(r), (v).

¹³ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 122; *see also, e.g., Petition of Leech Lake Telecommunications Company, LLC for Designation as an Eligible Telecommunications Carrier within Ojibwe Tribal Lands*, WC Docket No. 09-197 et. al., at 5-8 (filed Dec. 5, 2015).

¹⁴ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 122.

¹⁵ 47 U.S.C. § 214(e)(1); *see also* 47 CFR § 54.201(d).

¹⁶ 47 U.S.C. § 214(e)(1); *see also* 47 CFR § 54.201(d).

For CAF Phase II support recipients, the Commission defines supported service as qualifying voice service and conditions grant of funding on the offering of qualifying broadband services.¹⁷ As a condition of receiving support, ETCs must therefore offer voice telephony as a standalone service throughout their designated service area and must offer voice telephony services at rates that are reasonably comparable to urban rates.¹⁸ The Commission has adopted a similar reasonable comparability rate certification requirement for broadband performance obligations.¹⁹

All ETCs must offer qualifying voice service using their own facilities, at least in part.²⁰ The Commission has interpreted the term “facilities,” for purposes of section 214(e) of the Act, to mean “any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1).”²¹ As explained by the Commission, “a carrier need not offer universal service wholly over its own facilities in order to be designated an eligible carrier because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.”²² Facilities are the ETC’s “own” if the ETC has exclusive right to use the facilities to provide the supported services²³ or when service is provided by any affiliate within the holding company structure.²⁴

An ETC satisfies its obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund (USF)-related requirements.²⁵ Accordingly, a broadband provider may satisfy its voice obligation by

¹⁷ 47 CFR § 54.101 (including both eligible voice telephony and eligible broadband internet access as services “supported by federal universal service support mechanisms,” and characterizing the provision of eligible broadband service as a high-cost public interest obligation); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17691-94, paras. 74-89 (2012) (describing the “core functionalities of the supported services as ‘voice telephony service,’” and separately conditioning receipt of offer broadband service in their supported area) (*USF/ICC Transformation Order*).

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, paras. 80-81; *see also* 47 CFR § 54.101(b).

¹⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15686-87, para. 120 (2014) (*December 2014 CAF Order*).

²⁰ 47 U.S.C. § 214(e)(1); 47 CFR § 54.101.

²¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8847, para. 128 (1997).

²² *Id.* at 8870, para. 169.

²³ *Id.* at 8866, para. 160.

²⁴ *December 2014 CAF Order*, 29 FCC Rcd at 15668 n.143; *see also* 47 U.S.C. § 153(2) (defining an affiliate as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person”); *cf.* Rural Broadband Experiments – Frequently Asked Questions (FAQs), May 27, 2015, at <https://www.fcc.gov/general/rural-broadband-experiments> (explaining that “recipients of support in the rural broadband experiments, like all recipients of Connect America support, are free to meet their broadband public interest obligations through any affiliate within the holding company”).

²⁵ *Cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7215, para. 9 (WCB 2013) (finding that it is not sufficient for a broadband provider to qualify as an “unsubsidized competitor” if a consumer must obtain voice service from a third party, because that broadband provider would not be offering a voice service) (*Phase II Challenge Process Order*).

offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.²⁶

Under section 54.202 of the Commission's rules, the Commission adopted additional requirements for parties seeking an FCC ETC designation.²⁷ For example, a petitioner seeking an FCC ETC designation must submit a five-year improvement plan and a certification committing to implement consumer protection and customer service standards (consumer protection certification).²⁸ The Commission adopted these requirements in 2005, in conjunction with related annual reporting obligations, to monitor carriers' use of funding.²⁹

For CAF recipients, however, the Commission adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones.³⁰ For this reason, the Commission eliminated the five-year improvement plan requirement for price-cap and rate-of-return carriers and for recipients of funding under the rural broadband experiments.³¹ The Commission also eliminated, for all CAF recipients, the annual reporting obligations associated with both the five-year improvement plan and the consumer protection certification, after determining that such obligations were no longer essential to the Commission's ability to monitor ETC use of support for its intended purpose.³² Consistent with these decisions, we find good cause to waive, on our own motion, the requirement that winning bidders seeking an FCC ETC designation file a five-year improvement plan and demonstrate that it will satisfy applicable consumer

²⁶ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that "because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service," and requiring carriers to "offer VoIP over their broadband network on a standalone basis"); cf. *Phase II Challenge Process Order*, 28 FCC Rcd 7224, n.21 (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or "through a managed voice solution obtained from a third party vendor . . . , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers").

²⁷ 47 CFR § 54.202.

