



# PUBLIC NOTICE

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## 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

By the Commission: Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel issuing separate statements. Commissioner Clyburn approving in part, concurring in part, and issuing a statement

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**I. GENERAL INFORMATION**

**A. Introduction**

1. By this Public Notice, we establish procedures for the Connect America Fund Phase II auction (Phase II auction, auction, or Auction 903), thus furthering our progress toward closing the digital divide for all Americans, including those in rural areas of our country. The Phase II auction will award up to \$198 million annually for 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas.<sup>1</sup> The auction is scheduled to begin on July 24, 2018.

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<sup>1</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695, paras. 77-83, 86 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (defining “voice telephony service” as the supported service and requiring Connect America Fund support recipients to offer broadband as a condition of receiving support).

2. Auction 903 will be the first auction to award ongoing high-cost universal service support using a multiple-round, reverse auction.<sup>2</sup> Through this auction, we intend to maximize the value the American people receive for the universal service dollars we spend, balancing higher-quality services with cost efficiencies. Therefore, the auction is designed to select bids from providers that would deploy high-speed broadband and voice services in unserved communities for lower relative levels of support. The bidding procedures we adopt, including some modifications to our proposals, will be implemented through the Auction 903 bidding system, which will enable a bidder to express in a simple and orderly way the amount of support it needs to provide a specified level of service to a specified set of eligible areas.

## B. Background and Relevant Authority

3. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services.<sup>3</sup> The Commission created the Connect America Fund and concluded that support in price cap areas would be provided through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process (Phase II).<sup>4</sup> Specifically, the Commission offered support based on a forward-looking cost model to incumbent price cap carriers serving certain high-cost areas in exchange for committing to offer voice and broadband services meeting certain requirements in those areas. In the areas of the states where the incumbent price cap carrier declined model-based support, the Commission decided to award support through a competitive bidding process. The Commission sought comment on proposed rules governing the Phase II competitive bidding process, including options regarding basic auction design and the application process.<sup>5</sup> Since 2011, the Commission has made several decisions regarding the auction and sought additional comment.<sup>6</sup>

4. In the *Phase II Auction Order*, the Commission expressed its preference for a multi-round auction to award Phase II funding.<sup>7</sup> According to the Commission, “a multiple-round bid auction would enable bidders . . . to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support

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<sup>2</sup> In prior Mobility Fund and Tribal Mobility Fund auctions, the Commission awarded one-time universal service support using a single-round, reverse auction. *USF/ICC Transformation Order*, 26 FCC Rcd at 17773-824, paras. 301-492.

<sup>3</sup> See generally *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

<sup>4</sup> *Id.* at 17725, para. 156. In this Public Notice, Phase II support refers to Phase II auction-based, rather than model-based, support unless otherwise specified. Areas served by rate-of-return carriers are supported by other Connect America Fund support mechanisms. See *Connect America Fund et al.*, Report and Order et al., 31 FCC Rcd 3087 (2017).

<sup>5</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18085-108, paras. 1189-295.

<sup>6</sup> See *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238, 6240-41, paras. 5-11 (2017) (*CAF II Auction Comment Public Notice*); see also *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7060-66, paras. 29-47 (2014) (*April 2014 Connect America Order and/or FNPRM*); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644 (2014) (*December 2014 Connect America Order*); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*Phase II Auction Order and/or FNPRM*); *Connect America Fund; ETC Annual Reports and Certifications*, Order, 32 FCC Rcd 968 (2017) (*New York Auction Order*) (conditionally waiving the Phase II auction program rules to allocate Phase II support in Connect America-eligible areas in New York in coordination with New York’s New NY Broadband Program); *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624 (2017) (*Phase II Auction FNPRM Order*).

<sup>7</sup> *Phase II Auction Order*, 31 FCC Rcd at 5978-79, para. 88.

amounts.”<sup>8</sup> Consistent with prior practice, the Commission left the specific details of the auction to be developed as part of the pre-auction process,<sup>9</sup> which the Commission commenced with the *Phase II Comment Public Notice* in August 2017.<sup>10</sup> We now announce the procedures for the Phase II auction.

5. We urge prospective applicants to review carefully the Commission’s orders and public notices relating to the Connect America Fund cited above. Prospective applicants in Auction 903 should also familiarize themselves with the Commission’s general universal service rules, contained in 47 CFR Part 54; the rules for the Connect America Fund specifically, contained in 47 CFR §§ 54.302-54.321; and the specific competitive bidding rules for universal service support contained in 47 CFR §§ 1.21000-1.21004. Additionally, prospective Auction 903 bidders may find it helpful to familiarize themselves with the Commission’s general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees and authorization holders.<sup>11</sup> Copies of Phase II auction-related Commission documents, including public notices, can be retrieved from the Commission’s Phase II auction website at <http://www.fcc.gov/connect-america-fund-phase-ii-auction>. Additionally, documents are available at the Commission’s headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC 20554, during normal business hours.

6. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

### C. Auction Specifics

#### 1. Auction Title and Start Date

7. The auction will be referred to as “Auction 903 – Connect America Fund Phase II.”
8. Bidding in Auction 903 will begin on **July 24, 2018**.
9. The initial schedule for bidding rounds will be announced by public notice approximately one week before the start of the auction.

#### 2. Auction 903 Dates and Deadlines

10. The following dates and deadlines apply:

Auction Application Tutorial Available (via Internet).....	By March 13, 2018
Short-Form Application (FCC Form 183)	
Filing Window Opens.....	March 19, 2018; 12:00 noon ET

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See generally *CAF II Auction Comment Public Notice*.

<sup>11</sup> See, e.g., 47 CFR §§ 1.2101-1.2114; *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order et al., 15 FCC Rcd 15293 (2000), modified by *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Erratum, DA 00-2475 (rel. Nov. 3, 2000); *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546 (2001); *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Eighth Report and Order, 17 FCC Rcd 2962 (2002); *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005).

Short-Form Application (FCC Form 183)

Filing Window Deadline .....March 30, 2018; 6:00 p.m. ET

Auction Bidding Tutorial Available (via Internet).....By June 28, 2018

Mock Auction Begins.....During week of July 16, 2018

Auction Begins.....July 24, 2018

**3. Requirements for Participation**

11. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 183) electronically prior to 6:00 p.m. ET, March 30, 2018, following the electronic filing procedures that will be provided in a public notice to be released in advance of the opening of the short-form application filing window; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

**D. Public Interest Obligations**

12. Each winning bidder that is authorized to receive Phase II support after the close of the auction will be required to offer voice and broadband services meeting the relevant performance requirements to fixed locations.<sup>12</sup> It must make these services available to the required number of locations associated with the eligible census blocks for which it is the winning bidder.<sup>13</sup> The number of locations that a support recipient is required to serve in the eligible census blocks is aggregated to the census block group (CBG) level, which is the geographic area that will be used for bidding in the auction. In the auction, the Commission will accept bids for service at one of four performance tiers, each with its own minimum download and upload speed and usage allowance, and for either high or low latency service, as shown in the tables below. Winning bidders that become authorized to receive Phase II support must deploy broadband service that meets the performance tier and latency requirements associated with their winning bids. The performance requirements for authorized winning bidders are described in more detail in the *Phase II Auction Order* and *Phase II Auction FNPRM Order*:<sup>14</sup>

Performance Tier	Speed	Monthly Usage Allowance	Weight
Minimum	≥ 10/1 Mbps <sup>15</sup>	≥ 150 gigabytes (GB)	65
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	45
Above Baseline	≥ 100/20 Mbps	≥ 2 terabytes (TB)	15
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB	0

Latency	Requirement <sup>16</sup>	Weight
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<sup>12</sup> A support recipient will be required to offer service to fixed locations, regardless of the technology to be employed. Each Phase II auction support recipient must meet certain public interest obligations as a condition of receiving Phase II support. This section is a high-level summary of various rules, orders, and public notices that describe the public interest obligations for Connect America Fund recipients generally and Phase II auction recipients more specifically. Each prospective applicant is strongly encouraged to review the relevant underlying rules and documents and has the obligation to conduct due diligence prior to the auction to ensure that it will be able

(continued...)

<b>Low Latency</b>	$\leq 100$ ms	0
<b>High Latency</b>	$\leq 750$ ms & MOS $\geq 4$ <sup>17</sup>	25

13. Phase II support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements, and these plans must be offered at rates that are reasonably comparable to rates offered in urban areas.<sup>18</sup> For voice service, a support recipient will be required to certify that the pricing of its service is no more than the applicable reasonably comparable rate benchmark that the Commission's Wireline Competition Bureau (WCB) releases each year.<sup>19</sup> For broadband services, a support recipient will be required to certify that the pricing of a service that meets the required performance tier and latency performance requirements is no more than the applicable reasonably comparable rate benchmark, or that it is no more than the non-promotional price charged for a comparable fixed wireline broadband service in the state or U.S. territory where the eligible telecommunication carrier (ETC) receives support.<sup>20</sup>

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to meet the relevant public interest obligations if authorized to receive Phase II support. *See supra* Section I.B (Background and Relevant Authority); *infra* Section II.E.5 (Due Diligence Certification).

<sup>13</sup> For purposes of this Public Notice, we may also refer to winning bidders (or their designated operating companies) that are so authorized as support recipients.

<sup>14</sup> *Phase II Auction Order*, 31 FCC Rcd at 5956-63, paras. 14-37; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73; *see also* 47 CFR § 54.309(a)(2). The Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology released a public notice in November 2017 seeking to update the record regarding performance testing methodologies and parameters for high-cost recipients, including Phase II auction support recipients. *Comment Sought on Performance Measures for Connect America High-Cost Universal Service Support Recipients*, Public Notice, 32 FCC Rcd 9321 (WCB, WTB, OET 2017) (*CAF Performance Measures Public Notice*).

<sup>15</sup> The speeds listed for each performance tier are the required minimum downstream/upstream speeds.

<sup>16</sup> For the latency requirement, at least 95 percent or more of all peak period measurements of roundtrip latency must be at or below 100 milliseconds (ms) (low latency) or 750 ms (high latency). *Phase II Auction Order*, 31 FCC Rcd at 5960-61, paras. 30-31.

<sup>17</sup> With respect to voice performance, bidders placing high latency bids must also commit to demonstrate a score of four or higher using the Mean Opinion Score (MOS). *Id.* at 5960-61, para. 30

<sup>18</sup> Each Connect America Fund support recipient must offer voice as a standalone service, but may separately bundle its broadband offerings with a voice service. *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 80.

<sup>19</sup> 47 CFR § 54.313(a)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17693-94, paras. 81, 84; *see also* *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 32 FCC Rcd 1358 (WCB 2017) (*Reasonably Comparable Rate Public Notice*). Phase II support recipients, like all ETCs, have annual reporting and certification obligations. *See, e.g.*, 47 CFR §§ 54.313, 54.314, 54.316.

<sup>20</sup> 47 CFR § 54.313(a)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15686-88, paras. 120-23; *see also* *Reasonably Comparable Rate Public Notice*, 32 FCC Rcd at 1359. The reasonably comparable broadband benchmark varies, depending on the supported service's download and upload bandwidths and usage allowance. A support recipient must offer service at a rate that is no more than the benchmark that corresponds at a minimum with the required speeds and usage for the performance tier and latency combination(s) applicable to its authorized bids. So, if a support recipient has an authorized bid in the Minimum performance tier, it must, at a minimum, offer

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14. The Commission has adopted specific service milestones that require each winning bidder authorized to receive Phase II support to offer service to a portion of the number of locations associated with the eligible census blocks included in its authorized winning bids in a state.<sup>21</sup> Specifically, each support recipient must complete construction and begin commercially offering service to 40 percent of the requisite number of locations in a state by the end of the third year of funding and to an additional 20 percent in each subsequent year, with 100 percent by the end of the sixth year.<sup>22</sup> A support recipient is deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request.<sup>23</sup>

15. Compliance will be determined at the state-level. The Commission will verify that the support recipient offers the required service to the total number of locations across all the eligible census blocks included in all of the support recipient's authorized bid areas (i.e., CBGs) in a state.<sup>24</sup> If a support recipient is authorized to receive support in a state for different performance tier and latency combinations, it will be required to demonstrate that it is offering service meeting the relevant performance requirements to the required number of locations for each performance tier and latency combination within that state.<sup>25</sup> The Commission also decided that a support recipient that faces unforeseen challenges may take advantage of the flexibility to serve, at a minimum, 95 percent of the

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service meeting the relevant performance requirements to the number of locations it has committed to serve at the Minimum performance tier at rates that do not exceed the benchmark for 10/1 Mbps broadband speeds and a 150 Gbps monthly data usage allowance. See Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 4 (filed July 20, 2016) (seeking clarification on whether it would be in compliance if it was authorized for support for a winning bid in one performance tier, but offered a service that complied with standards of another performance tier at rates that did not exceed the benchmark for that performance tier rather than the performance tier applicable to its authorized bid).

<sup>21</sup> The number of locations per census block was estimated by the Connect America Cost Model (CAM). The location totals include housing units and small businesses (i.e., businesses to which mass market services have been made available). The CAM Methodology describes how the CAM identified locations in each census block. CostQuest Associates, Inc., Connect America Cost Model (CACM): Model Methodology 12-15 (Dec. 22, 2014), [https://transition.fcc.gov/wcb/CAM\\_v.4.2\\_Methodology.pdf](https://transition.fcc.gov/wcb/CAM_v.4.2_Methodology.pdf) (CAM Methodology). For guidance on location reporting, 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 (WCB 2016) (*WCB Location Guidance Public Notice*).

<sup>22</sup> 47 CFR § 54.310(c); *Phase II Auction Order*, 31 FCC Rcd at 5964, paras. 40-41.

<sup>23</sup> *WCB Location Guidance Public Notice*, 31 FCC Rcd at 12902.

<sup>24</sup> Winning bidders must use Phase II support to deploy service to locations in only the eligible census blocks, not to the other, ineligible census blocks within a CBG won in the auction.

<sup>25</sup> The required number of locations for each performance tier and latency combination will be determined by adding up the locations in all the eligible census blocks in the state covered by authorized winning bids specifying the particular performance tier and latency combination. For example, assume a bidder had (1) winning bids for the Minimum performance tier and low latency for eight CBGs in a state, which have a total of 20 locations in their eligible census blocks, and (2) winning bids for the Baseline performance tier and low latency for 10 CBGs in a state, which have a total of 30 locations in their eligible census blocks. If the bidder is authorized to receive support for all the winning bids, it will be required to demonstrate by the end of the six-year build-out period that it has offered service to 50 total locations within the eligible census blocks across the state, that it is offering to 20 of those locations service that at a minimum meets the Minimum performance tier and low latency performance requirements, and that it is offering to 30 of those locations service that at a minimum meets the Baseline performance tier and low latency performance requirements. For interim service milestones, we will monitor a support recipient's overall progress in meeting its service milestones, rather than a support recipient's progress in meeting the requirements for each relevant performance tier and latency combination.



required number of locations in a state.<sup>26</sup> Support recipients that offer service to at least 95 percent of locations but fewer than 100 percent of locations must refund support based on the number of locations left unserved in the state.<sup>27</sup>

16. In the event a support recipient cannot identify enough locations in the eligible census blocks in its winning bids to meet its statewide obligation, it will have one year after release of the Phase II auction closing public notice to file evidence of the total number of locations in those blocks, including geolocation data of all the locations it was able to identify.<sup>28</sup> The support recipient's filing will be subject to review and comment by relevant stakeholders and an audit. If the support recipient demonstrates that the number of actual, on-the-ground locations is lower than the number estimated by the CAM, its state location total will be adjusted, and its support will be reduced on a pro rata basis. If a support recipient finds that the number of actual locations has increased, its location total and support will not be increased.

17. To monitor each support recipient's compliance with the Phase II auction public interest obligations, the Commission has adopted reporting requirements described in detail in the *Phase II Auction Order*.<sup>29</sup> These include reporting a list of geocoded locations each year to which the support recipient is offering the required voice and broadband services,<sup>30</sup> making a certification when the support recipient has met service milestones,<sup>31</sup> and submitting the annual FCC Form 481 report.<sup>32</sup> A support recipient that fails to offer service to the required number of locations by a service milestone will be subject to non-compliance measures.<sup>33</sup> A support recipient will also be subject to any non-compliance measures that are adopted in conjunction with a methodology for high-cost support recipients to measure and report network performance.<sup>34</sup>

#### **E. Eligible Areas**

18. For the reasons explained in the *CAF II Auction Comment Public Notice*, we will use CBGs<sup>35</sup> containing one or more eligible census blocks as the minimum geographic area for bidding in the

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<sup>26</sup> *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-47. Support recipients are required to meet each interim service milestone (e.g., 40 percent of locations by the end of the third year of support, 60 percent of locations by the end of the fourth year, and 80 percent of locations by the end of the fifth year), but for the final service milestone, support recipients have the flexibility to serve a minimum of 95 percent of locations, rather than 100 percent of locations.

<sup>27</sup> The amount refunded will be based on one-half of the average support for the top five percent of the highest-cost, model-funded locations nationwide (i.e., the average support per location in the state multiplied by 1.89). 47 CFR § 54.310(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 45.

<sup>28</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order and Order on Reconsideration, FCC 18-5, at 10, paras. 23-24 (Jan. 31, 2018). This order directs WCB to implement the specific procedures for this filing.

<sup>29</sup> 47 CFR §§ 54.313, 54.314, 54.316; *Phase II Auction Order*, 31 FCC Rcd at 6010-16, paras. 172-87.

<sup>30</sup> 47 CFR § 54.316(a)(4). Each support recipient is required to submit its locations to the Universal Service Administrative Company's (USAC) High Cost Universal Service Broadband (HUBB) portal and is encouraged to do so on a rolling basis. *Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173.

<sup>31</sup> 47 CFR § 54.316(b)(4).

<sup>32</sup> *Id.* § 54.313.

<sup>33</sup> *Id.* §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

<sup>34</sup> *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194. A support recipient will be required to test its networks for compliance and certify and report the results on an annual basis once a methodology has been adopted for this testing. 47 CFR § 54.313(a)(6); *see also CAF Performance Measures Public Notice*.

<sup>35</sup> In this Public Notice, the census block group-level aggregations of eligible census blocks are interchangeably called "CBGs" or "areas."

auction.<sup>36</sup> We decline to adopt census blocks as the minimum geographic area because the large number of eligible census blocks would significantly increase the complexity of the bidding process both for bidders and the bidding system.<sup>37</sup> For instance, because the bidding system requires file uploads with a record for each geographic area in order to place bids, the number of records that a bidder would have to enter, manage, and ensure the accuracy of would be significantly larger with census blocks than with CBGs. Nonetheless, to the extent eligible areas are left unserved following the auction, we will consider the feasibility of awarding support on the basis of smaller geographic areas in future universal service proceedings.

19. As directed by the Commission,<sup>38</sup> WCB released a list of the eligible census blocks for Auction 903 in December 2017 based on December 31, 2016 FCC Form 477 data.<sup>39</sup> The list contains two tables. The first table identifies the CBGs eligible for bidding in the Phase II auction and lists the CBG identification number (the 12-digit Census code), the relevant state abbreviation, the county name, the number of locations that are eligible for Phase II support, and the reserve price (on an annual basis) rounded to the nearest dollar. The second table identifies the eligible census blocks within the CBGs that are eligible for bidding in the Phase II auction. This table lists the census block identification number (the 15-digit Census code), the relevant state abbreviation, the county name, and the CBG identification number. All the eligible census blocks within a CBG will be aggregated for bidding purposes.<sup>40</sup> The table includes approximately 214,000 census blocks that are within approximately 30,300 CBGs, located in 50 states and territories.<sup>41</sup> We direct WCB to release a revised map and list of eligible areas that

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<sup>36</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6241-42, 6263, paras. 12-14, 85 (stating that CBGs “provide bidders with more flexibility to develop a bidding strategy that aligns with their intended network expansion or construction”). Certain commenters expressed support for using CBGs because census tracts would be too large and particularly problematic for smaller providers. See RWA Comments at 1-2; WISPA Comments at 2-3 (agreeing with the Commission’s observation that using larger census tracts “could be particularly problematic for smaller providers that may seek to construct smaller networks or may seek to expand existing networks”) (citation omitted); RWA Reply at 6-7; WISPA Reply at 18.