²⁸ *Id.* § 54.202(a)(1)(ii), (a)(3).

²⁹ *Id.* § 54.313(a)(1) (2015) (requiring the annual filing of a progress report); *id.* § 54.202(a)(5) (2015) (requiring the annual certification of compliance with applicable service quality standards and consumer protection rules).

³⁰ See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 6010-12, paras. 172-177 (requiring recipients of Phase II competitive support to file location information and milestone certifications); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3163-3169, paras. 209-217 (2016) (requiring rate-of-return carriers to file location information and milestone certifications) (*2016 Rate-of-Return Reform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15686-89, paras. 124-28 (2014) (requiring recipients of Phase II model-based support to file location information and milestone certifications); *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, Order, 29 FCC Rcd 8769, 8795-97, paras. 76-85 (2014) (requiring rural broadband experiment participants to file location information and milestone certifications).

³¹ *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, 3168, paras. 216, 220 (eliminating five-year plan and related progress reports for rate-of-return and price-cap carriers); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 29 FCC Rcd 8769, 8801, 8095, para. 77 (2014) (eliminating five-year plan requirement for recipients of rural broadband experiment support); see also *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12101, para. 49 (2016) (eliminating five-year plan and related progress reports for Alaska Communications Systems, Inc.).

³² See *Connect America Fund et al.*, *ETCs Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order, 32 FCC Rcd 5944, 5944-48, paras. 3-14 (2017) (*ETC Reporting Streamlining Order*) (eliminating requirements relating to the reporting of network outages, unfulfilled service requests, complaints, and pricing and the certification of compliance with applicable service quality standards).

protection and service quality standards.³³ We do so for the same reasons the Commission eliminated them from the annual reporting requirements.³⁴

To obtain an FCC ETC designation, winning bidders must continue to meet the other requirements of section 54.202 of the Commission's rules, i.e., they must (1) certify their commitment to meeting the service and performance quality requirements applicable to their support type;³⁵ and (2) demonstrate their ability to remain functional in emergency situations.³⁶ They should also indicate, as part of their certification their commitment to satisfying additional requirements applicable to all high-cost ETCs, such as Lifeline obligations.³⁷

To demonstrate compliance with ETC requirements, winning bidders may incorporate by reference the relevant information and certifications submitted as part of their Auction 903 applications. When making their section 214(e)(1) commitment to offering supported services, carriers may rely on the information and certifications submitted in their Auction 903 long-form applications to demonstrate their ability and commitment to meeting service and performance quality requirements.

Demonstration that Designation Serves the Public Interest, Convenience, and Necessity

Section 214(e)(6) of the Act and section 54.202(b) of the Commission's rules requires the Commission to find that an ETC designation serves the public interest.³⁸ While Congress did not identify specific criteria to be used in making such a determination, the public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the principles for the preservation and advancement of universal service.³⁹ To this end, the Commission adopted a cost-benefit test designed to assess whether designation would further universal service policies, placing the burden of proof on the petitioning carriers to demonstrate that the advantages of

³³ Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may consider issues of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Ne. Cellular*, 897 F.2d at 1166.

³⁴ See, e.g., *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, 3168, para. 216 (explaining that the detailed broadband buildout obligations of rate-of-return ETCs provide a "more defined yardstick by which to measure their progress towards the universal availability of voice and broadband service in their areas," and thus, obviate the need for a five-year plan and annual updates); *ETC Reporting Streamlining Order*, 32 FCC Rcd at 4944, para. 1 (eliminating several ETC rules as either duplicative of other reporting requirements or simply no longer necessary given other methods of overseeing use of USF support).

³⁵ 47 CFR § 54.202(a)(1)(i).

³⁶ *Id.* § 54.202(a)(2) (requiring a petitioner seeking an FCC ETC designation to "[d]emonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations").

³⁷ See *id.* § 54.101(d); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016) (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

³⁸ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

³⁹ 47 U.S.C. § 254(b).

service, such as increased consumer choice, would outweigh the disadvantages, such as poor coverage.⁴⁰ In the Phase II auction context, however, bidders demonstrate their ability to efficiently offer service through the competitive bidding process while in their short-form and long-form applications, bidders demonstrate their ability to meet their public interest obligations.⁴¹ Through such processes, the Commission conducts the cost-benefit analysis for ETC designation.⁴² Accordingly, carriers need not provide additional specific evidence of service to the public interest in their petitions for ETC designation.