<sup>37</sup> See Letter from Thomas Cohen, Kelley Drye & Warren, LLP, Counsel to the American Cable Association (ACA), to Marlene H. Dortch, Secretary, FCC, AU Docket No. 17-182 et al., at 2 (filed Nov. 21, 2017) (ACA Nov. 21, 2017 *Ex Parte* Letter) (arguing that allowing bids on a census block basis will allow bidders to avoid including the extremely high-cost census blocks in a CBG for which the available support is often insufficient for an economically viable build); see also WISPA Dec. 5, 2017 *Ex Parte* Letter at 2 (“Smaller sizes, such as census blocks, would likely create more of a patchwork quilt of supported and unsupported areas in close proximity to each other.”); Rural Coalition et al. Jan. 24, 2018 *Ex Parte* Letter at 3 (asserting that the use of census block groups could “leav[e] many interested bidders on the sidelines . . . and many unserved locations left unserved”).

<sup>38</sup> *Phase II Auction Order*, 31 FCC Rcd at 5974, para. 73.

<sup>39</sup> See *Wireline Competition Bureau Releases List and Map of Eligible Census Blocks for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 10381 (WCB 2017) (*Eligible Census Block List*). The list of census blocks can be found at <https://www.fcc.gov/files/caf2auctionpublishblockcsv>. The list of census block groups can be found at <https://www.fcc.gov/files/caf2auctionpublishcbgcsv>.

<sup>40</sup> See *infra* Section IV.A.2 (Minimum Geographic Area for Bidding).

<sup>41</sup> We decline to make eligible for the Phase II auction certain census blocks in areas where price cap carriers accepted Phase II model-based support. See West Virginia Broadband Enhancement Council Comments at 2 (requesting that the Commission make eligible census blocks where price cap carriers accepted Phase II model-based support but that lack “construction activity,” “higher-quality services with cost efficiencies,” and “minimum level of service” as required by Phase II rules); Institute for Local Self-Reliance et al. (ILSR et al.) Reply at 10-11. This request is effectively an untimely petition for reconsideration because it would require us to reconsider the service milestones the Commission adopted for recipients of Phase II model-based support. *December 2014 Connect America Order*, 29 FCC Rcd at 15657-58, para. 36 (adopting the Phase II model-based support service milestones); 47 CFR § 1.429(d) (stating that a petition for reconsideration must be filed “within 30 days from the date of public notice” of the relevant action). Such Phase II model-based support recipients must offer service meeting the relevant requirements to 100 percent of the required number of locations in each state by the end of six

(continued....)

removes census block groups with a \$0 reserve price and census blocks that overlap certain rate-of-return carrier study area boundaries.<sup>42</sup>

## II. APPLYING TO PARTICIPATE IN AUCTION 903

### A. General Information Regarding Short-Form Applications

20. An application to participate in Auction 903, referred to as a short-form application or FCC Form 183, provides information used to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for universal service support.<sup>43</sup> The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, an entity seeking to participate in the auction must file a short-form application in which it certifies, under penalty of perjury, its qualifications.<sup>44</sup> Eligibility to participate in the Phase II auction is based on an applicant's short-form application and certifications. A potential applicant must take seriously its duties and responsibilities and carefully determine before filing a short-form application that it is able to meet the public interest obligations associated with Phase II support if it ultimately becomes a winning bidder in the auction. The Commission's determination that an applicant is qualified to participate in Auction 903 does not guarantee that the applicant will also be deemed qualified to receive Phase II support if it becomes a winning bidder. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 683), which the Commission will review to determine if a winning bidder should be authorized to receive support for its winning bids.

21. An entity seeking to participate in Auction 903 must file a short-form application electronically via the FCC's Auction Application System prior to 6:00 p.m. ET on March 30, 2018. Among other things, an applicant must submit operational and financial information demonstrating that it can meet the service requirements associated with the performance tier and latency combination(s) for which it intends to bid. Below we describe more fully the information disclosures and certifications required in the short-form application. An applicant that files a short-form application is subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition

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years of support (2020), and must meet evenly spaced interim service milestones—40 percent by the end of the third year of support (2017), 60 percent by the end of the fourth year of support (2018), and 80 percent by the end of the fifth year of support (2019). *December 2014 Connect America Order*, 29 FCC Rcd at 15657-58, para. 36. The exact deployment schedule is determined by the price cap carrier. Price cap carriers may still be in compliance with the Phase II model-based support requirements if they have not built out to or upgraded service in particular census blocks because they will have only had to certify that they offer service meeting the relevant performance requirements to 40 percent of their required number of locations in a state prior to the start of the auction. *See* Letter from Elena Kilpatrick, Senior Vice President, Operations, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 17-182 et al., at 3 (filed Oct. 17, 2017) (claiming that the West Virginia Broadband Enhancement Council's proposal would "fundamentally undermine any company accepting Commission funding in exchange for buildout").

For the same reasons, we decline to make eligible for the Phase II auction those census blocks that Frontier has identified in its FCC Form 477 data that it is serving with broadband at speeds of 10/1 Mbps. Illinois Electronic Cooperative Reply at 4-5 (citing Frontier Communications Corporation Comments). This request is effectively an untimely petition for reconsideration of the Commission's decisions to exclude from the Phase II auction those census blocks served by price cap carriers at speeds of at least 10/1 Mbps and to rely on the most recent publicly available FCC Form 477 data. 47 CFR § 1.429; *Phase II Auction Order*, 31 FCC Rcd at 5970, 5972-74, paras. 58, 70-73; *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80.

<sup>42</sup> Removing census blocks with a \$0 reserve price is consistent with the procedures we adopt in Section IV.B.2 (Reserve Prices).

<sup>43</sup> 47 CFR §§ 1.21001, 54.315.

<sup>44</sup> *Id.*

beginning at the deadline for filing short-form applications.<sup>45</sup>

22. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in this Public Notice does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 903 and/or use the contact information provided in this Public Notice to consult with Commission staff to better understand the information it must submit in its short-form application.

23. The same entity may not bid based on more than one auction application, i.e., as more than one applicant. Therefore, an entity may not submit more than one short-form application for Auction 903. If an entity submits multiple short-form applications, only one application may be the basis for that entity to become qualified to bid.

24. An applicant should note that submitting a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. As more fully explained below, an applicant is not permitted to make major modifications to its application after the short-form application filing deadline.<sup>46</sup> Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, the forfeiture of universal service support, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

25. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications to determine whether each application complies with the application requirements and has provided all required information concerning the applicant's qualifications for bidding.<sup>47</sup> After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies.<sup>48</sup> The public notice will include the deadline for resubmitting modified applications.<sup>49</sup> After the review of resubmitted applications is complete, a public notice will be released identifying the applicants that are qualified to bid.

#### **B. Disclosure of Agreements and Bidding Arrangements**

26. An applicant must identify in its short-form application all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding for Phase II support.<sup>50</sup> This disclosure requirement applies to any arrangements with parties that are applying to participate in Auction 903 as well as parties that are not. We adopt the proposal to require an applicant that discloses

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<sup>45</sup> See *infra* Section II.G (Prohibited Communications and Compliance with Antitrust Laws).

<sup>46</sup> 47 CFR § 1.21001(d)(4).

<sup>47</sup> See *id.* § 1.21001(d)(1).

<sup>48</sup> See *id.* § 1.21001(d)(5).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* § 1.21001(b)(3).

any such agreement(s) to provide in its short-form application a brief description of each agreement.<sup>51</sup>

27. An applicant must certify under penalty of perjury in its short-form application that it has disclosed all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Phase II support.<sup>52</sup> We adopt the proposal to require an applicant also to certify under penalty of perjury that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Phase II auction, other than those disclosed in its application.<sup>53</sup> For purposes of making the required agreement disclosures, if parties agree in principle on all material terms prior to the application filing deadline, each applicant should provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 183, even if the agreement has not been reduced to writing. If an applicant has had discussions, but has not reached an agreement by the close of the initial filing window, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the close of the initial filing window until after the auction closes.<sup>54</sup>

### C. Ownership Disclosure Requirements

28. Each applicant must comply with the ownership disclosure requirements in sections 1.2112(a) and 54.315(a)(1) of the Commission's rules.<sup>55</sup> Specifically, in completing the short-form application, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in section 1.2112(a) of the Commission's rules.<sup>56</sup> Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

29. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 183 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 183, if such information is in an electronic format compatible with FCC Form 183. Each applicant must carefully review any ownership information automatically entered into its FCC Form 183, including any ownership attachments, to confirm that all information supplied on FCC Form 183 is complete and accurate as of the application filing deadline for Auction 903. Any information that needs to be corrected or updated must be changed directly in FCC Form 183.

### D. Specific Universal Service Certifications

30. An applicant must certify that it is in compliance with all statutory and regulatory requirements for receiving the universal service support it seeks.<sup>57</sup> Alternatively, if expressly allowed by

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<sup>51</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6246, para. 25. This requirement is consistent with the agreement disclosure requirements for short-form applications to participate in our spectrum auctions. See 47 CFR § 1.2105(a)(2)(viii).

<sup>52</sup> 47 CFR § 1.21001(b)(4).

<sup>53</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6246, para. 26.

<sup>54</sup> See *infra* Section II.G (Prohibited Communications and Compliance with Antitrust Laws).

<sup>55</sup> See 47 CFR §§ 1.2112(a), 54.315(a)(1) (requiring the disclosure on the short-form application of the applicant's ownership information as set forth in 47 CFR § 1.2112(a)).

<sup>56</sup> 47 CFR § 1.2112(a).

<sup>57</sup> *Id.* § 1.21001(b)(6).

the rules specific to a high-cost support mechanism, an applicant may certify that it acknowledges that it must be in compliance with such requirements before being authorized to receive Phase II support.<sup>58</sup>

31. In addition, an applicant must certify that it will make any default payment that may be required pursuant to section 1.21004,<sup>59</sup> and that it is aware that if its application is shown to be defective, the application may be dismissed without further consideration and penalties may apply.<sup>60</sup>

## **E. Specific Phase II Eligibility Requirements and Certifications**

### **1. State Selections and Impermissible State Overlaps**

32. We adopt the proposal to require an applicant to select the specific state(s)<sup>61</sup> in which it wishes to bid when submitting its short-form application.<sup>62</sup> An applicant will be able to place bids for eligible areas only in the state(s) identified in its short-form application and for which it is deemed eligible to bid. An applicant should take appropriate steps to ensure that the state(s) it selects fully reflect its bidding intentions because an applicant may not select any additional states in which to bid after the initial short-form application filing window closes. However, an applicant will be permitted to remove any state(s) it selected on its short-form application during the application resubmission filing window.

33. In addition, to discourage coordinated bidding that may disadvantage other bidders, we adopt the proposal to prohibit separate applicants that are commonly controlled or are parties to a joint bidding arrangement<sup>63</sup> from bidding in any of the same states.<sup>64</sup> Knowing the specific state(s) for which an applicant intends to bid, as well as its ownership and bidding arrangement information, all of which is collected on the short-form application, will help us ensure that applicants comply with this prohibition.

34. Commonly controlled applicants are those in which the same individual or entity either directly or indirectly holds a controlling interest. To identify commonly controlled applicants, as proposed, we define a “controlling interest” for purposes of the Phase II auction as an individual or entity with positive or negative *de jure* or *de facto* control of the applicant.<sup>65</sup> In addition, consistent with the proposal, we define “joint bidding arrangements” as those that (i) relate to any eligible area in the Phase II auction and (ii) address or communicate bids or bidding strategies, including arrangements regarding Phase II support levels (i.e., bidding percentages) and specific areas on which to bid, as well as any arrangements relating to the post-auction market structure in an eligible area.<sup>66</sup>

35. We emphasize that entities that are commonly controlled or are parties to a joint bidding arrangement have two options for submitting short-form applications to avoid our restriction on state

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* § 1.21001(b)(7).

<sup>60</sup> *Id.* § 1.21001(d).

<sup>61</sup> For purposes of the short-form application, the term “state” shall also include the District of Columbia and U.S. territories to the extent they contain eligible areas.

<sup>62</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6243, para. 19. The only commenter that addressed the proposal—Hughes—expressed support for the state selection requirement and the prohibition of commonly controlled entities or parties to a joint bidding arrangement bidding in the same state. See Hughes Comments at 5-6.

<sup>63</sup> While joint bidding arrangements are permitted in auctions for universal service support, we caution that arrangements that are permissible under the Commission’s rules may nonetheless be prohibited by the antitrust laws. See *infra* Section II.G.10 (Antitrust Laws).

<sup>64</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6243-44, para. 20.

<sup>65</sup> See *id.* at 6244, para. 21; 47 CFR § 1.2105(a)(4)(i). In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. 47 CFR § 1.2105(a)(4)(i).

<sup>66</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6244, para. 21.

overlaps. It is important that such entities carefully consider these options prior to the short-form application filing deadline. At the deadline, the prohibition of certain communications begins,<sup>67</sup> and after that time, only minor amendments or modifications to applications will be permitted.<sup>68</sup>

36. First, such entities may submit a single short-form application and qualify to bid as one applicant in a state.<sup>69</sup> To facilitate the identification of such applications, we adopt the proposal to require an applicant to indicate whether it is submitting the application on behalf of itself and one or more existing operating companies, and if so, to identify such companies.<sup>70</sup> Similarly, parties to a joint bidding arrangement may form a consortium or a joint venture and submit a single short-form application that identifies each party to the consortium or joint venture.<sup>71</sup> At least one related entity, affiliate, or member of the holding or parent company, consortium, or joint venture identified in the short-form application must demonstrate that it meets the operational and financial requirements of section 54.315(a)(7).<sup>72</sup>

37. As proposed, if a holding/parent company or a consortium/joint venture is announced as a winning bidder in Auction 903, the entity may designate at least one operating company controlled by the holding/parent company or by a member of (or an entity controlled by a member of) the consortium/joint venture that will be authorized to receive Phase II support for the winning bids in a state.<sup>73</sup> While we will permit more than one operating company to be designated in a state, an operating company must be identified for each winning bid, whether the bid covers one CBG or a package of CBGs. Thus, a winning bidder cannot apportion either eligible census blocks within a winning bid for a CBG or separate CBGs within a winning package bid among multiple operating companies.<sup>74</sup> The operating company that seeks authorization for Phase II support must file the long-form application in its own name.<sup>75</sup> Because the operating company is the entity that will be required to meet the associated Phase II public interest obligations, we conclude the operating company should be the entity that will make the required certifications in the long-form application about its technical and financial qualifications and that will meet the public interest obligations.<sup>76</sup> We expect a holding/parent company or a consortium/joint venture

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<sup>67</sup> See 47 CFR § 1.21002(b).

<sup>68</sup> See *id.* § 1.21001(d)(4)-(5).

<sup>69</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6245, para. 23.

<sup>70</sup> See *id.*

<sup>71</sup> To the extent entities choose to form a consortium or joint venture, all real parties in interest to any agreements must be disclosed in the short-form application. 47 CFR § 1.21001(b)(3). The consortium or joint venture must also be consistent with antitrust laws and must not otherwise be prohibited by law. Compliance with our agreement disclosure requirement will not insulate a party from enforcement of the antitrust laws.

<sup>72</sup> 47 CFR § 54.315(a)(7).

<sup>73</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6245, para. 24.

<sup>74</sup> See *id.*

<sup>75</sup> We therefore decline to adopt the proposal to allow the operating company to be identified after the long-form application is filed. See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6245, para. 24. Entities filing the long-form application must be operating companies or consortium/joint venture members that were named in the short-form application or newly formed entities that are controlled by the applicant or one or more of its members. We caution applicants to be mindful of the Commission's rules prohibiting major modifications to applications when identifying the operating company. See 47 CFR § 54.315(b)(6)(iv); *infra* Section II.J (Modifications to FCC Form 183). However, as proposed, we classify the designation of an operating company that is controlled by the applicant or a member of a consortium/joint venture during the long-form application process as a *pro forma* transaction that we will not consider to be a major modification. See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6245 n.43.

<sup>76</sup> See 47 CFR § 54.315(b). As noted above, for simplicity, throughout this Public Notice, we refer to the entity that is authorized to receive Phase II support and required to meet the Phase II public interest obligations as the "support (continued...)"

short-form applicant that intends to form a new operating company if it is named as a winning bidder to take whatever steps are necessary to form the operating company in advance of the long-form application filing deadline. As proposed, the identified operating company must also be the entity that is designated as the ETC by the relevant state(s) in the areas covered by the winning bid(s) and is named in the letter of credit applicable to the specific winning bids for which it becomes authorized for support.<sup>77</sup>

38. The second way commonly controlled entities or parties to a joint bidding arrangement can participate is by submitting short-form applications and qualifying to bid independently, though not in the same state. Such applicants must exercise due diligence to confirm prior to submitting their respective short-form applications that no other commonly controlled entity or party to a joint bidding arrangement, or an entity that controls any party to such an arrangement, has indicated its intent to bid in any of the same state(s) that each of the applicants has selected. To that end, we require an applicant to certify in its short-form application that it acknowledges that it cannot place any bids in the same state as (i) another commonly controlled entity, (ii) another party to a joint bidding arrangement related to Phase II support that it is a party to, or (iii) any entity that controls a party to such an arrangement.<sup>78</sup> And, as noted above, to help identify any impermissible state overlaps, we adopt the proposal to require an applicant to provide in its short-form application a brief description of any bidding arrangements that are required to be disclosed.<sup>79</sup>

39. If, during short-form application review, applicants that are commonly controlled and/or parties to a joint bidding arrangement are found to have selected the same state(s) in their respective applications, all such applications will be deemed to be incomplete on initial review, as proposed.<sup>80</sup> The WCB and the Wireless Telecommunications Bureau (WTB) (collectively, the Bureaus) will inform each affected applicant of the identity of each of the other applicant(s) with which it has an impermissible state overlap and the specific overlapping state(s). To the extent that an affected applicant has disclosed a joint bidding arrangement with one or more of the other affected applicants, these applicants must decide amongst themselves which applicant (if any) will bid in each overlapping state. Then, the applicants must revise their short-form applications during the application resubmission window, as appropriate, so that only one of the applications includes the overlapping state and thus only one of the applicants can be deemed eligible to bid on that particular state. However, if the overlapping state(s) remain listed in more than one of the affected applicants' applications after the close of the resubmission filing window, none of the affected applicants will be eligible to bid in the overlapping state(s). Any affected applicant that has not entered into a joint bidding arrangement with the other affected applicant(s) (including commonly controlled entities) and disclosed that arrangement on its short-form application will be barred by the Commission's prohibited communications rule from discussing the overlap with any of the other affected applicant(s).<sup>81</sup> As a result, such applicants will be prohibited from bidding in any state(s) where there is an overlap after the close of the resubmission filing window.<sup>82</sup> After the Auction 903 qualified bidders are announced, each applicant will be able to view its final eligibility determination for each state in the Auction Application System. The bidding system will be configured to permit a qualified bidder to bid only in the state(s) for which that qualified bidder has been deemed eligible to bid.

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recipient." In this context, those terms shall also encompass the operating company(ies) that files the long-form application.

<sup>77</sup> *Id.* § 54.315(c); *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6245-46, para. 24.

<sup>78</sup> *See CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6246, para. 25.

<sup>79</sup> *See supra* Section II.B (Disclosure of Agreements and Bidding Arrangements).

<sup>80</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6246-47, para. 27.

<sup>81</sup> 47 CFR § 1.21002(b).

<sup>82</sup> *Id.* (exempting applicants that "are members of a joint bidding arrangement" that is disclosed in the short-form application).



## 2. Operational History and Submission of Financial Statements

40. In the *Phase II Auction Order*, the Commission established two pathways for an applicant to demonstrate its operational experience and financial qualifications to participate in the Phase II auction. These pathways vary depending on whether the applicant has at least two years of operational experience.<sup>83</sup> In addition, all applicants are required to provide the information described in sections II.E.3 and II.E.4 below, regardless of whether they have two years of operational experience.

41. With the first pathway, an applicant can certify, if applicable, on its FCC Form 183 that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline (or that the applicant is the wholly owned subsidiary of an entity that has done so), specify the number of years it has been operating, and identify the services it has provided.<sup>84</sup> An applicant will be deemed to have started providing a service on the date it began commercially offering that service to end users.