Certification of Eligibility for Benefits under the Anti-Drug Abuse Act

Petitioners must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in section 1.2002 of the Commission's rules.⁴³

Post-Designation Reporting Obligations

Winning bidders that are designated as an ETC must file on a recurring basis:

- *Annual Section 54.313 Report.* On July 1st of the year following the year an ETC begins receiving support and on each subsequent July 1st thereafter, it must file an FCC Form 481.⁴⁴ Annual reports are filed with the Universal Service Administrative Company (USAC).⁴⁵ ETCs must complete the FCC Form 481 on USAC's website.⁴⁶ As part of this form, carriers must test and certify compliance with relevant performance requirements in section 54.309 of the Commission's rules.⁴⁷ The Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau (WTB), and the Office of Engineering and Technology (OET)

⁴⁰ See *ETC Designation Report and Order*, 20 FCC Rcd at 6388-89, paras. 40-42. As part of this determination, the Commission also conducted a cream-skimming analysis to ensure that potential designees could not selectively choose to serve high-density portions of a rural telephone company's study area while receiving support, under legacy identical support rules, based on the average costs of the rural telephone company in providing service throughout the study area. *Id.* at 6393-95, paras. 48-53. In the *Phase II Auction Order*, however, the Commission explained that a cream-skimming analysis in the Phase II Auction context is irrelevant since winning bidders will be the only carrier receiving support to serve a bid area and must serve areas the marketplace would not otherwise serve absent subsidy. See *Phase II Auction Order*, 31 FCC Rcd at 6008, para. 165.

⁴¹ See 47 CFR § 54.315 (requiring prospective bidders to include within their applications, among other things, certifications and evidence demonstrating that they are financial and technically qualified to meet public interest obligations).

⁴² *Id.* § 54.315.

⁴³ *Id.* § 1.2002.

⁴⁴ 47 CFR § 54.313(h)(2)(i); *Id.* § 54.313(j).

⁴⁵ *ETC Reporting Obligations Elimination Order*, 32 FCC Rcd at 5948, para. 15 (determining that the Commission "will no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018"); 47 CFR § 54.313.

⁴⁶ See Universal Service Administrative Company High Cost Forms, Form 481, <http://www.usac.org/hc/tools/forms.aspx>; Instructions for Completing FCC Form 481, http://www.usac.org/_res/documents/hc/pdf/forms/FCC-Form-481-Instructions.pdf.

⁴⁷ 47 CFR § 54.309.

have adopted a uniform framework to measure and report on the performance of ETCs' broadband service.⁴⁸

- *Annual 54.314 Certification.* On October 1st, beginning in the year after the winning bidder begins receiving support and continuing throughout the entire support term, an ETC designated by the FCC must certify that the support received in the prior year was used, and the support that will be received in the upcoming year will be used, only for the provision, maintenance, and upgrading of facilities and services for which support is intended.⁴⁹ An ETC designated by the FCC must self-certify by filing a sworn affidavit executed by a corporate officer attesting to the relevant facts.⁵⁰ Certifications must be filed with both the FCC and USAC. ETCs may submit their certifications to USAC via its online filing system⁵¹ or by sending the appropriate certification sample letter (provided on USAC's website) via email or U.S. mail.⁵² Certifications must also be submitted to the FCC's Office of the Secretary on or before October 1st. The submission should clearly reference WC Docket No. 14–58, ETC Annual Reports and Certifications.
- *Annual Reporting of Location Information.* On or before the last business day of the second calendar month following the one-year anniversary of support authorization, and by the same day in subsequent years until all build-out requirements are satisfied, winning bidders must file with USAC through the High-Cost Universal Broadband (HUBB) portal location information, including geocoded data, for each qualifying location to which they are offering the requisite service and identify the kind of technology used to bring such service.⁵³ In the first year, bidders must submit all locations where the requisite service is being provided, and in subsequent years, all locations to which they are newly offering service.⁵⁴ The Commission has consistently encouraged carriers subject to defined deployment obligations and HUBB reporting obligations to report location data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.⁵⁵
- *Milestone Certifications.* By the last business day of the second calendar month following each relevant service milestone, an ETC must file a certification that they have met their

⁴⁸ *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Order, DA 18-710 (WCB/WTB/OET rel. July 6, 2018); *see also Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1387, para. 16 (2018) (*Phase II Auction Reconsideration Order*) (establishing general guidelines for the adoption of a performance methodology); *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112; 47 CFR § 54.313(a)(6).

⁴⁹ 47 CFR § 54.314. The affidavit becomes part of the public record. *See id.*

⁵⁰ 47 CFR § 54.314(b), (c)(2). Relevant state authorities submit certifications on behalf of the ETCs they designate. *Id.* § 54.314(a).