42. If an applicant certifies that it has been providing voice and/or broadband services for at least two years, it must certify that it (or its parent company, if it is a wholly owned subsidiary) has filed FCC Form 477s as required during that time period. And it must identify the FRNs it (or its parent company) used to file the FCC Form 477s for the relevant filing periods.<sup>85</sup> The relevant FCC Form 477 filing periods include data as of June 30, 2016; December 31, 2016; and June 30, 2017. We will use FCC Form 477 data for these periods that were on file as of February 5, 2018 to validate an applicant's representation on the short-form application that it has been providing a voice and/or broadband service for at least two years. If the applicant certifies that it has been providing only electric distribution or transmission services for at least two years (i.e., it has not also been providing voice or broadband service for at least two years), it must submit with its short-form application qualified operating or financial reports that it (or its parent company, if it is a wholly owned subsidiary) filed with the relevant financial institution in 2016 and 2017 that demonstrate that the applicant (or its parent company) has been operating for at least two years. The applicant also must submit a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution.<sup>86</sup> We will accept the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; the CoBank Form 7; or the functional replacement of one of these reports.<sup>87</sup>

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<sup>83</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5982-86, paras. 100-09.

<sup>84</sup> 47 CFR § 54.315(a)(7)(i).

<sup>85</sup> *Id.* § 54.315(a)(7)(i)(A). If the applicant is making this certification as a wholly owned subsidiary of a parent company that has provided service for at least two years, it must also identify the parent company's name in the short-form application. If the applicant is a holding company, it must make this certification on behalf of one of the operating companies that is identified in the application. If the applicant is a consortium or joint venture, it must make this certification on behalf of one of the entities that is part of the consortium or joint venture.

<sup>86</sup> *Id.* § 54.315(a)(7)(i)(B). If the applicant is a holding company or consortium/joint venture, it must submit the electric distribution or transmission documents of the operating company that is the subject of the at least two-year operational certification.

<sup>87</sup> A report will be considered a functional replacement if it is a report that RUS, CoBank, or CFC has adopted to replace one of the reports identified. *Phase II Auction Order*, 31 FCC Rcd at 5982-83, para. 100. Given that these forms will be disclosed publicly absent a request for confidentiality that is filed pursuant to section 0.459 of the Commission's rules, portions of these reports may be redacted so that only relevant operating data is provided. See 47 CFR § 0.459; *infra* Section II.F (Procedures for Limited Disclosure of Application Information); Letter from C. Douglas Jarrett, Counsel to the National Rural Electric Cooperative Association and Utilities Telecom Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 5, 2015) (identifying the relevant operating sections of these forms).

43. If an applicant that meets the foregoing requirements and it (or its parent company) is audited in the ordinary course of business, the applicant must also submit its (or its parent company's) financial statements from the prior fiscal year, including balance sheets, net income, and cash flow, that were audited by an independent certified public accountant.<sup>88</sup> Because the short-form application filing window opens in the first quarter of 2018, we require that an applicant submit its (or its parent company's) 2016 audited financial statements. However, an applicant may, and is encouraged to, instead submit its fiscal year-end 2017 audited financial statements if they are finalized before the short-form application deadline.

44. If an applicant (or its parent company) is not audited in the ordinary course of business and the applicant does not submit its audited financial statements with the short-form application, it must certify that the long-form applicant will submit its (or its parent company's) audited financial statements from the prior fiscal year within 180 days after being announced as a winning bidder.<sup>89</sup> We also adopt the proposal to require such an applicant to submit its (or its parent company's) fiscal year-end 2016 unaudited financial statements with its short-form application, including balance sheet, net income, and cash flow.<sup>90</sup> If an applicant certifies in its short-form application that it will submit audited financial statements during the long-form application process, but such statements are ultimately not submitted, the winning bidder or long-form applicant will be deemed to be in default and subject to a forfeiture.<sup>91</sup>

45. An applicant that does not have at least two years of operational experience must submit with its short-form application its (or its parent company's) financial statements that are audited by an independent certified public accountant from the three most recent fiscal years (i.e., 2014, 2015, and 2016), including balance sheets, net income, and cash flow.<sup>92</sup> Such an applicant must also submit with its short-form application a letter of interest from a qualified bank stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is selected for bids of a certain dollar magnitude.<sup>93</sup> The letter should include the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant and a statement that the bank would be willing to issue a

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<sup>88</sup> 47 CFR § 54.315(a)(7)(i). If the applicant is a holding company, it must submit its own audited financial statements. If the applicant is a consortium or a joint venture, it must submit the audited financial statements of the entity that is the subject of the at least two-year operational certification. If the applicant is a wholly owned subsidiary and has certified that its parent company has provided service for at least two years, it must submit the audited financial statements of its parent company.

<sup>89</sup> 47 CFR § 54.315(a)(7)(i).

<sup>90</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6256, para. 56 (seeking comment on this requirement); see also *ACA Comments* at 8 (stating that it is not “opposed” to requiring such applicants to file unaudited financial statements). An applicant is encouraged to submit fiscal year-end 2017 unaudited financial statements instead if available before the short-form application deadline.

<sup>91</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5984-85, para. 104.

<sup>92</sup> 47 CFR § 54.315(a)(7)(ii). Given the lack of operating history of such bidders, the Commission did not extend the option of submitting audited financial statements during the long-form application stage to bidders that qualify pursuant to this second set of eligibility standards. See *Phase II Auction Order*, 31 FCC Rcd at 5985, para. 106 n.210. If the applicant is a holding company, it must submit its own audited financial statements. If the applicant is a consortium or joint venture, it must submit the audited financial statements of one of the entities that is part of the consortium/joint venture. If the applicant is an operating company, it may submit its own audited financial statements or the financial statements of its parent company. An applicant is encouraged to instead submit fiscal year-end 2015, 2016, and 2017 audited financial statements if the 2017 audited financial statements are finalized in time to submit them before the short-form application deadline.

<sup>93</sup> The bank issuing the letter of credit must meet the requirements set forth in 47 CFR § 54.315(c)(2).

letter of credit that is substantially in the same form as set forth in the model letter of credit provided in Appendix B of the *Phase II Auction Order*.<sup>94</sup>

### 3. Financial Qualifications

46. We adopt the proposal to require all applicants to report on their short-form application certain metrics from their financial statements (audited or unaudited) from the prior fiscal year being submitted with the applications.<sup>95</sup> These metrics are meant to demonstrate that an applicant has sufficient financial qualifications to participate in the Phase II auction to minimize the number of winning bidders that default because they are unable to meet the long-form application requirements.<sup>96</sup> Winning bidders will be required to provide additional, more specific evidence of their financial qualifications at the long-form application stage to demonstrate that they have the financial qualifications to meet the Phase II public interest obligations.<sup>97</sup>

47. These metrics must be reported in the short-form application and will be scored using a five-point scale described below.<sup>98</sup> As stated in the *CAF II Auction Comment Public Notice*,<sup>99</sup> the five-point scale will be used to score one yes/no question and four other common financial metrics.<sup>100</sup> These metrics are based on information already contained in the financial statements that must be submitted with the short-form application. The five-point scale provides a streamlined process for assessing, efficiently and objectively, whether an applicant has sufficient financial qualifications or requires further financial review. An applicant that scores at least three points will be deemed to have sufficient financial qualifications to participate in the auction if it has submitted the required financial information with its short-form application.<sup>101</sup>

48. The objective financial metrics that we adopt for this five-point scale will not necessarily provide a full picture of an applicant's financial qualifications. Therefore, a score of less than three points will warrant a review of the full set of financial statements submitted with the short-form application, as well as other information submitted with the application and/or information submitted to the Commission in other contexts (e.g., financials filed with a FCC Form 481, revenues reported in FCC Form 499, etc.).

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<sup>94</sup> *Phase II Auction Order*, 31 FCC Rcd at 6045-49, Appx. B.

<sup>95</sup> An applicant that is required to submit three years' audited financial statements with its short-form application need only identify the metrics from the most recent audited financial statements.

<sup>96</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6255-57, paras. 55-61. Applicants should note that even if an applicant is able to demonstrate that it has sufficient financial qualifications to participate in the auction, it may not ultimately be authorized to receive Phase II support based on its long-form application if it becomes a winning bidder.

<sup>97</sup> 47 CFR § 54.315(b)(2)(v), (vi), (c).

<sup>98</sup> See Rural Coalition Reply at 14-15 (noting the "importance of such a screening measure"); Letter from Rebekah P. Goodheart, Jenner & Block LLP, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 6-7 (filed Nov. 21, 2017) (Rural Coalition Nov. 21, 2017 *Ex Parte* Letter) (noting that the financial screen "allow[s] the Commission to make a reasonable initial assessment of each bidder's financial health and well-being" and that such screens "are necessary to preserve auction integrity and prevent against default").

<sup>99</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6256, para. 58.

<sup>100</sup> Financial metrics refer to the financial information that is scored using the five-point scale, including the question asking whether an audited applicant received an unmodified (non-qualified) opinion.

<sup>101</sup> Below, we explain that an applicant can seek confidential treatment of the financial metrics, the individual score for each financial metric, and the financial statements that an applicant submits with its short-form application (but not the applicant's total financial score) pursuant to a section 0.459 abbreviated process, although requests that we withhold financial data that is elsewhere disclosed to the public will not be granted. See *infra* Section II.F (Procedures for Limited Disclosure of Application Information); 47 CFR § 0.459(a)(4).

To the extent this information does not sufficiently demonstrate that an applicant is financially qualified, the application will be deemed incomplete and the Commission may request further information from the applicant during the application resubmission period.<sup>102</sup>

49. The first point on the five-point scale is based on a yes/no question. Specifically, an applicant that submits audited financial statements will be asked whether it received an unmodified, non-qualified opinion from the auditor; an applicant will receive one point for a “yes” answer.<sup>103</sup> An applicant must also enter the following metrics from the most recent financial statements submitted with the short-form application: (1) latest operating margins (i.e., operating revenue less operating expenses excluding depreciation), where an operating margin greater than zero will receive one point; (2) Times Interest Earned Ratio (TIER), where a TIER ((net income plus interest expense) divided by interest expense) greater than or equal to 1.25 will receive one point; (3) current ratio (current assets divided by current liabilities), where a ratio greater than or equal to 2 will receive one point; and (4) equity ratio (total equity divided by total capital), where a result greater than or equal to 0.4 will receive one point. This scoring methodology is summarized in the table below:

**Short -Form Application Financial Five-Point Scale**

Financial Metric	Response or Threshold	Score
If the applicant has audited financial statements, did it receive an unmodified (non-qualified) opinion?	Yes	+1
Operating margin	> 0	+1
Times Interest Earned Ratio (TIER)	≥ 1.25	+1
Current Ratio (Ratio current assets/current liabilities)	≥ 2	+1
Equity Ratio (Total equity/total capital (total equity plus total liabilities))	≥ 0.4	+1

50. As the Commission explained in the *CAF II Auction Comment Public Notice*,<sup>104</sup> the question regarding an applicant’s audit opinion measures both the applicant’s financial condition and operations. The metric for operating margin measures core profitability, and the metrics for current ratio and equity ratio measure the applicant’s short- and long-term financial condition, respectively. TIER measures the ability to pay interest on outstanding debt.

51. We decline to adopt different financial metrics as suggested by some commenters. For example, we decline to replace operating margin with Earnings Before Interest, Taxes, Depreciation, and

<sup>102</sup> See *infra* Section III.C (Application Processing and Minor Modifications).

<sup>103</sup> An applicant submitting unaudited financial statements will not be asked this question, but will still be required to obtain a score of at least three for the four other metrics to avoid further review. Given that such an applicant’s unaudited financial metrics will be assessed in such situations, we conclude that it serves the public interest to subject such an applicant to a stricter screening process. See ACA Comments at 8 (suggesting that the Commission “recognize that the financial information provided by these applicants may not indicate that they have in fact sufficient financial capability to be a viable provider”). *But see* WISPA Comments at 23 (claiming that the “Commission should neither favor nor disfavor any applicant, whether it provides audited financial statements as part of the short-form application or whether it certifies that it will provide audited financial statements post-auction”).

<sup>104</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6257, para. 60.

Amortization (EBITDA).<sup>105</sup> Operating margin provides a more useful measure of the profitability of an applicant's core operations, whereas EBITDA is generally a measure of cash flow.

52. We also reject proposals to eliminate TIER or replace TIER with other metrics. The use of TIER addresses both interest coverage and cash flow, and the capital-intensive nature of certain applicants is measured through their TIER and equity ratios.<sup>106</sup> First, we are not persuaded that we should replace TIER with another interest coverage ratio (EBITDA over interest expense)<sup>107</sup> because TIER is a measure of a company's ability to honor its debt payments, and it is used by banks, bond rating agencies and the RUS.<sup>108</sup> Given TIER may be calculated as either Earnings Before Interest and Taxes (EBIT) or EBITDA divided by the total-interest-expense, a form of EBITDA (i.e., earnings before interest) is considered with TIER. Second, we decline to replace TIER with the ratio of a company's previous year's income to its total retained earnings.<sup>109</sup> A metric of previous year's income to total retained earnings would reflect an applicant's return on investment, which is already addressed by requiring an applicant's equity ratio.<sup>110</sup>

53. We also decline to eliminate the current ratio and the equity ratio metrics.<sup>111</sup> We disagree with suggestions that these metrics do not have a "place in a capital-intensive industry."<sup>112</sup> Instead, such metrics play an integral role in an effective screening mechanism because they are useful indicators of an applicant's general financial health. The current ratio metric is used to measure an applicant's liquidity (i.e., its ability to pay its short-term obligations). The equity ratio metric is an indicator of the level of leverage used by an applicant; it measures the proportion of the total assets that are financed by stockholders, as opposed to creditors.

54. We also are not persuaded that we should lower the scoring thresholds for the current ratio as proposed by some commenters.<sup>113</sup> However, given the capital-intensive nature of the telecommunications industry, we have lowered the equity ratio from 0.5 to 0.4.<sup>114</sup> We conclude that the

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<sup>105</sup> See WISPA Comments at 23. Further, applicants must exclude depreciation expense from their operating margin.

<sup>106</sup> See Roger A. Morin, *New Regulatory Finance* 91 (Public Utilities Reports, Inc. 2006) ("The equity capital acts as a cushion or buffer to absorb losses, and enables a company to weather business cycle volatility without violating its contractual debt obligations.").

<sup>107</sup> See WISPA Comments at 23.

<sup>108</sup> *Connect America Fund et al.*, Wireline Competition Bureau Staff Report, 28 FCC Rcd 7123, 7169, 7172-73 paras. 119, 129-30 (WCB 2013); see also Leonardo R. Glacchino & Jonathan A. Lesser, *Principles of Utility Corporate Finance* 108 (Public Utilities Reports, Inc. 2011) ("An ICR [Interest Coverage Ratio] of less than one is an obvious indicator of financial distress. Generally, rating agencies like to see ICR values of at least 1.5.").

<sup>109</sup> See Sacred Wind Communications Comments at 8-9; see also ILSR et al. Reply at 9 (opposing using TIER as a metric).

<sup>110</sup> See Morin, *supra* note 106, at 445 ("To assess the reasonableness of the allowed return on equity, the coverage ratio that results from a given allowed equity return can be computed and compared to norms of reasonableness and to that of peer groups.").

<sup>111</sup> See BEK Communications Comments at 2-3; WISPA Comments at 23-24; Rural Coalition Reply at 16.

<sup>112</sup> See WISPA Comments at 23-24.

<sup>113</sup> See ITTA Comments at 4; WISPA Comments at 24; USTelecom Comments at 3; BEK Comments at 1-3; GeoLinks Reply at 2-3; ILSR et al. Reply at 9. See Glacchino & Lesser, *supra* note 108, at 101 ("While current ratios by industries will differ, a general rule of thumb is that a current ratio of 2.0 is satisfactory.").

<sup>114</sup> See, e.g., ITTA Comments at 4; WISPA Comments at 24; USTelecom Comments at 4; Rural Coalition Reply at 15-16. A lower equity ratio measures the extent of a carrier's leverage and can be interpreted as the portion of a carrier's assets that are financed by debt.

scoring thresholds for these metrics are reasonable indicators for assessing whether to require further review of an applicant's financial qualifications for participating in Auction 903.

55. We also adopt a modification to the proposal in the *Phase II Auction Comment Public Notice* regarding which financial results will trigger further review of the applicant's financial qualifications. In particular, we will consider an applicant with a total score of three points or greater (i.e., a score of one for at least three of the metrics) to have sufficient financial qualifications to participate in Auction 903, regardless of the applicant's score for any specific metric. This modification of the Commission's original proposal no longer places added emphasis on an applicant's score for the final two metrics (current ratio and equity ratio). We thus acknowledge the concerns expressed by commenters that those two thresholds are difficult for certain providers, including small providers, to meet in light of the extensive capital expenditures required in the telecommunications industry.<sup>115</sup> Our modification is expected to result in more established providers (including existing universal service support recipients) demonstrating that they have sufficient financial qualifications at the short-form application stage without the need for further review, which may encourage participation in the auction and will preserve Commission resources by avoiding additional reviews.<sup>116</sup>

56. At the same time, we are mindful that not every applicant may have the financial qualifications required to bid in the Phase II auction, and we do not want to allow those applicants to avoid review and participate in the auction. We therefore decline to adopt other suggestions in the record that might subject fewer applicants to further financial review, such as automatically deeming certain classes of applicants to have sufficient financial qualifications. For example, we are not persuaded that applicants that are existing, compliant universal service support recipients or applicants that have at least two years of operating history and/or an unmodified, unqualified opinion from an auditor are necessarily financially qualified to take on additional Phase II obligations.<sup>117</sup> The Commission decided to collect the audited financial statements of such applicants to assess their financial qualifications despite their operational or universal service history.<sup>118</sup> Moreover, while an auditor's opinion helps assess an applicant's financial health because the auditor develops a detailed understanding of the applicant's internal controls environment and conducts in-depth validations of financial transactions posted to the general ledger,<sup>119</sup> the auditor's opinion by itself does not provide as broad an insight into an applicant's financial condition as the metrics we have adopted.<sup>120</sup>

57. Some commenters argue that it is not necessary to collect additional financial information for experienced applicants because the Commission acknowledged that an applicant demonstrating at

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<sup>115</sup> See, e.g., WISPA Comments at 21-23; ITTA Comments at 4; BEK Communications Comments at 1-3; USTelecom Comments at 3; GeoLinks Reply at 2-3; ACA Reply at 16; Verizon Reply at 3-4; ILSR et al. Reply at 9; Rural Coalition Reply at 16.

<sup>116</sup> See WISPA Comments at 21 (stating that “[i]f the Commission were to apply its proposed test, it would be less quick and less efficient because Commission staff would almost always be required to undertake the ‘more in-depth review of the full set of financial statements’”) (emphasis deleted).

<sup>117</sup> See ITTA Comments at 5; USTelecom Comments at 2-3; WISPA Reply at 15; GeoLinks Reply at 3; ACA Reply at 15-16; AT&T Reply at 18-19; Verizon Reply at 3-4.

<sup>118</sup> *Phase II Auction Order*, 31 FCC Rcd at 5983, para. 101 (stating that the Commission is collecting audited financial statements because “[t]he need to ensure that every Phase II auction recipient is in good financial health is critical”).

<sup>119</sup> *Id.*

<sup>120</sup> See Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 7 (urging the Commission to “not dispense altogether with a reasonably tailored financial screen of all those applying to participate” in the Phase II auction).

least two years of operational history would give “reasonable assurance” of the entity’s financial health.<sup>121</sup> We disagree with such commenters. The Commission made that statement when it decided to require an applicant not audited in the ordinary course of business to submit its audited financials in the long-form application, balancing the interest in having applicants that are not audited in the ordinary course of business participate in the auction against the potential for defaults.<sup>122</sup> Such balancing is consistent with our use of the information submitted in the short-form application to make an informed assessment of an applicant’s financial condition, further reducing the possibility of potential defaults that could leave consumers without broadband service. The criteria we adopt here are intended to provide applicants with further clarity about how they can demonstrate their financial qualifications.<sup>123</sup>

58. We disagree that our decision to adopt a mechanism for reviewing the financial statements submitted with short-form applications is inconsistent with our decision not to adopt a similar process for price cap carriers accepting Phase II model-based support.<sup>124</sup> For Phase II model-based support, we offered a set support amount to each price cap carrier in exchange for fulfilling specific voice and broadband service obligations within its existing area in areas where it already had plant in service and an existing customer base so there was already a revenue stream available to help support the upgrades of such networks. We knew how much support each price cap carrier would receive and the number of locations it would be required to serve. By contrast, for the Phase II auction, many auction participants will be building out new networks in areas where they do not have an existing customer base so we need to be able to verify that they will be able to secure the necessary capital to construct and sustain new networks. We do not know where Phase II bidders will bid, how much support they will request, or how much support will ultimately be provided to serve a particular location. Therefore, we conclude that it serves the public interest to require all applicants to make the same demonstration that they have the financial qualifications to participate in the Phase II auction.

59. We are also not persuaded that we should focus on one financial metric in lieu of applying our five-point scale. For example, focusing only on an applicant’s EBITDA would provide information only on an applicant’s cash flow, whereas the five-point scale is intended to provide broader information on an applicant, including assets, liabilities, equity, operations, and cash flow.<sup>125</sup> Eliminating

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<sup>121</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 102; see also ITTA Comments at 2-3; GeoLinks Reply at 3; ACA Reply at 15 n.66; AT&T Reply at 17-18.

<sup>122</sup> *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 102. Similarly, the Commission’s statement that the requirement that an applicant has operated any voice, broadband, or electric distribution or transmission network will provide “sufficient assurance” that an applicant is “qualified to bid” was made in the context of denying a request that the Commission also consider if an applicant is an existing high-cost support recipient. *Phase II Auction Order*, 31 FCC Rcd at 5983, para. 100 n.200; ITTA Comments at 2-3. It is clear from the Commission’s decision to require applicants to submit additional information, including audited financial statements, that the Commission did not intend that an applicant’s operating history would be the only criterion in determining an applicant’s eligibility to participate in the auction. See 47 CFR §§ 1.21001(b), 54.315(a).

<sup>123</sup> The Commission did not discuss in the *Phase II Auction Order* what standards it would use to review the submitted audited financial statements, nor did it state that collection of the financial statements without further review beyond the audit opinion would be sufficient. *Contra* ITTA Comments at 2-3 (suggesting that the Commission is “upping the ante . . . with additional hurdles”).

<sup>124</sup> See, e.g., WISPA Comments at 21; ITTA Comments at 3-4; ACA Reply at 15.

<sup>125</sup> See WISPA Comments at 24-25 (proposing that the Commission conduct an in-depth review if an applicant’s EBITDA margin is less than 10 percent in lieu of conducting such review where an applicant scores less than three on the five-point scale). WISPA later revised its proposal to suggest that the Commission deem an applicant as having sufficient financial qualifications to participate in the Phase II auction if it can make the EBITDA showing or if the applicant submits “audited financial statements from the prior fiscal year with an unmodified, non-qualified auditor’s opinion.” WISPA Reply at 15-16. Above, we discuss why an unmodified, non-qualified auditor’s opinion does not provide sufficient insight into an applicant’s full financial condition. See Rural Coalition Reply at 15

(continued....)

one or more of these financial components would give a less than complete view of an applicant's full financial status. For similar reasons, we are not persuaded that, in lieu of TIER, the current ratio, and the equity ratio, we should require an applicant to certify that it "will not bid for annual support exceeding 50 percent of its average annual GAAP operating cash flow from the prior two fiscal years."<sup>126</sup> Such an approach may not be an adequate proxy for assessing an applicant's financial status and would add complexity to bidding for both bidders and the Commission in ensuring that the maximum support amount for each applicant is not exceeded.<sup>127</sup>

60. We emphasize that a failure to score at least three does not indicate that an applicant lacks the financial qualifications to participate in the auction. Rather, it indicates that further review is required. During this further review, an applicant's operating cash flow and EBITDA will be considered, as these metrics may provide a useful context for assessing an applicant's financial status.<sup>128</sup>

61. Although we will consider these additional metrics, as well as other information, in the further review process, we decline to adopt specific parameters for that process that would apply to all applicants that score less than three. Several commenters suggest that if the Commission does not adopt such parameters, entities will be dissuaded from participating in the auction.<sup>129</sup> However, because each applicant's financial circumstances differ, the further review is intended to be tailored to an applicant's full financial statements to determine whether it has the financial qualifications to participate in the Phase II auction even though it scored less than three. If an applicant is unable to demonstrate that it has sufficient financial qualifications based on the information submitted with the short-form application and information submitted to the Commission in other contexts, Commission staff will be able to ask the applicant questions and request additional information during the resubmission filing window.

62. Finally, we are not persuaded that whether an applicant has received state support should be considered as part of an applicant's demonstration of its financial qualifications.<sup>130</sup> Such an approach would require that Commission staff become familiar with each relevant state's procedures for assessing an applicant's financial qualifications, potentially prolonging the time it takes to review each short-form application. Moreover, the fact that a state deemed an applicant to have sufficient financial qualifications for its own program at a certain point in time would not necessarily show that an applicant has sufficient qualifications at the time of the Phase II auction.

#### 4. Eligibility to Bid for Performance Tier and Latency Combinations

63. For the reasons discussed in the *CAF II Comment Public Notice*,<sup>131</sup> we adopt the general proposal to require an applicant to demonstrate its eligibility to bid for the performance tier and latency combination(s) it selects in its application in advance of the start of bidding in the auction. Pursuant to the Commission's rules and consistent with the proposals in the *CAF II Comment Public Notice*, an applicant must submit high-level operational information in its short-form application to complete its

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(stating that EBITDA margin "is not a meaningful or sufficient substitute for a more robust screen that takes into account not only current margins but also some other measures of debt obligations and access to capital").

<sup>126</sup> USTelecom Comments at 4-5; AT&T Reply at 19. *But see* WISPA Reply at 15 (noting that this proposal "favors large companies with greater cash flow over smaller entities"); Rural Coalition Reply at 15 (suggesting that USTelecom has not demonstrated that this test "sufficiently capture[s] the level of scrutiny needed to ensure the sustainability of a firm in a capital-intensive business").

<sup>127</sup> *See* Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 7 (noting that these proposals "miss the mark in focusing solely on the one-time act of deployment, and failing to consider ongoing sustainability") (emphasis deleted).

<sup>128</sup> *See* USTelecom Comments at 5; WISPA Comments at 23.

<sup>129</sup> *See* WISPA Comments at 21; ACA Reply at 16.

<sup>130</sup> *See* ILSR et al. Reply at 9.

<sup>131</sup> *CAF II Comment Public Notice*, 32 FCC Rcd at 6247-48, paras. 31-32.



operational showing. It is our objective to safeguard consumers from situations where bidders unable to meet the specified service requirements divert support from bidders that can meet the Phase II public interest obligations, and we believe the short-form application we adopt can accomplish this purpose. However, a determination at the short-form stage that an applicant is eligible to bid for a given performance tier and latency combination and has sufficient access to spectrum, if applicable, does not preclude a determination at the long-form application stage that a long-form applicant lacks the requisite technical qualifications or access to spectrum, and thus should not be authorized to receive Phase II support for that eligible area.

**a. Selecting Performance Tier and Latency Combinations**

64. As required by the Commission's rules, each applicant must select in its short-form application the performance tier and latency combination(s) for which it intends to bid in each state where it seeks support.<sup>132</sup> For each tier and latency combination, an applicant must indicate the technology or technologies it intends to use to meet the associated requirements.<sup>133</sup> If an applicant intends to use spectrum, it must also indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it selected in each state.<sup>134</sup>

**b. Operational Information**

65. As proposed in the *CAF II Auction Comment Public Notice*,<sup>135</sup> we will require an applicant to submit in its short-form application sufficient operational information regarding its experience providing voice, broadband, and/or electric distribution or transmission service and its plans for provisioning service if awarded support. Such information will demonstrate whether an applicant has the technical qualifications to bid for specific performance tier and latency combinations. Specifically, we adopt the proposal that an applicant must submit high-level operational information to complete its operational showing and demonstrate that it can be expected to be reasonably capable of meeting the public interest obligations (e.g., speed, usage, latency, and service milestones) for each performance tier and latency combination selected.<sup>136</sup> We also make several clarifying changes to the short-form application operational questions proposed in the *CAF II Auction Comment Public Notice*, and reject proposals to require applicants to submit additional evidence with their short-form applications.

66. Eligibility to bid for specific tier and latency combinations will be determined on a state-by-state basis. Accordingly, for each selected performance tier and latency combination, an applicant will be required to demonstrate that it is reasonably capable of meeting the relevant public interest obligations for each state it selects and to explain how it intends to provision service if awarded support. We decline to make such determinations on a nationwide basis for each performance tier and latency combination selected because state-level review provides more granular information on an applicant's capabilities and may reduce the risk of default.<sup>137</sup> Because compliance with the service obligations will be determined on a state-level basis and some applicants may propose to deploy hybrid networks, it will be useful to

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<sup>132</sup> 47 CFR § 54.315(a)(4).

<sup>133</sup> *Id.* An applicant may propose to use different technologies within a state and use hybrid networks to meet its Phase II public interest obligations.

<sup>134</sup> The last mile refers to the portion of the network that transmits services to end users.

<sup>135</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6248, 6277, paras. 33-35, Appx. A.

<sup>136</sup> See Verizon Reply at 4 (generally supporting the Commission's "proposed technical qualifications requirements"); IEC Reply at 3 (supporting the Commission's "proposal to collect high-level operational information from each applicant to complete its operational showing and enable [Commission] staff to determine whether the applicant is expected to be reasonably capable of meeting the public interest obligations").

<sup>137</sup> See WISPA Comments at 8 n.22.

understand how an applicant selecting multiple performance tier and latency combinations within a state intends to meet the requirements for each combination in the state. Some parties have suggested in the Phase II proceeding that we should only require additional information from, and conduct an eligibility review for, applicants that select certain performance tier and latency combinations.<sup>138</sup> Instead, to reduce the risk of defaults, we will evaluate the combination(s) selected by an applicant to determine its eligibility to bid for any such combination(s).

67. An applicant must answer the questions listed in Appendix A for each state it selects in its application. The questions are intended to elicit short, narrative responses from the applicant regarding its experience in providing voice, broadband, and/or electric distribution or transmission service, and the network(s) it intends to use to meet its Phase II public interest obligations. The questions are designed to confirm that the applicant has developed a preliminary design or business case for meeting the public interest obligations for its selected performance tier and latency combinations. They ask the applicant to identify the information it could make available to support the assertions in its application. We do not anticipate that it will be unduly burdensome to respond to these questions because, at a minimum, each applicant will need to have started planning at a high-level how it intends to meet the relevant Phase II public interest obligations as part of its obligation to conduct due diligence prior to the auction. We recognize that because a short-form applicant will not know where it might be authorized to receive support and will have six years to build out or upgrade its network, the information submitted may be based on a preliminary network design, which may be modified once the winning bids are announced and as the network is built out.

68. We decline to revise these questions so that they elicit only yes or no responses.<sup>139</sup> This approach would provide little insight into whether an applicant has given appropriate consideration to how it will meet its Phase II obligations if it becomes authorized to receive Phase II support. Instead, we have revised the originally proposed questions to clarify that we expect concise descriptions from applicants. We will implement the Commission's usual procedures for reviewing auction applications to help ensure that eligibility determinations are made consistently across all applications by, among other things, leveraging the expertise of engineers and/or other subject matter experts.<sup>140</sup>

69. We also are not persuaded that we should revise these questions to require an applicant to describe the information it could provide in its long-form application if it is deemed a winning bidder, rather than require an applicant to describe the information that it could make available during the short-form application stage to support its responses to the questions.<sup>141</sup> Requiring an applicant to demonstrate that it could submit sufficient evidence during the short-form application stage if requested will encourage the applicant to carefully and thoughtfully select the performance tier and latency combination(s) for which it intends to bid on the basis of being reasonably capable of meeting the public interest obligations associated with those combination(s). This approach will minimize situations where a bidder that is

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<sup>138</sup> See Letter from Rebekah P. Goodheart, Jenner & Block LLP, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 7-8 (filed Jan. 19, 2017) (Rural Coalition Jan. 19, 2017 *Ex Parte* Letter) (suggesting that only entities that want to bid in the Above Baseline and Gigabit performance tiers be required to submit additional documentation establishing their eligibility to bid in these tiers). *But see* Letter from Thomas Cohen, Kelley Drye & Warren, LLP, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 11 (filed Jan. 30, 2017) (suggesting that unqualified bidders will not only bid in the "two upper tiers").

<sup>139</sup> See WISPA Comments at 9-10.

<sup>140</sup> *Id.* at 9 (suggesting that the Commission make edits to the questions "to avoid disparate interpretations of descriptive responses"); *see also* Hughes Reply at 9 (urging "the Commission to review its proposed short-form questions to ensure that the Commission can assess them in an objective an[d] equitable way").

<sup>141</sup> See WISPA Comments at 9-10.

unable to meet the specified service requirements diverts support from bidders that can meet the service requirements.

70. Similarly, we are not convinced that we should eliminate the question that asks each applicant to identify the assumptions it intends to make regarding subscription rate and peak period data usage.<sup>142</sup> Responses to this question will provide insight into how an applicant preliminarily intends to design its network with sufficient capacity to meet its obligations and will further demonstrate that an applicant is undertaking the necessary due diligence.<sup>143</sup>

71. We likewise decline to revise the question regarding an applicant's potential vendors, integrators, and other partners, and the question regarding how the network will be maintained and services provisioned.<sup>144</sup> We recognize that until an applicant knows where it will be awarded support and how many locations it will be required to serve, it may not have made all its decisions regarding how it will meet its Phase II obligations.<sup>145</sup> However, an applicant is required to certify that it has performed the necessary due diligence to participate in the Phase II auction. This includes making sure that the applicant will be able to build and operate facilities that will fully comply with all applicable requirements. Accordingly, we conclude that it is reasonable to expect that an applicant will have developed a preliminary plan for how it will meet its Phase II obligations if awarded support. If an applicant has not demonstrated that it is reasonably capable of meeting the relevant public interest obligations based on the information submitted in the short-form application, the applicant will be asked to submit evidence during the resubmission filing window to demonstrate that it has developed a preliminary plan.

#### (i) Modifications to Proposed Operational Questions

72. In response to comments, we have made some modifications to the originally proposed operational questions to provide greater clarity on how an applicant should respond to them.

73. First, we retain the question about the total number of subscribers an applicant has served with voice and broadband because the size of a service provider's current operations provides useful insight into how an applicant has scaled its network in the years it has been operating. However, we do clarify that an applicant can provide an estimate and should provide the current total number of

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<sup>142</sup> See *id.* at 9.

<sup>143</sup> See Verizon Reply at 4 (noting that this question “will allow Commission staff to assess whether the applicant’s network design can meet the relevant tier’s public interest obligations and will also confirm that the applicant has developed a preliminary design or business case for meeting those obligations”); Rural Coalition et al. Jan 24, 2018 *Ex Parte* Letter at 5 (proposing that the Commission retain this question “to ensure that providers make reasonable assumptions about the subscription rate and data usage prior to bidding”). We disagree with the suggestion that Commission staff should not assess the reasonableness of an applicant’s peak assumptions. See WISPA Comments at 9. We are not willing to risk the potential for defaults by simply assuming that an applicant will make reasonable assumptions about its network.

<sup>144</sup> See WISPA Comments at 8-10.

<sup>145</sup> See *id.* at 9. The short-form application asks an applicant that does not intend to use internally developed systems to provision and maintain service about its use of outside systems. This question gives an opportunity for such an applicant to demonstrate that it has developed a preliminary plan for meeting its Phase II obligations if awarded support. It is not intended to signal that an applicant that intends to use internally developed systems will be preferred over an applicant that uses external systems; both types of applicants will need to describe concisely the information and sources of the information that they could make available. See *id.* at 9-10 (claiming that the question as proposed “appears to favor applicants that have internally developed operations systems . . . over an applicant that chooses to rely on externally developed operations systems and would need to prepare more detailed information”). An eligible telecommunications carrier is permitted to offer the supported service “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” 47 U.S.C. § 214(e)(1)(A).

subscribers (as of the short-form application filing deadline).<sup>146</sup> If an applicant is no longer providing service in any state, we require the applicant to estimate the number of customers that were served at the beginning of the last full year that it did provide service.

74. Second, we retain the question asking an applicant to identify the relevant industry standards for the last-mile technologies it intends to use to meet its Phase II obligations if it becomes a winning bidder and is authorized to receive support. This question will give an applicant the opportunity to demonstrate that it has started planning how it will meet the Phase II obligations and that it intends to use technologies that are generally accepted as having the capabilities to meet the relevant performance standards.<sup>147</sup> However, we clarify that an applicant is not precluded from proposing to use non-standards-based technology.<sup>148</sup> So that an applicant intending to use such technology can demonstrate that the technology has suitable capabilities for meeting the applicable performance requirements, we will require such an applicant to identify the vendors and the products it is considering using, and to provide links to the vendors' websites and to publicly available technical specifications of the products.<sup>149</sup> If the technical specifications are not publicly available, the applicant may submit them with its application.

75. We emphasize that we will treat the responses to the questions in Appendix A and any associated supporting documentation as confidential and will withhold them from routine public inspection.<sup>150</sup> Accordingly, there is no need for an applicant to submit a section 0.459 confidentiality request to seek protection of this information from public disclosure.<sup>151</sup>

#### (ii) Additional Information

76. We are not persuaded that we should require applicants to submit additional information with their short-form applications as suggested by some parties in response to the *Phase II Comment Public Notice*. First, we decline to require an applicant that intends to use spectrum to submit propagation maps with its short-form application.<sup>152</sup> Each applicant is required to perform the necessary due diligence to ensure that it will be able to offer service to the required number of locations to meet the performance tier and latency public interest obligations if it becomes a winning bidder and is authorized to receive Phase II support, and we expect that preparing preliminary network maps, including propagation maps,

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<sup>146</sup> See WISPA Comments at 8 (explaining that requiring an applicant to specify how many subscribers were “served” would require an applicant to “calculate the total number of subscribers in a state that it has served since the provider began offering service, including those that may have disconnected years ago”). *But see* Verizon Reply at 4 (noting that “an applicant’s experience in the provision of broadband services is clearly relevant to an assessment of the applicant’s technical qualifications”).

<sup>147</sup> See WISPA Comments at 8-9 (requesting that the Commission eliminate this question). *But see* Verizon Reply at 4-5 (supporting the inclusion of this question).

<sup>148</sup> See WISPA Comments at 8-9 (arguing that the proposed question “implic[d] that an applicant relying on non-standards-based equipment could be found to be unqualified”).

<sup>149</sup> We also revise the question to ask “[w]hat *capabilities* of this technology and proposed network will enable performance tier, latency, and voice service requirements to be met?” in response to WISPA’s comment that asking about the “*features*” of this technology was “vague.” WISPA Comments at 9.

<sup>150</sup> We will treat short-form applicants that submit this information as having made a request to treat this information as confidential trade secrets and/or commercial information. See 47 CFR § 0.459(a)(4). If a request for public inspection under section 0.461 is made, however, the short-form applicant will be notified and will be required to justify confidential treatment of its request if the short-form applicant has any objections to disclosure. See *id.* § 0.461.

<sup>151</sup> See WISPA Comments at 8 (suggesting that an applicant would have to submit a section 0.459 confidentiality request to protect its subscribership information from public disclosure).

<sup>152</sup> See Rural Coalition Comments at 19; Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 1-4.

will be part of this process.<sup>153</sup> Nevertheless, because an applicant will not know if or where it will be awarded support and has some flexibility to change the areas for which it will bid during the auction, we anticipate that it would be burdensome to require each such applicant proposing to use spectrum to meet the relevant Phase II public interest obligations to submit propagation maps of every area in which it might potentially win support.<sup>154</sup> Moreover, it would be burdensome for reviewers to examine the propagation maps of all applicants that intend to use spectrum, particularly given the maps may not be relevant if an applicant does not become qualified or does become qualified but does not win support in that area. We are not convinced that collecting the maps without reviewing them in detail would further our efforts to ensure that each applicant has conducted the necessary due diligence.<sup>155</sup> Absent a close analysis, Commission staff would likely not be able to determine whether an applicant has considered how it will meet the relevant public interest obligations. For the same reasons, we decline to require an applicant that intends to use wireline networks to submit network maps with its short-form application.<sup>156</sup>

77. Instead, we intend to rely on an applicant's responses to the operational questions and other information submitted in the application regarding an applicant's experience and spectrum access at the short-form application stage and will require more detailed network information at the long-form application stage once winning bidders know exactly where they have been assigned Phase II support.<sup>157</sup>

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<sup>153</sup> Because each applicant is already required to certify that it acknowledges its responsibility to conduct due diligence and that "it will be able to build and operate facilities in accordance with the Connect America Fund obligations and the Commission's rules generally," it is unnecessary to further require that each applicant certify that it "has created a network map, including propagation maps." See *infra* Section II.E.5 (Due Diligence Certification); Letter from Rebekah P. Goodheart, Jenner & Block LLP, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Jan. 24, 2018) (Rural Coalition et al. Jan. 24, 2018 *Ex Parte* Letter) at 4.