⁵¹ *See* Universal Service Administrative Company Online Filing User Guide for Section 54.314 Self-Use Certification, http://www.usac.org/_res/documents/hc/pdf/forms/Self-Certifiers-User-Guide.pdf.

⁵² *See* Universal Service Administrative Company Self-Use Certification Sample Letter, http://www.usac.org/_res/documents/hc/pdf/samples/sample-self-use-cert-letter.pdf.

⁵³ 47 CFR § 54.316(a)(4).

⁵⁴ *Phase II Auction Order*, 31 FCC Rcd at 6010-11, para.173.

⁵⁵ *See id.* at 6011, para. 173; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3164, 3167, paras. 211, 218 (2016); *see generally Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12910 (2016) (*HUBB Public Notice*); Universal Service Administrative Company, Filing Geolocated Broadband Deployment Data, <https://usac.org/hc/tools/hubb.aspx>.

interim service milestone and are meeting the requisite public interest obligations.⁵⁶ If an ETC is unable to meet an interim build-out milestone, it must notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government as appropriate, no later than ten business days after the applicable deadline.⁵⁷ If the ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it may also seek waiver of the service milestones.⁵⁸ The Commission has repeatedly warned Phase II support recipients, however, that it does not expect to routinely grant such waiver requests, emphasizing the difficulty of demonstrating good cause under circumstances where carriers fail to plan for some contingencies that would otherwise prevent compliance with defined deployment obligations.⁵⁹

All post-designation ETC-related filings must be submitted in good faith and, include a certification that, to the best of the ETC's knowledge and belief, the information is complete and accurate.⁶⁰ In addition, ETCs have an on-going duty to correct or amend information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data is inaccurate, incomplete, or contains data errors or anomalies.⁶¹ The failure to timely file information may result in penalties in the form of a reduction in support.⁶²

⁵⁶ 47 CFR § 54.314(b)(4) (requiring a “certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c)”; *id.* § 54.310(c) (“Recipients of Connect America Phase II awarded through a competitive bidding process must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year.”)).

⁵⁷ 47 CFR § 54.320(d).

⁵⁸ *December 2014 CAF Order*, 29 FCC Rcd at 15700, para. 154.

⁵⁹ *See Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1394, para. 33, n.88 (2018) (explaining that “it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term”); *id.* (explaining that “the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver”) (citing *December 2014 CAF Order*, 29 FCC Rcd at 15660, para. 40, n.93).

⁶⁰ *See, e.g.*, FCC Form 481 Officer Certification (requiring an officer of a petitioning entity to certify that he/she is “an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate”); *see also* 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading”).

⁶¹ *See Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900, 12910 (2016) (*HUBB Public Notice*).

⁶² 47 CFR § 54.313(j); *Id.* § 54.314.

Document Retention and Compliance Audits. Under section 54.320 of the Commission's rules, recipients of high-cost support must retain, for at least ten years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the FCC (and any of its bureaus or offices) and to USAC, and to their respective auditors.⁶³ In addition, all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders, including verification of actual deployment to reported locations.⁶⁴

Consequences for Non-Compliance. A Phase II Auction support recipient authorized to receive Phase II support is subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement, other service requirements, or fails to fulfill any other term or condition of Phase II support.⁶⁵ These measures scale with the extent of non-compliance, and include additional reporting, withholding of support, and support recovery.⁶⁶ A defaulting support recipient may also be subject to sanctions, including, but not limited to, potential revocation of ETC designations and suspension or debarment.⁶⁷ Additionally, a support recipient will be subject to any non-compliance measures adopted in conjunction with the methodology for measuring and reporting speed and latency performance to fixed locations.⁶⁸

Discontinuance of Service and/or Relinquishment of Support. It is a violation of FCC rules to receive USF support if that support is not used to provide, maintain, and upgrade voice and/or broadband facilities and services in eligible areas or if the recipient is no longer offering supported services. A carrier that cannot appropriately use USF support must relinquish its ETC designation pursuant to section 214(a) of the Act and section 54.205 of the Commission's rules.⁶⁹ The ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). WCB will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.⁷⁰ The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.⁷¹

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⁶³ 47 CFR § 54.320(b).

⁶⁴ *Id.* § 54.320(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, para. 621.

⁶⁵ 47 CFR §§ 54.315(c)(4), 54.320.

⁶⁶ *Id.* §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 CAF Order*, 29 FCC Rcd at 15694-701, paras. 142-57.

⁶⁷ 47 CFR § 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194; *ETC Designation Report and Order*, 20 FCC Rcd at 6402, para. 72 ("If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.").

⁶⁸ *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

⁶⁹ 47 U.S.C. § 214(a); 47 CFR § 54.205.