<sup>154</sup> See Verizon Reply at 5-6 (noting that this proposal "would apparently limit an applicant to bidding on only those areas for which the applicant has submitted a map with its short-form application, which would further complicate the auction design and impose significant costs on applicants"); AT&T Reply at 19-20 ("[A] 'preliminary' propagation map produced before the wireless provider completes its full network design and analysis would not be a reliable indicator of the services that could be provided at specific locations within the mapped area and thus would be of little value to Commission reviewers."); WISPA Reply at 4 ("Applicants would be required to spend countless hours preparing additional detailed exhibits with no countervailing benefit for the Commission."); Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 17-182 et al., at 1-2 (filed Dec. 5, 2017) (WISPA Dec. 5, 2017 *Ex Parte* Letter) ("requiring submission of propagation maps, conceivably for every possible compilation of spectrum bands and census block groups, would be impractical, unfair, and inefficient"); CTIA Reply at 3-4; GeoLinks Reply at 6; RWA Reply at 11-12.

<sup>155</sup> See Rural Coalition et al. Jan. 24, 2018 *Ex Parte* Letter at 4.

<sup>156</sup> See WISPA Reply at 4-5. But see Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 2 (noting that it "does not oppose a requirement that fiber-based applicants submit in their short-form applications maps of proposed deployment routes of main-line fiber optic cable to demonstrate fiber availability inside of eligible census block locations").

<sup>157</sup> We disagree that the New York's New NY Broadband Program is an appropriate comparison for determining whether this requirement would be burdensome for applicants or Commission staff. See Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 4 (noting that "[t]he Commission approved the New York Broadband Program requirements, and there is nothing to suggest that those requirements have been burdensome for providers, or that the network map requirement specifically has deterred participation"); New York State, New NY Broadband Program: Phase 3 Requests for Proposal Guidelines, at 46 (2017), available at [https://nysbroadband.ny.gov/sites/default/files/broadband\\_-\\_phase\\_3\\_rfp\\_guidelines-final\\_0.pdf](https://nysbroadband.ny.gov/sites/default/files/broadband_-_phase_3_rfp_guidelines-final_0.pdf) (noting that applicants would be required to submit "detailed information concerning their projects, proposed Service Areas, management and financial capabilities . . ."). Unlike the Phase II auction, New York's auction does not have a two-step application process or a separate bidding process. Accordingly, New York requires applicants to submit detailed technical information with their bids. New York applicants can thus tailor their network information to the

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As we have discussed, we expect that the information that an applicant must submit at the short-form application stage will be sufficient to demonstrate it is reasonably capable of meeting the relevant Phase II public interest obligations. If the information submitted by certain applicants is insufficient for such a demonstration, that applicant may be asked to submit more information during the application resubmission period. For example, an applicant could submit propagation and/or network maps during the resubmission period tailored to the issues raised by Commission staff to provide further support for its technical qualifications. We conclude that this approach achieves a reasonable balance between assessing an applicant's technical qualifications prior to the auction, minimizing burdens on applicants, and avoiding unreasonable delay in commencing the auction.

78. Second, we decline to require a satellite service provider to identify the total number of locations it can serve in a given service tier based on its total capacity and to limit its bidding to only that many locations.<sup>158</sup> Such an approach is unnecessary, would add complexity, and would require further development to the bidding software, potentially delaying the Phase II auction.<sup>159</sup> We conclude that there are already adequate safeguards in place that collectively will encourage bidders to bid to serve only the number of locations that they will have enough capacity to serve. For example, we already request that a satellite service provider submit in its short-form application information regarding its subscription rate and peak period data usage assumptions, its total available capacity and the methods it intends to use to assign bandwidth and capacity for each spot beam,<sup>160</sup> which will give a satellite service provider the opportunity to demonstrate that it is proposing to deploy a network that is reasonably scalable to meet the relevant Phase II public interest obligations. A satellite service provider may also be asked to submit additional information during the application resubmission period if the information initially submitted by the provider is insufficient to make a determination.

79. As described below,<sup>161</sup> we also will require an applicant to make certain minimum operational assumptions about its subscription rate and the number of locations it will be serving when determining whether it can meet the Phase II public interest obligations if it becomes a winning bidder and is authorized to receive Phase II support. Moreover, an applicant should be aware that each bid during the auction represents a commitment, should the applicant become a winning bidder, that it or its designated operating company (i) will serve the number of locations across all its winning bids (or will be subject to a default if the long-form applicant is not ultimately authorized to receive support),<sup>162</sup> and (ii) as a support recipient will be subject to non-compliance measures if it defaults or is ultimately unable to

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exact areas covered by their bids in New York state; New York reviewers will only have to review the information relevant to winning bids; and reviewers could allot an appropriate amount of time to review the information without having concerns about delaying the start of the auction. By contrast, the Phase II auction is nationwide and an applicant that is deemed eligible to bid in the Phase II auction has some flexibility to change the areas that are covered by its bids. As noted above, for the propagation map requirement to be meaningful, a Phase II applicant would need to submit propagation maps for any area where it might potentially bid and win support, possibly for a number of states. Reviewers would also not have the benefit of knowing in which areas the applicant will bid or win support, so all submitted maps would likely have to be reviewed for the information to be useful. This could potentially prolong the short-form application review period and delay the start of the Phase II auction.

<sup>158</sup> See Rural Coalition Comments at 20-21; ILSR et al. Reply at 7. *But see* Hughes Reply at 8 (claiming that the "Rural Coalition's assertion that satellite providers are 'unique' in facing a trade-off in speed and capacity with increasing numbers of users on their networks is incorrect").

<sup>159</sup> See Hughes Reply at 8 ("[I]t is unclear how the Commission would enforce such a limit in the bidding process even if it required this information from bidders.").

<sup>160</sup> See *infra* Appendix A, questions 3 & 7.

<sup>161</sup> See *infra* Section II.E.4.c (Operational Assumptions).

<sup>162</sup> See *infra* Section IV.B.4.b.i (Assignment).

meet the requirements.<sup>163</sup> Every applicant, regardless of the technology it intends to use, will be required to certify that if it wins support “it will be able to build and operate facilities in accordance with the Connect America Fund obligations and the Commission’s rules generally” and that it is “technically qualified” to meet the relevant public interest obligations.<sup>164</sup> An applicant will thus be certifying that it will have sufficient capacity to serve the locations included in its bid.<sup>165</sup>

### c. Operational Assumptions

80. We also adopt certain assumptions that an applicant will need to make about network usage and subscription rates when determining, for purposes of its short-form application, whether it can meet the public interest obligations for its selected performance tier and latency combination(s) if it becomes a winning bidder and is authorized to receive Phase II support.

81. First, as proposed in the *CAF II Auction Comment Public Notice*,<sup>166</sup> we require that an applicant assume it will offer service to at least 95 percent of the required number of locations across its bids in each state by the end of the six-year build-out period.<sup>167</sup> This assumption is consistent with the requirement that each winning bidder submit with its long-form application a network diagram with a certification by a professional engineer that the network would deliver, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the relevant performance requirements.<sup>168</sup> While we reiterate that Phase II support recipients should plan to offer service to 100 percent of the required number of locations and take advantage of the flexibility to offer service to 95 percent of the required number of locations only in unforeseen circumstances,<sup>169</sup> we conclude that an assumption by an applicant that it will offer service to 95 percent of locations will provide reasonable assurance that the applicant will engineer its network so that it is reasonably capable of meeting the relevant public interest obligations for the required number of locations. While each winning bidder that is authorized to receive Phase II support will be required to offer service only in areas where it is authorized to receive support,<sup>170</sup> we caution that, after the close of a round, each bid represents an irrevocable offer to meet the terms of the bid if it becomes a winning bid.<sup>171</sup> Accordingly, an applicant that becomes a qualified bidder should assume for each round of the auction that it could be required to offer service meeting the relevant requirements to the number of locations across *all* the bids that it places

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<sup>163</sup> See, e.g., 47 CFR § 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6000, paras. 143-45.

<sup>164</sup> See *infra* Section II.E.5 (Due Diligence Certification); 47 CFR § 54.315(a)(2).

<sup>165</sup> Accordingly, we decline to adopt a duplicative certification that would require satellite service providers to certify that “they will not bid for more locations in any round than they have the capacity to serve.” Rural Coalition et al. Jan. 24, 2018 *Ex Parte* Letter at 5.

<sup>166</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6249, para. 36.

<sup>167</sup> See WISPA Comments at 11-12; GeoLinks Comments at 1-2; WISPA Reply at 9-10.

<sup>168</sup> 47 CFR § 54.315(b)(2)(iv); see also WISPA Comments at 11-12.

<sup>169</sup> See Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 8; ILSR Comments at 1-2; ILSR et al. Reply at 3-5; see also *Phase II Auction Order*, 31 FCC Rcd at 5965, para. 44. We decline to “only consider bids that cannot cover all premises in the event that there is *no* bidder that can connect all premises.” ILSR et al. Reply at 5. This request is essentially an untimely petition for reconsideration of the Commission’s decision to give Phase II support recipients the flexibility of serving 95 percent of the required number of location due to unforeseen circumstances. 47 CFR § 1.429(d) (requiring that petitions for reconsideration “be filed within 30 days from the date of public notice of such action”); *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-47; see also WISPA Reply at 10.

<sup>170</sup> See Hughes Comments at 6; Hughes Reply at 7 (suggesting that the “relevant question” is “whether an applicant will be able to serve all customers who wish to subscribe *in the areas where the applicant is the winning bidder*”).

<sup>171</sup> This is consistent with other Commission auctions. See, e.g., 47 CFR §§ 1.21004, 1.1.2104(g)(2); Rural Coalition Reply at 12-13 (noting that “every bidder must be willing and able to serve every location in which it bids”).

in each state.

82. Second, consistent with assumptions made in the CAM,<sup>172</sup> we will require an applicant to assume that it will have at least a 70 percent subscription rate for its voice and broadband services by the time it will meet the final service milestone if it becomes authorized to receive support.<sup>173</sup> Because it may take time for an applicant that becomes a winning bidder and is authorized to receive Phase II support to obtain customers as it builds out its network, we will permit applicants to factor this into their engineering and make reasonable assumptions about how the subscription rate will scale during the build-out term.<sup>174</sup> Regardless of the assumptions an applicant makes about its subscription rate when engineering its network, the applicant must keep in mind that its network must be capable of scaling to meet demand. That is, if a Phase II support recipient reports in the High Cost Universal Service Portal that a location is served,<sup>175</sup> it must be capable of providing service meeting the relevant performance requirements to that location within 10 business days after receiving a request.<sup>176</sup>

83. We clarify that an applicant, if it becomes a winning bidder and is authorized to receive Phase II support, will not be required to demonstrate that it has achieved at least a 70 percent subscription rate once it has deployed to the required number of locations. Instead, we require an applicant to assume for purposes of its short-form application that it will achieve at least a 70 percent subscription rate when engineering its network. We recognize that some Phase II support recipients will achieve at least a 70 percent subscription rate in the areas where they are authorized to receive support and others will not. However, requiring an applicant to make a specific assumption will give the Commission reasonable assurance that an applicant is engineering a network that can be scaled to meet potential demand. Given that subscription rates are likely to vary from area to area and over the 10-year period, we conclude that the most objective way to minimize defaults and verify that an applicant is making reasonable assumptions about its subscription rate is to require all applicants to make the same assumption about the minimum subscription rate at the end of the build-out period. By adopting a minimum 70 percent subscription rate, we are also providing applicants some additional clarity for how they can demonstrate that they are technically qualified to participate in the Phase II auction.<sup>177</sup> These benefits would not be achieved by simply presuming that an applicant will have the incentive to make reasonable subscription assumptions because the applicant will ultimately be subject to network testing requirements and non-

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<sup>172</sup> *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 3964, 4040, para. 179 (WCB 2014) (*CAM Inputs Order*); see also *Phase II Auction Order*, 31 FCC Rcd at 5988, para. 114 n.227 (“An entity that engineers its network based on the assumption that only 40 percent of the customer base in the relevant area will subscribe will not be authorized.”).

<sup>173</sup> See Rural Coalition Comments at 21-23; ILSR et al. Reply at 5 (supporting a 70 percent subscription rate).

<sup>174</sup> See WISPA Comments at 13-14; IEC Comments at 4; Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1-2 (filed July 28, 2017); AT&T Reply at 25. We disagree with the suggestion that our decision to permit an applicant to make reasonable assumptions about how its subscription rate will scale is inconsistent with the approach WCB took when adopting a 70 percent subscription rate for the offer of Phase II model-based support. See Rural Coalition Comments at 23; Rural Coalition Reply at 17-18. Instead, the Commission acknowledged “[i]t is reasonable to expect that it will take some time to upgrade facilities in these areas and, therefore, take time to achieve a 70 percent subscription rate for these newly built facilities” and concluded that the “Bureau’s prediction that 70 percent of locations will subscribe *over five years*” was reasonable. *Connect America Fund et al.*, Memorandum Opinion and Order, 29 FCC Rcd 14092, 14096-97, para. 11 (2014) (emphasis added).

<sup>175</sup> See 47 CFR § 54.316 (describing the Phase II location reporting requirements).

<sup>176</sup> *WCB Location Guidance Public Notice*, 31 FCC Rcd at 12902-03; see also Rural Coalition Reply at 17-18 (noting that if an applicant were permitted to assume a take rate lower than 70 percent, “winning bidders may not be able to serve all locations, leaving certain locations stranded and, paradoxically, worse off than they were prior to the [a]uction”).

<sup>177</sup> 47 CFR § 54.315(a)(2).



compliance measures if it becomes a winning bidder and is authorized to receive Phase II support, as suggested by some commenters.<sup>178</sup>

84. By requiring an applicant to assume a minimum subscription rate of 70 percent, we are balancing the reality that not all consumers in a given area may subscribe to the Phase II-funded service with the requirement that Phase II support recipients provide the required service to consumers living at a funded location within 10 business days of a request.<sup>179</sup> While we acknowledge that some commenters suggest a lower subscription rate would be more appropriate,<sup>180</sup> in our predictive judgment, a 70 percent subscription rate is a reasonable assumption for engineering a network when taking into account (i) that existing subscription rates, which in some cases are lower than 70 percent, may not reflect actual demand over the 10-year support term, which we would expect to increase as data usage increases and higher speeds are made available, and (ii) in the high-cost areas where the Phase II support recipient will be deploying its network, it is more likely to be the only broadband provider, which may increase adoption rates.<sup>181</sup> We acknowledge there is a risk that this requirement may result in an increase in costs and could potentially lead to an applicant engineering a network that is capable of serving more locations than actually request service.<sup>182</sup> However, we conclude that this potential harm is outweighed by the risk that a support recipient could engineer a network that is incapable of meeting demand and may leave consumers unserved if the Commission does not take proactive measures to ensure that a support recipient is making reasonable assumptions about its potential subscription rate.<sup>183</sup>

85. Finally, the record lacks any specific proposals for assumptions an applicant should make concerning per-subscriber data usage.<sup>184</sup> Therefore, we will require each winning bidder to provide high-level information regarding its peak period data usage assumptions during the short-form application stage and detailed information regarding its peak period data usage assumptions during the long-form application stage once the bidders know the number of locations they will be required to serve.<sup>185</sup> We intend to review each winning bidder's response on a case-by-case basis to ensure that it is making reasonable assumptions given the required data usage allowances for the performance tiers for which it has been named a winning bidder.

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<sup>178</sup> See AT&T Reply at 22-23 (claiming that “[t]he Commission’s existing requirements are sufficient to address concerns about the adequacy of a [Phase] II auction recipient’s network”).

<sup>179</sup> See *WCB Location Guidance Public Notice*, 31 FCC Rcd at 12902.

<sup>180</sup> See AT&T Reply at 24 (claiming that the subscription rate assumption should be lower than 70 percent and citing FCC Form 477 data as of June 2016 that show that the national subscription rate for 10/1 Mbps was 63 percent and for 25/3 Mbps was 47 percent, and also citing data that demonstrate that “adoption rates in rural areas lag behind urban areas”).

<sup>181</sup> See *CAM Inputs Order*, 29 FCC Rcd at 4039, paras. 177-79.

<sup>182</sup> See AT&T Reply at 23.

<sup>183</sup> See Rural Coalition Reply at 18 (suggesting that if providers were able to make their own assumptions they “could face competitive pressure to lower take-rate assumptions in order to win support, leading to a race to the bottom”).

<sup>184</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6249-50, para. 36 (seeking comment on “whether we should specify the assumptions an applicant should make concerning per-subscriber data usage to ensure that its network is sufficient to support peak usage busy hour offered load, accounting for the monthly data usage allowance associated with the performance tier(s) the applicant selects in its short-form application”); see also WISPA Comments at 14 (noting that “[f]ixed wireless networks are not designed to accommodate all users simultaneously using the fastest speed to download large data files during peak usage periods” and that “operators make certain assumptions based on their experience to determine the number (or percentage) of subscribers that are likely to be downloading and uploading material to the Internet at a given time at a given speed, and design their systems according to reasonable usage assumptions based on their experience”).

<sup>185</sup> See *infra* Section V.B.6 (Description of Technology and System Design); Appendix A, question 3.

**d. Specific Information Required from Applicants Proposing to Use Spectrum to Provide Service**

86. An applicant that intends to use radiofrequency spectrum to offer its voice and broadband services must submit information regarding whether the spectrum to which it has access will enable the applicant to meet the public interest obligations for each performance tier and latency combination that it selects in its application.

87. The Commission's Phase II auction rules require an applicant that plans to use spectrum to demonstrate that it has (i) the proper spectrum use authorizations, if applicable; (ii) access to operate on the spectrum it intends to use; and (iii) sufficient spectrum resources to cover peak network usage and meet the minimum performance requirements to serve the fixed locations in eligible areas.<sup>186</sup> Consistent with the Commission's approach in the Mobility Fund Phase I auction, for the described spectrum access to be sufficient, the applicant must have obtained any necessary approvals from the Commission for the spectrum, if applicable,<sup>187</sup> by the short-form application filing deadline, subject to the exceptions described below. The Phase II auction short-form application rules also require an applicant to certify that it will retain such authorizations for at least 10 years.<sup>188</sup>

88. A number of parties sought clarification on how an applicant can demonstrate that it has access to sufficient spectrum resources.<sup>189</sup> We clarify that an applicant that intends to use licensed or unlicensed spectrum must in its short-form application (i) identify the spectrum band(s) it will use for the last mile, backhaul, and any other parts of the network;<sup>190</sup> (ii) describe the total amount of uplink and downlink bandwidth (in megahertz) that it has access to in each spectrum band for the last mile; (iii) describe the authorizations (including leases) it has obtained to operate in the spectrum, if applicable;<sup>191</sup> and (iv) list the call signs and/or application file numbers associated with its spectrum authorizations, if

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<sup>186</sup> 47 CFR § 54.315(a)(6); *see* Hughes Reply at 9 (stating that it “has no objection to identifying the licenses that it currently holds, spacecraft it currently uses, and other spectrum bands that it may use in the term of support” but that review of such information should be “appropriately circumscribed”). Commenters that suggest that the Commission should not be collecting information about an applicant's spectrum usage at the short-form application stage are effectively seeking reconsideration of the rule that was adopted in the *Phase II Auction Order*. *See* CTIA Reply at 2-3; 47 CFR § 54.315(a)(6) (requiring that each applicant “demonstrate . . . that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements”); *Phase II Auction Order*, 31 FCC Rcd at 5981-82, para. 98. Yet petitions for reconsideration must “be filed within 30 days from the date of public notice of such action,” and that period has long since passed. 47 CFR § 1.429(d).

<sup>187</sup> *See* 47 CFR § 54.315(a)(6); *Phase II Auction Order*, 31 FCC Rcd at 5981-82, para. 98 (requiring that an applicant “demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use”); *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, 27 FCC Rcd 4725, 4754-55, para. 96 (WTB 2012) (*Mobility Fund Phase I Auction Public Notice*). A pending request for such an approval does not satisfy this requirement.

<sup>188</sup> 47 CFR § 54.315(a)(6).

<sup>189</sup> *See, e.g.*, ViaSat Petition for Reconsideration at 5-7 (proposing how satellite providers can demonstrate they have the proper authorizations and access to sufficient spectrum); Oppositions to Petitions for Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 3-6 (filed Sept. 2, 2016) (requesting that the Commission “clarify the requirements for terrestrial spectrum use” and “provide examples so that bidders will have greater certainty before the auction on those types of spectrum solutions that would be in a ‘safe harbor’ of permissibility”).

<sup>190</sup> An applicant may propose to use more than one spectrum band to meet its Phase II obligations. *See* WISPA Comments at 15-16; GeoLinks Reply at 6-7; RWA Reply at 12; Microsoft Reply at 4. Each applicant must identify for which part of the network (e.g., last mile, backhaul, etc.) it intends to use each spectrum band.

<sup>191</sup> If the licensee is a different party than the applicant, the licensee's name should be provided and its relationship to the applicant should be described. If the applicant is leasing spectrum, the lease number should be provided along with the license information.

applicable. For the reasons discussed in the *CAF II Comment Public Notice*,<sup>192</sup> we also require any applicant that intends to provide service using satellite technology to describe in its short-form application its expected timing for applying for earth station licenses if it has not already obtained these licenses. Moreover, because an applicant can apply to obtain a microwave license at any time,<sup>193</sup> we will permit an applicant that intends to obtain microwave license(s) for backhaul to meet its Phase II public interest obligations to describe in its short-form application its expected timing for applying for such license(s), if it has not already obtained them.

89. This spectrum information, combined with the operational and financial information submitted in the short-form application, will allow an applicant to demonstrate that it has sufficient spectrum resources and is reasonably capable of meeting the public interest obligations required by its selected performance tier and latency combination(s). If a license, lease, or other authorization is set to expire prior to the end of the 10-year support term, the Commission will infer that the authorization will be able to be renewed when determining at the short-form application stage whether an applicant has sufficient access to spectrum.<sup>194</sup> However, this inference will in no way influence or prejudice our resolution of any future renewal application, and if the authorization is not renewed during the support term and the Phase II support recipient is unable to meet its Phase II obligations, that support recipient will be in default and subject to any applicable non-compliance measures.

90. In Appendix B, we identify the spectrum bands that we anticipate could be used for the last mile to meet Phase II obligations and indicate whether the spectrum bands are licensed or unlicensed. We have updated this chart to reflect most of the additional bands that commenters have suggested in response to the *CAF II Auction Comment Public Notice*.<sup>195</sup> We would expect that a service provider operating in these bands could, *at a minimum*, offer service meeting the requirements for the Minimum performance tier provided that the service provider is using sufficient bandwidth in the spectrum band(s) and a technology that can operate on these spectrum bands consistent with applicable U.S. and international rules and regulations.

91. We decline to add two spectrum bands proposed by WISPA to Appendix B. First, we decline to add spectrum in the 3650-3700 MHz Band licensed pursuant to Part 90 of the Commission's rules.<sup>196</sup> Because Part 90 licenses in the 3650-3700 MHz Band will sunset in April 2020,<sup>197</sup> an applicant that intends to operate on this band using only its Part 90 license to meet its Phase II public interest obligations would not be able to demonstrate that it will have sufficient access to spectrum for the 10-year support term.<sup>198</sup> Second, we decline to add the 37.0 to 37.6 GHz band.<sup>199</sup> The Commission has announced that it intends to work with the National Telecommunications and Information Administration

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<sup>192</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6251, para. 41.

<sup>193</sup> See, e.g., 47 CFR § 101.21(f) (describing the steps an applicant must take to obtain a microwave license).

<sup>194</sup> See, e.g., WISPA Comments at 16-17; RWA Reply at 12.

<sup>195</sup> See WISPA Comments at 17-18; Microsoft Comments at 4-9; Hughes Comments at 7-8; SpaceX Comments at 10; RWA Reply at 12-13; SpaceX Reply at 4; Microsoft Reply at 2-3.

<sup>196</sup> See WISPA Comments at 17.

<sup>197</sup> See 47 CFR § 90.1338.

<sup>198</sup> An applicant could propose to use spectrum in the 3650-3700 MHz Band licensed under the Part 90 rules until 2020 and then either transition to operation under the Part 96 rules or use other spectrum band(s) (either licensed or unlicensed) after 2020 to meet its performance obligations; however, the applicant must sufficiently demonstrate that it has access to such spectrum for the entire 10-year period.

<sup>199</sup> See WISPA Comments at 17.

to implement a federal/non-federal sharing regime in this band.<sup>200</sup> It would unnecessarily complicate these proceedings if we were to say that we expect that Phase II support recipients could use spectrum in this band to meet their Phase II public interest obligations, particularly given that no non-federal incumbent licensees currently provide commercial service using this band.

92. We also are not persuaded that we should exclude TV White Spaces or the 70/80/90 GHz bands from Appendix B because they are the subject of “ongoing Commission proceedings,” as suggested by the Rural Coalition.<sup>201</sup> There is nothing in the Spectrum Frontiers proceeding or the post-incentive auction repacking process cited by the Rural Coalition that would definitively bar an entity from obtaining access to these frequencies to provide service. Instead, an applicant proposing to operate on these bands to meet the Phase II public interest obligations will be subject to any service rule changes that result from ongoing or future proceedings and any final determinations in the post-incentive auction repacking process.

93. We emphasize, however, that Appendix B is a non-exhaustive list of spectrum bands that an applicant could potentially use to meet its performance obligations.<sup>202</sup> An applicant is not precluded from proposing to use a spectrum band that is not included in Appendix B, provided that the applicant can demonstrate that it is reasonably capable of meeting the performance requirements over the 10-year support term for the selected performance tier and latency combination(s) using that spectrum. We also note that an applicant that selects a spectrum band listed in Appendix B for a particular performance tier and latency combination may not necessarily be deemed eligible to bid for that combination. Such a showing depends on the technology the applicant intends to use and whether such use is consistent with applicable U.S. and international rules and regulations, the performance tier and latency combination(s) selected, the bandwidth to which the applicant has access in the band(s), and the authorizations the applicant has, if applicable, to access the spectrum.<sup>203</sup> Because these factors will vary for each applicant, we decline to designate specific spectrum bands as “safe harbors” based on whether providers have historically met the relevant requirements for certain performance tier and latency combinations using those spectrum bands.<sup>204</sup>

94. We decline to require an applicant that intends to deploy a wireline network to demonstrate its access to “rights-of-way, poles and other necessary infrastructure access components used in the technical design of the network for which funding is sought” in response to comments suggesting that we should require all applicants—not just those applicants intending to use spectrum—to demonstrate they have some form of access.<sup>205</sup> We expect that an applicant will plan ahead and make reasonable preparations to secure access to the necessary infrastructure so that, if it becomes a winning bidder and is authorized to receive Phase II support, it can meet service milestones by the relevant deadlines. However, we recognize that the applicant will not know *if* it will be deemed a winning bidder,

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<sup>200</sup> *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8170-74, paras. 446-64 (2016).

<sup>201</sup> Rural Coalition Reply at 20-21.

<sup>202</sup> See WISPA Comments at 17; SpaceX Comments at 9-10.

<sup>203</sup> See WISPA Comments at 17; Space X Comments at 9-10; WISPA Reply at 9; RWA Reply at 13; SpaceX Reply at 4; Microsoft Reply at 3.

<sup>204</sup> See WISPA Comments at 15; GeoLinks Reply at 5-6; RWA Reply at 11 (requesting that the Commission designate specific spectrum bands as safe harbors). We also decline to adopt a mechanism that would allocate dedicated spectrum to Phase II auction support recipients. See GeoLinks Comments at 2-4 (asking the Commission to “craft a spectrum licensing regime associated with the Phase II Auction”); GeoLinks Reply at 5. This request is outside of the scope of this Public Notice, which addresses application and bidding procedures, not spectrum policy.

<sup>205</sup> See WISPA Comments at 14-15; see also Hughes Reply at 9 (“The short-form showings required must demonstrate a consistent degree of skepticism in applicants using all types of technologies.”).

let alone in which CBGs it will be authorized to receive support, and in some cases a support recipient may not build out its network in areas where it does receive support until later in the support term.<sup>206</sup> Accordingly, we conclude that the burdens, such as the time and costs involved in obtaining all rights-of-way and other access to infrastructure prior to the auction, outweigh the benefits, particularly given that the access might be meaningless if the applicant is not authorized to receive support in the area where it has obtained access.

95. We disagree that it violates the Commission's commitment to technology neutrality to require that each applicant proposing to use wireless technologies demonstrate sufficient access to spectrum prior to the auction, while not imposing similar requirements on each applicant proposing to use wireline technologies.<sup>207</sup> Access to spectrum, which substantially affects overall network costs, varies dramatically among potential support recipients and differs across geographic areas. Therefore, we find that whether an applicant has secured the required authorizations, if applicable, and has access to sufficient spectrum prior to the auction is a necessary inquiry for determining whether an applicant is reasonably capable of meeting the relevant Phase II obligations. In contrast, we expect that a wireline support recipient would be able to adjust its network deployments if it is unable to secure a planned right-of-way or access to specific infrastructure. In short, spectrum access is indispensable to wireless providers, while specific infrastructure access elements are more readily available for wireline providers because they are not as likely to be subject to the same licensing requirements, bandwidth considerations, and allocation processes. Recognizing that crucial distinction does not violate the Commission's commitment to technology neutrality.

**e. Collection of Identifiers Associated with Information Submitted to the Commission in Other Contexts**

96. In addition to information provided in a short-form application, any relevant information that an applicant has submitted to the Commission in other contexts may be considered during application review for purposes of determining whether the applicant is expected to be reasonably capable of meeting the public interest obligations for its selected performance tier and latency combination(s) if it becomes a winning bidder and is authorized to receive Phase II support. As proposed in the *CAF II Auction Comment Public Notice*,<sup>208</sup> this other information would include the following: data reported in FCC Form 477 Local Telephone Competition and Broadband Report (FCC Form 477), FCC Form 481 Carrier Annual Reporting Data Collection Form (FCC Form 481), and FCC Form 499-A Annual Telecommunications Reporting Worksheet (FCC Form 499-A), including non-public information. For example, whether an applicant already offers service that meets the public interest obligations associated with its selected performance tier and latency combination(s) and the number of subscribers to that service may be considered.

97. Specifically, as discussed in the *CAF II Auction Comment Public Notice*,<sup>209</sup> applicants must submit in the short-form application any FCC Registration Numbers (FRNs) that an applicant or its parent company—and in the case of a holding company applicant, the operating companies identified in its application—has used to submit its FCC Form 477 data during the past two years.<sup>210</sup> Because the short-form application deadline is March 30, 2018, we will collect FCC Form 477 FRNs that were used

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<sup>206</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15658, para. 36 (recognizing that “[r]ecipients of support . . . will likely . . . proceed incrementally, route by route, working to complete construction evenly over the course of the term required for deployment”).

<sup>207</sup> See WISPA Comments at 14-15; RWA Reply at 10-11; CTIA Reply at 2-3.

<sup>208</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6251-53, paras. 42-48.

<sup>209</sup> *Id.* at 6252, paras. 44-45.

<sup>210</sup> If an applicant is a consortium or joint venture, it should provide all the FRNs that were used by its members to submit FCC Form 477 data during the past two years, if applicable.

for the filings for data as of June 30, 2017, data as of December 31, 2016, and data as of June 30, 2016.<sup>211</sup> Requiring submission of the FRNs that an applicant has used for FCC Form 477, will allow reviewers to cross-reference FCC Form 477 data that an applicant (or a related entity) has filed during the past two years.

98. For the reasons discussed in the *CAF II Auction Comment Public Notice*, an applicant must also submit in the short-form application any study area codes (SACs) indicating that the applicant (or its parent company/subsidiaries) is an existing ETC.<sup>212</sup> A holding-company applicant must submit the SACs of its operating companies identified in the application. An applicant is required by the Commission's Phase II short-form application rules to disclose its status as an ETC if applicable.<sup>213</sup>

99. Finally, for the reasons discussed in the *CAF II Auction Comment Public Notice*, applicants must submit in the short-form application any FCC Form 499 filer identification numbers that the applicant or its parent company and, in the case of a holding company, its operating companies identified in the application have used to file an FCC Form 499-A in the past year, if applicable.<sup>214</sup> Because the short-form application filing deadline is March 30, 2018, applicants must submit filer identification numbers that were used for the April 3, 2017 filing.

**f. Limiting Eligibility to Bid for Certain Performance Tier and Latency Combinations**

100. As proposed in the *CAF II Auction Comment Public Notice*, we will preclude applicants planning to use certain technologies to meet their Phase II obligations from becoming eligible to bid for performance tier and latency combinations that are inconsistent with those technologies.<sup>215</sup> Specifically, the Auction Application System will not allow an applicant that selects low latency in combination with any of the performance tiers to also select geostationary satellites as the technology for those performance tier and latency combinations. The Auction Application System also will not allow an applicant that selects the Gigabit performance tier in combination with either high or low latency in its short-form application to also select geostationary satellites as the technology for those tier and latency

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<sup>211</sup> Twice a year, in FCC Form 477, (1) all facilities-based providers of broadband connections to end users and facilities-based providers of terrestrial mobile wireless broadband must file broadband deployment and subscription data; (2) all incumbent or competitive local exchange carriers and providers of interconnected VoIP must file voice subscription data; and (3) all facilities-based mobile voice providers must file voice deployment and subscription data. 47 CFR §§ 1.7001, 1.7002; FCC, FCC Form 477: Local Telephone Competition and Broadband Reporting Instructions at 5-9, <https://transition.fcc.gov/form477/477inst.pdf>. Because the March 1st filing deadline for FCC Form 477 data as of December 31, 2017 is immediately before the short-form application filing deadline and WCB will need time to process this data, we will not collect FCC Form 477 FRNs that were used for the data as of December 31, 2017.

<sup>212</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6252-53, para. 46. If an applicant is a consortium or joint venture, it should provide the SACs associated with all its members, if applicable. Any time that a service provider is designated as an ETC by a state or the Commission, USAC will assign that service provider a SAC before the provider begins receiving universal service support.

<sup>213</sup> 47 CFR § 54.315(a)(3).

<sup>214</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6252-53, para. 47. If an applicant is a consortium or joint venture, it should provide the filer identification numbers associated with all its members, if applicable.

<sup>215</sup> *Id.* at 6253-54, para. 49; *see also* Rural Coalition Comments at 24-25; ITTA Comments at 5 (supporting the Commission's proposal); ILSR et al. Reply at 6 ("The Commission should ensure that bidders are proposing technologies that are capable of meeting the promises made.").

combinations.<sup>216</sup>

101. In addition, the Auction Application System will allow an applicant that selects the Gigabit and Above Baseline performance tiers to also select the fixed wireless and/or digital subscriber line (DSL) technologies for those performance tiers on the short-form application. However, the applicant's most recent publicly available FCC Form 477 deployment and subscription data, in addition to the applicant's operational information, will be used to determine the applicant's eligibility to bid in those tiers. If the FCC Form 477 data for that period do not show that the applicant offers residential Gigabit service using fixed wireless or DSL (whichever is selected by the applicant), the applicant will not be deemed eligible to bid in the Gigabit performance tier.<sup>217</sup> If an applicant does not offer a fixed wireless or DSL service at or above 100/20 Mbps based on its FCC Form 477 data, the applicant *may* be deemed eligible to bid in the Above Baseline performance tier, but that determination will be informed by its FCC Form 477 data as well as its operational information.

102. As discussed in the *CAF II Auction Comment Public Notice*,<sup>218</sup> we are not convinced that a geostationary satellite service provider would be reasonably capable of offering broadband at speeds of 1 Gbps downstream/500 Mbps upstream and 2 TB of monthly data to consumers by the first interim service milestone. Moreover, satellite service providers have acknowledged that geostationary satellites cannot meet the low latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds due to the limitations of high earth-orbit satellites.<sup>219</sup> We received no comments from geostationary satellite service providers or other parties disputing these findings.<sup>220</sup>

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<sup>216</sup> We clarify that this automatic preclusion applies to any applicant intending to use geostationary satellites to meet its obligations, but not to applicants that propose to use other satellite technologies like non-geostationary satellite orbit (NGSO) systems. *See* SpaceX Comments at 3-6.

<sup>217</sup> *See* Rural Coalition Comments at 26-27 (requesting that the Commission prohibit fixed wireless providers from bidding in the Above-Baseline and Gigabit performance tiers); Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 5-6; *see also* ITTA Comments at 6 (supporting the Commission's proposal to limit an applicant "to bidding on performance tier and latency combinations that [the applicant] or similar providers are currently offering"). We are not persuaded that we should take the further step of confirming that the services are actually available in the relevant markets. *See* Rural Coalition Comments at 26-27 (suggesting that the Commission "construe" FCC Form 477 data "conservatively"); Rural Coalition Reply at 11-12. FCC Form 477 filers are required to certify that the data they submit are accurate, and if the data reflect that an applicant has deployed Gigabit speeds, the Commission will also consider all the information submitted in the short-form application to make an initial determination as to whether the applicant is eligible to bid in the Gigabit performance tier.

<sup>218</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6253-54, para. 49 (describing how no geostationary satellite provider had reported offering broadband speeds in excess of 25/3 Mbps and that the record lacks specificity on whether or when a geostationary satellite provider would be able to offer 1 Gbps/500 Mbps speeds and a minimum monthly 2 TB data usage allowance).

<sup>219</sup> *See, e.g.*, Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Aug. 21, 2015) (claiming that the "100 milliseconds latency requirement" "categorically exclude[s] satellite broadband providers that use geostationary spacecraft"); Petition for Reconsideration of Hughes Network Systems, LLC, WC Docket No. 10-90 et al., at 9 (filed Apr. 20, 2017) (Hughes Petition for Reconsideration) (noting "the inevitable latency resulting from the data travel time to and from a geostationary satellite").

<sup>220</sup> We do not address comments that argue that satellite providers should not be permitted to participate in the Phase II auction. *See* Institute for Local Self-Reliance Comments at 3; ILSR et al. Reply at 6-7. Such arguments are effectively untimely petitions for reconsideration of the Commission's decision in the *Phase II Auction Order* to adopt technology-neutral performance requirements. 47 CFR § 1.429(d) (requiring that petitions for reconsideration "be filed within 30 days from the date of public notice of such action"); *Phase II Auction Order*, 31 FCC Rcd at 5956-63, paras. 14-37.

103. We also are not convinced that an applicant proposing to use fixed wireless or DSL technologies could demonstrate that it is reasonably capable of offering broadband at speeds of 1 Gbps downstream/500 Mbps upstream unless the applicant currently reports such deployment to residential consumers. Based on FCC Form 477 data as of June 30, 2016, 99 percent of fixed wireless and DSL providers have not reported offering Gigabit speeds, and fewer than 10 percent have reported offering speeds of 100 Mbps.<sup>221</sup> Given the lack of reported deployment at these higher speeds, we do not find it reasonable to expect that an applicant choosing to use either of these technologies would be able to offer Gigabit speeds by the first service milestone, unless an applicant has reported that it is already offering Gigabit broadband service.<sup>222</sup> Even if an applicant has already reported deploying a fixed wireless or DSL network offering Gigabit speeds, that applicant will not automatically be eligible to bid in the Gigabit performance tier. The areas where an applicant currently offers such service likely are not as challenging to serve as the areas eligible for the Phase II auction. In addition to the FCC Form 477 data, the applicant's submitted operational information must demonstrate that it is reasonably capable of meeting the relevant public interest obligations for the Gigabit performance tier, if it selects that tier.