⁷⁰ 47 U.S.C. § 214(e)(4).

⁷¹ 47 CFR § 63.71.

Upon receipt of a petition filed pursuant to section 214(e)(6), the Commission routinely issues a public notice establishing a pleading cycle.⁷² Under section 1.21002 of the Commission's rules, after an application to participate in an auction for Universal Service Fund support is filed, applicants are prohibited from engaging in certain communications about their bids or bidding strategies, either directly or indirectly, with other applicants.⁷³ Such prohibition applies until the long-form application deadline, which will fall on the 10th day after the release of the public notice announcing the close of the auction (unless otherwise provided by public notice).⁷⁴ Petitions for ETC designation that contain information about bid areas could constitute a prohibited communication, if disclosed prior to the Commission announcing winning bids in the Auction Closing Public Notice. Consequently, to avoid violating the prohibited communications rule, petitioners seeking a designation in connection with an auction application should not submit their petitions for ETC designation to the Commission (or the relevant state commission(s), if applicable) until after the release of the Auction Closing Public Notice.

ETC Petition Filing Requirements

Petitions for ETC Designation and Related Pleadings. All ETC petitions filed with the Commission must reference "Petition for Designation as an Eligible Telecommunications Carrier Pursuant to section 214(e)(6) of the Act, **WC Docket No. 09-197**." Comments and reply comments must reference the same information as well as the DA number assigned to the public notice establishing a pleading cycle for the petition, as described below. If a petitioner is seeking designation to serve Tribal lands, it must provide copies of its petition to the appropriate state commission⁷⁵ and to the affected tribal government and tribal regulatory authority, as applicable,⁷⁶ when it files its petition for ETC designation with the Commission.

Pleading Cycle. Upon receipt of an ETC petition, the Commission will issue a public notice establishing a pleading cycle.⁷⁷ If the ETC designation petition involves Tribal lands, the Commission shall send copies of this public notice to the state commission by overnight mail and to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.⁷⁸ The Commission encourages any statements and analyses from the appropriate tribal authority addressing the jurisdictional question or the merits of the designation request.⁷⁹

Requests for Confidential Treatment. To the extent that a petitioner seeks confidential treatment of any information included in its petition, it must file a separate request for confidentiality pursuant to section 0.457 and 0.459 of the Commission's rules, along with redacted copies.⁸⁰

FCC Electronic Filings. Petitions and related filings may be filed using ECFS at <http://fjallfoss.fcc.gov/ecfs2/>.⁸¹ Filers must transmit one electronic copy of the comments for each docket number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers.

⁷² Section 214(e)(6) Public Notice, 12 FCC Rcd at 22950.

⁷³ 47 CFR § 1.21002.

⁷⁴ See *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 1428, 1477, para. 134 (2018).

⁷⁵ *2000 Tribal Order*, 15 FCC Rcd at 12266-67, para. 120.

⁷⁶ 47 CFR § 54.202(c).

⁷⁷ Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948.

⁷⁸ See *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 120; 47 CFR § 54.202(c).

⁷⁹ *2000 Tribal Order*, 15 FCC Rcd at 12267, para. 120.

⁸⁰ 47 CFR §§ 0.457, 0.459.

⁸¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Paper Filings. Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings submitted to the FCC must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- *Hand or Messenger Delivery.* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- *Commercial Overnight Mail.* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- *U.S. Postal Service First-Class, Express, and Priority Mail.* U.S. Postal Service mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.
- *Additional Copies.* One copy of each paper filing must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563.

Permit but Disclose Ex Parte Communications. For the purposes of the Commission's *ex parte* rules, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.⁸² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).⁸³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.⁸⁴ If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.⁸⁵ Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).⁸⁶ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).⁸⁷ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

⁸² See 47 CFR § 1.1206.

⁸³ *Id.* § 1.2016(b)(2)(iii).

⁸⁴ *Id.* § 1.206(b)(1).

⁸⁵ *Id.*

⁸⁶ *Id.* § 1.1206(b)(2).

⁸⁷ *Id.* § 1.1206(b)(2)(i); see also *id.* § 1.49(f).

Public Inspection. Filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com. The documents may also be viewed in and downloaded from ECFS.

People with Disabilities: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

For further information, please contact the Nissa Laughner at (202) 418-1358 or Nissa.Laughner@fcc.gov, or Alexander Minard at (202) 418-0428 or Alexander.Minard@fcc.gov, both of the Wireline Competition Bureau, Telecommunications Access Policy Division.

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Summary: Motion Motion for Waiver of Requirement to Five-Year Plan electronically filed by Frank P. Darr on behalf of Bascom Mutual Telephone Company