104. We are not convinced that we should automatically prohibit an applicant that intends to use geostationary satellites, fixed wireless, or DSL technologies from bidding in the Above-Baseline performance tier if the applicant does not already offer broadband at speeds of at least 100 Mbps.<sup>223</sup> While fewer than 10 percent of fixed wireless and DSL providers, and no satellite service providers, have reported offering speeds of at least 100 Mbps, we find that applicants that do not currently offer these higher speeds may be able to do so by the first service milestone.<sup>224</sup> Because there is widespread availability of 25 Mbps broadband speeds using these technologies today, we are more confident that an applicant *could* demonstrate the ability to engineer a network using these technologies to offer 100/20 Mbps broadband speeds even if it has not already offered such speeds.<sup>225</sup> It is reasonable to expect that an applicant that is planning to use a technology that has consistently achieved a broadband speed of 25 Mbps could demonstrate that it is more capable of scaling to a broadband speed of 100 Mbps than to a much higher speed like 1 Gbps. Although we acknowledge the capacity constraints inherent in satellite technology,<sup>226</sup> we are requiring each applicant planning to use satellite technology to describe its total capacity and its plans for assigning bandwidth and capacity for each spot beam it intends to use. An applicant intending to use satellite, fixed wireless, or DSL technologies must demonstrate in its operational information submitted in the short-form application that it is reasonably capable of meeting

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<sup>221</sup> FCC, FCC Form 477 June 30, 2016 data, available at <https://www.fcc.gov/form-477-broadband-deployment-data-june-2016-version-2>. By contrast, nearly 20 percent of optical carrier/fiber-to-the-end-user and over 15 percent of cable DOCSIS 3.0 providers offer broadband at 100 Mbps speeds. *See id.*

<sup>222</sup> Given the lack of deployment at these high speeds across all providers of the technology, we are not persuaded that an applicant's experience in deploying broadband at lower speeds will provide sufficient assurance that an applicant will be reasonably capable of offering Gigabit speeds. *See* WISPA Comments at 19 (urging the Commission to "allow[] experienced providers to propose performance tier and latency combinations that they may not have previously deployed").

<sup>223</sup> *See* Rural Coalition Comments at 26; Rural Coalition Reply at 9-12.

<sup>224</sup> A support recipient will have three years after it has been authorized to receive support to meet its first interim service milestone—offering the required level of service to 40 percent of the required number of locations. *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

<sup>225</sup> Approximately 15 percent of asymmetric xDSL providers, nearly 20 percent of ADSL2, ADSL2 + providers, more than 20 percent of VDSL providers, almost 10 percent of symmetric xDSL providers, nearly 30 percent of satellite providers, and approximately 15 percent of fixed wireless providers report deploying networks capable of offering at least 20 Mbps speeds. FCC Form 477 June 30, 2016 data.

<sup>226</sup> *See* Rural Coalition Comments at 25 (citing Vantage Point Solutions, *Satellite Broadband Remains Inferior to Wireline Broadband*, at 8 (2017), attached to Letter from Larry Thompson, CEO, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 5, 2017)); Rural Coalition Reply at 11.



the relevant public interest obligations to be deemed qualified for the Above-Baseline performance tier, if it selects that tier.<sup>227</sup> We balance our interest in minimizing the risk of defaults and streamlining the short-form application review process with the potential for applicants that have not deployed 100 Mbps speeds in the past to deploy such networks in the coming years with Phase II support.<sup>228</sup>

105. We reject claims that our decision to preclude some entities from bidding for certain performance tier and latency combinations violates the principle of competitive neutrality.<sup>229</sup> Additionally, our decision to limit an applicant's ability to select certain performance tier and latency combinations does not negate the Commission's decision to adopt technology-neutral performance standards for the Phase II auction.<sup>230</sup> Further, adopting eligibility requirements that some applicants are unable to meet does not violate competitive and technological neutrality if those requirements are narrowly tailored to advance the Commission's objectives.<sup>231</sup> The principle of competitive neutrality does not preclude us from addressing other reasonable regulatory objectives, including ensuring that an entity bidding in the Phase II auction is reasonably capable of meeting the relevant Phase II obligations if awarded support. Thus, it does not violate competitive and technological neutrality to preclude an applicant from selecting a latency standard that it is physically incapable of meeting with the technology it proposes to use, as is the case with geostationary satellites and the low latency performance requirements. Nor does it violate competitive and technological neutrality to rely on our predictive judgement to restrict applicants proposing to use certain technologies from selecting the Gigabit performance tier unless those applicants have reported deployment at that speed. Because so few providers have reported deploying fixed wireless and DSL networks capable of higher speeds, we conclude that it is necessary to confirm that an applicant proposing to use these technologies for the Gigabit performance tier has experience offering Gigabit speeds.<sup>232</sup> We are not persuaded that the certifications an applicant must make in its short-form application and the forfeitures that we will impose

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<sup>227</sup> We expect these safeguards will help prevent an applicant from bidding for performance tier and latency combinations that have associated public interest obligations that the applicant would be unable to meet. See *Rural Coalition* Nov. 21, 2017 *Ex Parte* Letter at 5-6 (claiming that "qualified bidders may be discouraged from participation" in the Phase II auction if "providers are allowed to bid in unattainable tiers based on the potential for speculative technological advances").

<sup>228</sup> See WISPA Comments at 18 ("[A] particular fixed wireless provider may have not yet deployed updated technology but should have the ability to propose such technology in its application.").

<sup>229</sup> See, e.g., AT&T Reply at 20-21. The principle of competitive neutrality does not require all competitors to be treated alike, but "only prohibits the Commission from treating competitors differently in 'unfair' ways." *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009). Moreover, neither the competitive neutrality principle nor the other section 254(b) principles impose inflexible requirements for the Commission's formulation of universal service rules and policies. Instead, the "promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles" in section 254(b). *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803, para. 52 (1997) (*Universal Service First Report and Order*); see also *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001) (*Qwest I*) ("The FCC may balance the principles against one another, but must work to achieve each one unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC's authority."); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) ("We reiterate that predictability is only a principle, not a statutory command. To satisfy a countervailing statutory principle, therefore, the FCC may exercise reasoned discretion to ignore predictability."); *Rural Cellular Ass'n*, 588 F.3d at 1103 ("The Commission enjoys broad discretion when conducting exactly this type of balancing.").

<sup>230</sup> See, e.g., WISPA Reply at 6-7 (arguing that "the Commission should not preclude any applicant from proposing any technology and any performance tier").

<sup>231</sup> In the context of universal service, the principle of competitive neutrality includes technological neutrality. See *Universal Service First Report and Order*, 12 FCC Rcd at 8802, para. 49.

<sup>232</sup> No geostationary satellite provider reports speeds higher than 25 Mbps at this time. FCC Form 477 June 30, 2016 data.

if a winning bidder defaults will alone provide adequate protection against an applicant overestimating the capabilities of technologies that are not generally used to offer Gigabit and low latency service.<sup>233</sup>

106. Notwithstanding the preclusions we adopt above, we will not preclude applicants that propose to use other technologies that lack historical deployment data from bidding for any specific performance tier and latency combination if such applicants become qualified to bid.<sup>234</sup> Without historical deployment data, we are unable to decide categorically whether we can reasonably predict that a new technology would generally be able to meet the relevant public interest obligations by the required service milestones. We will consider each application proposing to use such a new technology on a case-by-case basis, taking into account the applicant's experience, its responses to the short-form operational questions, its spectrum access (if applicable), and other information collected in the short-form application. We conclude that the additional costs of having to review these technologies on a case-by-case basis are outweighed by the potential benefits to consumers if an applicant can use new technologies to bring advanced services to unserved areas.<sup>235</sup>

107. We decline to establish a rebuttable presumption that an applicant should submit more evidence that it can meet the relevant performance requirements if it proposes to use certain technologies and select certain performance tier and latency combinations.<sup>236</sup> It would be burdensome for each applicant to submit this information with its short-form application for every area where it intends to bid and for reviewers to analyze the information, particularly when an applicant, even if it becomes qualified to bid, may not win support in these areas. Instead, to streamline our review process and minimize the burden on applicants, the short-form applications will be reviewed after the initial application filing window closes and, as described below, additional information will be requested during the resubmission period if an applicant is unable to demonstrate it is eligible based on the information submitted with the short-form application. Such an approach will allow Commission staff to make targeted requests for information from an applicant designed to address the specific concerns that Commission staff have with the information submitted by the applicant in its short-form application.

**g. Standard for Evaluating Information on Performance Tier and Latency Combinations; Initial and Final Determinations of Eligibility to Bid on Selected Combinations**

108. As proposed in the *CAF II Comment Public Notice*,<sup>237</sup> the Bureaus will review the information submitted by an applicant in its short-form application as well as any other relevant and available information to determine whether the applicant has planned how it would provide service if awarded support and whether it is expected to be reasonably capable of meeting the public interest

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<sup>233</sup> AT&T Reply at 20-21.

<sup>234</sup> See, e.g., SpaceX Comments at 3-6 (urging the Commission to permit an applicant that intends to deploy a NGSO system to participate in the auction); WISPA Comments at 18 (“[A]n applicant should not be limited to existing technology, but should be able to demonstrate performance based on probable product releases.”); ADTRAN Comments at 1-2 (noting the “rapid pace of broadband technology developments”); Microsoft Reply at 3-4.

<sup>235</sup> See ITTA Comments at 6-7 (noting the costs of “evaluating [an] applicant’s technological bona fides”); Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 6 (noting that “Commission staff will face increased administrative burdens”). But see Verizon Reply at 6-7 (noting that “it would be reasonable for an applicant’s plan to contemplate technologies that are currently under development and that may reduce costs or achieve higher speeds than current-generation technology”); SpaceX Reply at 3-4 (claiming that “[r]estricting support to only currently available technologies unfairly favors incumbents to the detriment of Americans seeking modern broadband access” and that “[i]t would leave no room for technologies that could truly help expand affordable broadband access to the most remote and hard-to-reach communities”).

<sup>236</sup> See Rural Coalition Reply at 11; Rural Coalition Nov. 21, 2017 *Ex Parte* Letter at 6.

<sup>237</sup> *CAF II Comment Public Notice*, 32 FCC Rcd at 6254-55, paras. 52-53.

obligations for its selected performance tier and latency combination(s) in its selected state(s).<sup>238</sup> If an applicant demonstrates that it is reasonably capable of meeting the public interest obligations for one or more selected tier and latency combinations in a state, the applicant will be deemed eligible to bid for those performance tier and latency combination(s) in that state. We decline to modify this standard by deeming an applicant ineligible only if it misrepresents its qualifications or provides incorrect responses.<sup>239</sup> Such an approach would not minimize defaults because an applicant may truthfully and accurately represent its plans and qualifications, but not demonstrate that it is reasonably capable of meeting the Phase II auction public interest obligations for the performance tier and latency combination(s) it selects.

109. If an applicant is unable to demonstrate that it is reasonably capable of meeting the relevant public interest obligations for its selected performance tier and latency combination(s) based on the information submitted in its short-form application and other available information, the Bureaus will deem the application incomplete. The applicant will then have another opportunity during the application resubmission period to submit additional information to demonstrate that it meets this standard. The Bureaus will notify the applicant that additional information is required to assess the applicant's eligibility to bid for one or more of the specific performance tier and latency combination(s) selected in its short-form application. During the application resubmission filing window, the applicant will be able to submit additional information to establish its eligibility to bid for the relevant performance tier and latency combination(s). An applicant will also have the option of selecting a lesser performance tier and latency combination for which it might be more likely to meet the relevant public interest obligations. We consider these to be permissible minor modifications of the short-form application.<sup>240</sup> After the Auction 903 qualified bidders are announced, each applicant will be able to view its final eligibility determination for each performance tier and latency combination in the selected state(s) for which it is eligible through the Auction Application System.<sup>241</sup> An applicant must have at least one performance tier and latency combination deemed eligible in at least one state in order to become qualified to bid. The bidding system will be configured to permit a qualified bidder to bid only for the performance tier and latency combination(s) for which it has been deemed eligible to bid.

#### **h. Non-Compliance Measures**

110. For the reasons described in the *CAF II Auction Comment Public Notice*,<sup>242</sup> we will not adopt any specific measures or remedies related to an applicant's representations in its short-form or long-

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<sup>238</sup> *Phase II Auction Order*, 31 FCC Rcd at 5982, para. 99.

<sup>239</sup> See Hughes Comments at 6. We will not direct USAC to retain a third party to perform this review as one commenter suggests. See Rural Coalition Comments at 23-24; Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 9. Such an engagement would be time-consuming and unduly expensive, thus diverting scarce Connect America Fund resources to a third party, rather than a support recipient. See WISPA Reply at 11 ("This process will no doubt add time, complexity, and taxpayer cost to the short-form application process . . . with no clear benefit over an approach that relies on existing Commission staff that has expertise in various technologies based on its day-to-day work."). Moreover, there is no guarantee the eligibility determinations from a third-party reviewer would be any less subjective or more well-informed than that of the Commission. We are fully confident that by leveraging knowledge across multiple Bureaus, Commission staff has sufficient expertise to make these determinations. See WISPA Comments at 18.

<sup>240</sup> See 47 CFR § 1.21001(d)(5).

<sup>241</sup> A finding that an applicant is ineligible to bid for a performance tier and latency combination would not necessarily mean that a potential bidder is incapable of meeting the relevant public interest obligations. Instead, such a finding would mean that it is not in the public interest to risk awarding support to an applicant that Commission staff believe is likely to default and divert support away from bidders that could offer the required services to consumers.

<sup>242</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6255, para. 54.

form applications of its capabilities to meet its selected performance tier and latency combination(s).<sup>243</sup> No party has convinced us that the Commission's existing non-compliance measures collectively provide inadequate incentives for an applicant to submit truthful and accurate evidence of its technical qualifications.<sup>244</sup> Because we expect that incidents involving misrepresentations are likely to involve unique circumstances and will vary in severity, we prefer to retain the flexibility to address such incidents on a case-by-case basis by using all of the non-compliance measures available to us rather than by adopting a fixed approach prior to the start of the auction.<sup>245</sup>

## 5. Due Diligence Certification

111. Each applicant has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Phase II support for which it will seek to bid in Auction 903 if it becomes a qualified bidder. Each qualified bidder is responsible for assuring that, if it becomes a winning bidder and is ultimately authorized to receive Phase II support, it will be able to build and operate facilities in accordance with the Phase II obligations and the Commission's rules generally.

112. Applicants should be aware that Auction 903 represents an opportunity to apply for Phase II support, subject to certain conditions and regulations. Auction 903 does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does the award of Phase II support constitute a guarantee of business success.

113. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, we strongly encourage each applicant to review all underlying Commission orders and to assess all pertinent economic factors relating to the deployment of service in a particular area.

114. Each applicant should perform technical analyses or refresh its previous analyses to assure itself that, should it become a winning bidder for Phase II support, it will be able to build and operate facilities that fully comply with all applicable technical and legal requirements and will advertise and provide the service to customers. Each applicant should verify that it can identify enough locations within the eligible census blocks that it intends to include in its bids to be able to offer service meeting the relevant requirements to the required number of locations if it becomes a winning bidder and is authorized to receive Phase II support. Each Phase II support recipient will be required to offer service meeting the relevant requirements to the total number of locations across all the winning bids in each state where it is authorized to receive support. The total number of locations where a Phase II support recipient is required to offer service in each state is determined by adding up the number of locations the CAM estimated for each eligible census block included in the support recipient's winning bids in the state.<sup>246</sup> As described above,<sup>247</sup> the Commission has adopted a process by which support recipients that cannot identify enough locations to meet their state location totals can demonstrate that the number of actual, on-

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<sup>243</sup> See WISPA Comments at 20 (agreeing "strongly" that the Commission "should not adopt any additional non-compliance measures"). *But see* Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 9 (suggesting that the Commission "adopt strict *ex post* remedies to further discourage potential abuse" and "consider barring bidders that abuse the process by making materially false claims as to their technical capability to deliver in a given tier from participating in future Connect America Fund auctions").

<sup>244</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6255, para. 54 (citing 47 CFR §§ 1.21004, 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45).

<sup>245</sup> See, e.g., Rural Coalition Comments at 27-28 (claiming that "without clear penalties for noncompliance set forth in advance, auction bidders may not have the incentive to perform the due diligence necessary"). A good faith but unsuccessful effort to establish technical qualifications during the short-form application process would not rise to the level of a misrepresentation.

<sup>246</sup> See CAM Methodology at 12-15; *WCB Location Guidance Public Notice*, 31 FCC Rcd 12900.

<sup>247</sup> See *supra* Section I.D (Public Interest Obligations).

the-ground locations is lower than the number estimated by the CAM. Such a demonstration must be made within one year after the release of the Auction 903 closing public notice and will be subject to review by WCB following comment by relevant stakeholders and potentially an audit. Applicants' due diligence should be informed by the availability of and requirements for this process, in addition to other factors.

115. We strongly encourage each applicant to conduct its own research prior to Auction 903 to determine the existence of pending administrative or judicial proceedings that might affect its decision on participation in the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the applicant to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

116. We also remind each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission—including applications, applications for modification, notices of proposed rulemaking, notices of inquiry, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to or affect licensees or applicants for support in Auction 903. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on Phase II support available through this auction.

117. Each applicant is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on or otherwise receive Phase II support. Each applicant is responsible for undertaking research to ensure that any support won in this auction will be suitable for its business plans and needs. Each applicant must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

118. We make no representations or guarantees regarding the accuracy or completeness of information in our databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, an applicant must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, we make no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into our databases.

119. To confirm an applicant's understanding of its obligations, we require the applicant to certify under penalty of perjury in its short-form application that:

The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical, marketplace, and regulatory factors that may have a bearing on the level of Connect America Fund Phase II support it submits as a bid, and that, if the applicant wins support, it will be able to build and operate facilities in accordance with the Connect America Fund obligations and the Commission's rules generally.

This certification will help ensure that an applicant acknowledges and accepts responsibility, if it becomes a qualified bidder, for its bids and any forfeitures imposed in the event of default,<sup>248</sup> and that it will not attempt to place responsibility for the consequences of its bidding activity on either the Commission or any of its contractors.

## **6. Eligible Telecommunications Carrier Certification**

120. An applicant must acknowledge in its short-form application that it must be designated as

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<sup>248</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5984-85, 6000, paras. 104, 143.

an ETC for the areas in which it will receive support prior to being authorized to receive support.<sup>249</sup> Only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (the Act) “shall be eligible to receive specific Federal universal service support.”<sup>250</sup> Section 214(e)(2) gives states the primary responsibility for ETC designation.<sup>251</sup> However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of any state commission.<sup>252</sup> Support is disbursed only after the provider receives an ETC designation and satisfies the other long-form application requirements.

121. The Commission decided that an applicant need not be an ETC as of the initial short-form application filing deadline for Auction 903, but that it must obtain a high-cost ETC designation for the areas covered by its winning bids within 180 days after being announced as a winning bidder.<sup>253</sup> Absent a waiver of the deadline, a long-form applicant that fails to obtain the necessary ETC designations by this deadline will be subject to an auction forfeiture as described below, and will not be authorized to receive Phase II support.<sup>254</sup> In addition to all the requirements for participating in the Phase II auction, each applicant should be familiar with the requirements for a high-cost ETC. For example, all high-cost ETCs are required to offer Lifeline voice and broadband service to qualifying low-income consumers pursuant to the Lifeline program rules.<sup>255</sup> Moreover, when the requirement has been fully implemented, each Phase II support recipient will be required to bid on category one telecommunications and Internet access services in response to a posted FCC Form 470 seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program (E-rate) for eligible schools and libraries located within any area in a census block where the ETC is receiving Phase II support.<sup>256</sup> A high-cost ETC may also be subject to state-specific requirements imposed by the state that designates it as an ETC.

#### **F. Procedures for Limited Disclosure of Application Information**

122. Consistent with the Commission’s practice in the Mobility Fund Phase I auction (Auction 901) and recent spectrum auctions, we adopt procedures for limiting the application information that will be disclosed to the public, as proposed in the *CAF II Auction Comment Public Notice*.<sup>257</sup>

<sup>249</sup> 47 CFR § 54.315(a)(3). A Lifeline-only ETC designation is not sufficient, and the applicant must obtain a high-cost ETC designation in areas where it seeks to be authorized to receive Phase II support.

<sup>250</sup> 47 U.S.C. § 254(e).

<sup>251</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6397, para. 61 (2005).

<sup>252</sup> 47 U.S.C. § 214(e)(6).

<sup>253</sup> 47 CFR §§ 54.310(e)(1), 54.315(b)(5); *see also Phase II Auction Order*, 31 FCC Rcd at 6002-05, paras. 149-56; *April 2014 Connect America Order*, 29 FCC Rcd at 7064-66, paras. 40-46.

<sup>254</sup> The Commission explained that in the event a long-form applicant is unable to obtain the necessary ETC designations within this timeframe, it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. *See Phase II Auction Order*, 31 FCC Rcd at 6002, para. 152.

<sup>255</sup> *See* 47 CFR §§ 54.101(d), 54.405(a); 47 CFR Subpart E.

<sup>256</sup> 47 CFR § 54.309(b) (such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings); *see also Modernizing the E-rate Program for Schools and Libraries et al.*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15562-69, paras. 60-76 (2014). WCB has not yet adopted reasonable comparability benchmarks to implement this requirement.

<sup>257</sup> *See CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6272, para. 137; 47 CFR § 1.21003(b)(1); *see also Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97*, Public Notice, 29 FCC Rcd 8386, 8428-31, paras. 149-57 (WTB 2014) (*Auction 97 Procedures Public Notice*);

(continued....)

123. Specifically, to help ensure anonymous bidding and to protect applicants' competitively sensitive information, we will withhold from the public, as well as other applicants, the following information submitted with an Auction 903 short-form application at least until after the auction closes and the results are announced:

- The state(s) selected by an applicant.
- The state(s) for which the applicant has been determined to be eligible to bid.
- The performance tier and latency combination(s) selected by an applicant and the associated weight for each combination.
- The spectrum access attachment submitted with the short-form application.
- The performance tier and latency combination(s) for which the applicant has been determined to be eligible to bid and the associated weight for each combination.
- An applicant's responses to the questions in Appendix A and any supporting documentation submitted in any attachment(s) that are intended to demonstrate an applicant's ability to meet the public interest obligations for each performance tier and latency combination that the applicant has selected in its application.
- Any financial information contained in an applicant's short-form application for which the applicant has requested confidential treatment under the abbreviated process in section 0.459(a)(4) of the Commission's rules.<sup>258</sup>

All other application information that is not subject to a request for confidential treatment will be publicly available upon the release of the public notice announcing the status of submitted short-form applications after initial review.

124. In the *CAF II Auction Comment Public Notice*, the Commission proposed to withhold financial information submitted by an applicant that also files financial information on FCC Form 481 pursuant to a protective order.<sup>259</sup> The Commission also proposed to require all other applicants that seek confidential treatment to submit a request pursuant to section 0.459.<sup>260</sup> However, consistent with WISPA's comments,<sup>261</sup> we now conclude that all applicants have an equal interest in protecting their private financial information and thus should be treated in the same way. We will therefore permit any

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*Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18141, 18181-85, paras. 145-56 (WTB 2007); *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, Public Notice, 21 FCC Rcd 4562, 4600-05, paras. 140-57 (2006).

<sup>258</sup> See 47 CFR § 0.459(a)(4). For this purpose, "financial information" includes an applicant's financial metrics identified in the short-form application, the individual score for each financial metric, and the financial statements that are submitted with the short-form application. As noted above, when we reference financial metrics, we are referring to the financial information that is scored using the five-point scale, including the question asking whether an audited applicant received an un-modified (non-qualified) opinion. See *supra* Section II.E.3 (Financial Qualifications). As explained below, for purposes of the section 0.459(a)(4) abbreviated process, an applicant's total financial score is not considered to be financial information.

<sup>259</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6273, para. 139.

<sup>260</sup> See *id.*; *Connect America Fund et al.*, Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14565-66, paras. 16-17 (2012) (*Connect America Fund Fifth Reconsideration Order*); *Connect America Fund et al.*, Protective Order, 31 FCC Rcd 2089 (WCB 2016) (protecting privately held rate-of-return carriers' financial information from public disclosure).

<sup>261</sup> See WISPA Comments at 25-26.

applicant to use the abbreviated process under section 0.459(a)(4) to request confidential treatment of the financial information contained in its short-form application. The abbreviated process allows all applicants to answer a simple yes/no question on FCC Form 183 as to whether they wish their information to be withheld from public inspection.<sup>262</sup> We caution that requests to withhold financial data that applicants elsewhere disclose to the public will not be granted and that information may be disclosed in the normal course.

125. Unlike the typical section 0.459 process, which requires that an applicant submit a statement of the reasons for withholding the information for which confidential treatment is sought from public inspection,<sup>263</sup> an applicant that seeks confidential treatment of the financial information contained in its short-form application need not submit a statement that conforms with the requirements of section 0.459(b) unless and until its request for confidential treatment is challenged.<sup>264</sup> Because we have found in other contexts that financial information that is not otherwise publicly available could be competitively sensitive,<sup>265</sup> we permit applicants seeking confidential treatment of financial information to use this abbreviated process. We will not, however, permit an applicant to seek confidential treatment of the total financial score that it receives for its financial metrics (using the five-point scale adopted above) pursuant to the section 0.459(a)(4) abbreviated process. Because an applicant's total financial score will not identify an applicant's specific financial information, it does not raise the same competitive sensitivity concerns.

126. The section 0.459(a)(4) abbreviated process for requesting confidential treatment may *not* be used by an applicant to request confidential treatment of any information in its short-form application other than its financial information. Thus, an applicant that wishes to seek confidential treatment of any other portion(s) of its short-form application must file a regular section 0.459 request for confidential treatment of any such information with its short-form application (other than responses to the questions in Appendix A and associated supporting documentation that we presume to be competitively sensitive).<sup>266</sup> This request must include a statement of the reasons for withholding those portions of the application from public inspection.<sup>267</sup> Additionally, in the event an applicant's abbreviated request for confidential treatment of the financial information contained in its short-form application is challenged, the applicant must submit a request for confidential treatment of its financial information that conforms with the requirements of section 0.459 within 10 business days after receiving notice of the challenge.

127. After the auction closes and the results are announced, we no longer have a need to preserve anonymous bidding. Accordingly, and as proposed, we will make publicly available all short-form application information that was withheld from the public prior to and/or during the auction as set forth in paragraph 123, except for (1) responses to the questions in Appendix A and any supporting information submitted in any attachment(s) that are intended to demonstrate an applicant's ability to meet

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<sup>262</sup> 47 CFR § 0.459(a)(4). We decline to apply a protective order to all privately held applicants as WISPA suggests. *See* WISPA Comments at 26. We see no reason to subject applicants to provisions in a protective order governing third-party access to the information at issue or to treat rate-of-return carriers that file their financial statements with their FCC Form 481 pursuant to a protective order and all other applicants disparately.

<sup>263</sup> 47 CFR § 0.459(b).

<sup>264</sup> 47 CFR § 0.459(a)(4). Section 0.459(b) of the Commission's rules cross-references section 0.459(a)(3), which the Commission redesignated as section 0.459(a)(4) in 2011. *See* FCC, Commission's Rules of Practice, Procedure, and Organization, 76 Fed. Reg. 24383 (May 2, 2011); *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887, 9921, para. 79 (2013) (allowing for the request of confidentiality pursuant to a check-box on the Form 477).

<sup>265</sup> *Connect America Fund Fifth Reconsideration Order*, 27 FCC Rcd at 14554-56, paras. 15-17.

<sup>266</sup> *See supra* para. 75.

<sup>267</sup> 47 CFR § 0.459(b).



the public interest obligations for the performance tier and latency combination(s) that the applicant selected in its application,<sup>268</sup> and (2) any financial information for which the section 0.459(a)(4) abbreviated confidential treatment process was requested and continues to be afforded. This approach is consistent with our interest in a transparent auction process and the Commission's practice in the Mobility Fund Phase I auction and our typical spectrum auctions.

### G. Prohibited Communications and Compliance with Antitrust Laws

128. To help protect competition in the auction, the Commission's rules prohibit an applicant from communicating certain auction-related information to another applicant from the auction application filing deadline until the post-auction deadline for winning bidders to file long-form applications for support. More specifically, section 1.21002 of the Commission's rules prohibits an applicant in Auction 903 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period.<sup>269</sup> The rule provides an exception for communications between applicants if those applicants identify each other on their respective applications as members of a joint bidding arrangement and certify that the application identifies all real parties in interest to agreements related to the applicant's participation in the auction.<sup>270</sup>

129. This section provides guidance on the application of the rule during Auction 903, addresses a number of questions and suggestions in the record, and clarifies certain aspects of the rule for prospective auction applicants. As in past auctions where similar suggestions have been made, we explain that the targeted restrictions imposed by the rule are necessary to serve the important public interest in a fair and competitive auction.<sup>271</sup>

#### 1. Entities Covered by Section 1.21002

130. Section 1.21002's prohibition of certain communications will apply to any applicant that submits a short-form application to participate in Auction 903. **This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants become qualified bidders or actually bid.**<sup>272</sup>

<sup>268</sup> See *supra* para. 75.

<sup>269</sup> 47 CFR § 1.21002.

<sup>270</sup> See 47 CFR §§ 1.21001(b)(3)-(4), 1.21002; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 431.

<sup>271</sup> See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015) (*BIA Guidance*); *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, 27 FCC Rcd 4725, 4743-44, paras. 54-55 (WCB & WTB 2012) (discussing prohibition in competitive bidding for universal service support); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17551-52, para. 11 (2001) (explaining that “when one bidder is privy to a competing bidder's strategic bidding information . . . it may use such information to manipulate the auctions process and gain an unfair competitive advantage”).

<sup>272</sup> See, e.g., *Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (2004), *application for review granted in part sub nom. Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007) (*Star and Northeast Review Order*), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (observing that Section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, FCC, to Robert Pettit, Wiley, Rein & Fielding, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

131. “Applicant” for purposes of this rule includes the entity filing the application, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.<sup>273</sup>

132. Subject to the exception described above, the prohibition applies to communications of an applicant that are conveyed to another applicant.<sup>274</sup> The prohibition of “communicating in any manner” includes public disclosures as well as private communications and indirect or implicit communications, as well as express statements of bids and bidding strategies.<sup>275</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant, unless the exception applies.<sup>276</sup>

133. Applicants subject to section 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any other applicant’s bids or bidding strategies. Information received by a party related to the applicant may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant, and, absent a disclosed agreement that makes the rule’s exception applicable, the shared officer creates an apparent violation of the rule.<sup>277</sup> Commission staff have not addressed a situation where non-officers or directors receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

## 2. Prohibition Applies Until Long-Form Application Deadline

134. The section 1.21002 prohibition of certain communications begins at the short-form application filing deadline and ends at the long-form application deadline. As discussed below, long-form applications will be due within 10 business days after release of the Auction 903 closing public notice, unless otherwise provided by public notice.<sup>278</sup>

## 3. Prohibited Communications

135. Section 1.21002 prohibits an applicant from communicating with another applicant only with respect to “its own, or one another’s, or any other competing applicant’s bids or bidding strategies.”<sup>279</sup> Thus, the prohibition does not apply to all communications between or among applicants; it

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<sup>273</sup> 47 CFR § 1.21002(a).

<sup>274</sup> *Id.* § 1.21002(b).

<sup>275</sup> *Id.*; see generally *Updating Part 1 Competitive Bidding Rules*, 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).

<sup>276</sup> We remind applicants that they must determine whether parties with whom they are communicating are covered by the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

<sup>277</sup> See, e.g., Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, FCC Wireless Telecommunications Bureau, to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, 20 FCC Rcd 14648 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

<sup>278</sup> See *infra* Section V.B (Long-Form Application: Disclosures and Certifications).

<sup>279</sup> 47 CFR § 1.21002(b).

applies to any communication conveying, in whole or part, directly or indirectly, the applicant's or a competing applicant's bids or bidding strategies.

136. All applicants applying to obtain support are “competing applicants” under the rule. Parties apply to participate in Auction 903 to obtain support from a fixed budget that is insufficient to provide support at the reserve price to all eligible areas. The bidding system determines which areas will receive support based on the bids placed for any areas. As in the reverse auction portion of the broadcast incentive auction, applicants are competing with one another regardless of whether each seeks to serve different geographic areas with Phase II support.<sup>280</sup>

137. A communication must convey “bids or bidding strategies” to be covered by the prohibition. The prohibition applies to the same subject matter included in “joint bidding arrangements,” as defined for purposes of determining impermissible state overlaps among applicants.<sup>281</sup> Those arrangements (i) relate to any eligible area in the Phase II auction and (ii) address or communicate bids or bidding strategies, including arrangements regarding Phase II support levels (i.e., bidding percentages) and specific areas on which to bid, as well as any arrangements relating to the post-auction market structure in an eligible area.<sup>282</sup> Thus, covered parties should be careful to avoid direct or indirect communications with another applicant that (i) relate to any Phase II auction eligible area(s) and (ii) address Phase II support levels, including potential arrangements regarding the post-auction market structure in eligible areas.

138. Business discussions and negotiations that are *unrelated* to bidding in Auction 903 and that do not convey information about Phase II bids or bidding strategies are not prohibited by the rule.<sup>283</sup> Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 903 will not violate the rule. In contrast, communicating how a party will participate, including specific states and/or tier and latency combinations selected, specific percentages bid, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.<sup>284</sup>

139. While section 1.21002 does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategy. Certain discussions might touch upon subject matters that could convey cost information and bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

140. We caution applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.”<sup>285</sup> Moreover, the

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<sup>280</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6738, para. 400 (2014).

<sup>281</sup> See *BIA Guidance*, 30 FCC Rcd at 10806, paras. 32-33 (explaining that the definition of joint bidding arrangements identifies the types of communications subject to the prohibited communications rule).

<sup>282</sup> See *supra* Section II.E.1 (State Selections and Impermissible State Overlaps).

<sup>283</sup> See *BIA Guidance*, 30 FCC Rcd at 10795, para. 3.

<sup>284</sup> See *id.* at 10796-97, paras. 6-9.

<sup>285</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate . . . in specific markets,"<sup>286</sup> and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."<sup>287</sup>

141. Likewise, when completing short-form applications, each applicant should avoid any statements or disclosures that may violate section 1.21002, particularly in light of the limited information procedures in effect for Auction 903. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its state selection, such as referring to certain states or markets in describing bidding agreements, including any information in attachments that will be publicly available that may otherwise disclose the applicant's state selections, or, to the extent it has an alternative option, using applicant names that refer to states or locations within a state.<sup>288</sup>

142. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a section 1.21002 violation.<sup>289</sup> Similarly, an applicant's public statement of intent not to place bids during Auction 903 bidding could also violate the rule.

143. Applicants should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.21002 even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating with Third Parties

144. Section 1.21002 does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender, provided that the applicant takes appropriate steps to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other applicants, unless both applicants are parties to a joint bidding arrangement disclosed on their respective applications.<sup>290</sup> For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party.<sup>291</sup> Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating

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<sup>286</sup> *Mercury PCS II, LLC*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970, 17974, 17976, paras. 12, 17 (1997).

<sup>287</sup> *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998).

<sup>288</sup> For example, if an existing ETC with a name that includes the state in which it operates wishes to apply, it need not necessarily change that name to avoid violating section 1.21002. However, to the extent that an existing entity wishes to apply through a new operating company, it should avoid using a location name for that new entity.

<sup>289</sup> *Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>290</sup> *See, e.g., BIA Guidance*, 30 FCC Rcd at 10798, para. 13 (describing the use of non-disclosure agreements and, for third parties that may be advising multiple covered parties, firewalls).

<sup>291</sup> *Id.*

the bids or bidding strategies of one applicant to other individuals representing separate applicants.<sup>292</sup> Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability, if a violation of the rule has occurred.<sup>293</sup>

145. As Commission staff have explained in the context of the broadcast incentive auction, in the case of an individual, the objective precautionary measure of a firewall is not available.<sup>294</sup> As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of engaging in a prohibited communication.<sup>295</sup> We will take the same approach to interpreting the prohibited communications rule in Auction 903. We emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.<sup>296</sup>

146. Separate Auction 903 applicants should not specify the same individual on their short-form applications to serve as an authorized bidder.<sup>297</sup> A violation of section 1.21002 could occur if an individual acts as the authorized bidder for two or more applicants because a single individual may, even unwittingly, be influenced by the knowledge of the bids or bidding strategies of multiple applicants, in his or her actions on behalf of such applicants.<sup>298</sup> Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm, engineering firm, or consulting firm), a violation similarly could occur.<sup>299</sup> In the latter case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.21002.<sup>300</sup>

147. Some commenters suggest that communications of bids or bidding strategies can be completely prevented even when applicants retain the same individual counsel, consultant, or expert and obtain bidding advice from that individual throughout the auction or that under particular circumstances in this auction any potential for such communications should be ignored.<sup>301</sup> As a threshold matter, we reiterate that whether a communication is prohibited is fact dependent and determined on a case-by-case basis. Therefore, we cannot categorically announce more “flexible” or lenient enforcement intentions or speculate on whether hypothetical, broadly described conduct would constitute a violation of the rule, as commenters request. Nonetheless, Commission precedent makes clear that an individual consultant hired by multiple applicants to offer bidding advice during the auction presents a greater risk of violating

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<sup>292</sup> See *id.*; *Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978, para. 12 (1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

<sup>293</sup> See, e.g., *BIA Guidance*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

<sup>294</sup> *BIA Guidance*, 30 FCC Rcd at 10800, para. 15.

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> Each applicant must specify at least one and up to three individuals (or authorized bidders) to place bids in the bidding system on behalf of the applicant. 47 CFR § 1.21001(b)(2).

<sup>298</sup> See *BIA Guidance*, 30 FCC Rcd at 10800, para. 15.

<sup>299</sup> See *Nevada Wireless Order*, 13 FCC Rcd at 11977-78, paras. 11-12.

<sup>300</sup> *Id.*

<sup>301</sup> See ACA Comments at 7-8; Rural Coalition Comments at 7-12; RWA Comments at 3-6; WISPA Comments at 4-6; GeoLinks Reply at 4-5; ILSR et al. Reply at 10. By contrast, AT&T urges us to reject requests to weaken the Commission’s long-standing anti-collusion rules, claiming that there is a “very high risk that bidders could use resource sharing to engage in coordinated bidding, and thus undermine the integrity of the auction.” AT&T Reply at 9-11.

section 1.21002 than an individual consultant who estimates the costs of individual projects for multiple applicants without weighing in on bidding strategies during the bidding.

148. While commenters propose various safeguards, such as firewalls,<sup>302</sup> attorney ethics rules,<sup>303</sup> and attestations,<sup>304</sup> we cannot conclude that such safeguards always will work in practice to prevent the communication of bids and bidding strategies between applicants consulting the same individual. Once an individual obtains bidding information from one applicant, any subsequent bidding advice to a different auction participant would necessarily be informed and influenced by such information—even if its use were not intentional or knowing. Any applicant’s attestation or attorney ethics rules aimed at intentional or knowing disclosures would be ineffective at preventing *all* communications relating to bidding and bidding strategies.<sup>305</sup> We are unwilling to overlook the risk of potential collusion or dismiss it as “inconsequential,” as WISPA suggests.<sup>306</sup> Accordingly, we reject the notion that such safeguards applied to an individual advisor should provide an absolute defense against an alleged violation of the prohibited communications rule.

149. WISPA, with support from various commenters, proposes a safe harbor from violations for applicants that retain the same individual counsel, consultant, or expert so long as the applicants bid on different CBGs.<sup>307</sup> However, the auction involves inter-area competition for a finite budget—not just competition for specific CBGs.<sup>308</sup> Accordingly, we do not want to sanction the sharing of bidding information from *any* bidder in the auction by the same individual, even if unintentional or unknowing. To hold otherwise would “encourage[] parties to divide up territory where the parties will not compete against one another.”<sup>309</sup>

150. The same rationale would apply if, for example, two applicants that have been qualified to bid in separate states were to decide to retain the same consultant. Although we are unwilling to grant a safe harbor for such an engagement, the absence of a safe harbor does not mean that any use of common counsel, consultants, or experts inevitably will result in a finding that the applicants involved violated the prohibition. First, applicants that have entered into a joint bidding arrangement identified on the applicants’ short-form applications are excepted from the prohibition and therefore will not violate it by sharing third-party services.<sup>310</sup> Second, as already noted, corporate third parties and even individual third parties might be able to serve more than one applicant in the auction without becoming a conduit for

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<sup>302</sup> See ACA Comments at 8 (suggesting written procedures that the Commission could request); see also Rural Coalition Reply at 9; WISPA Reply at 17.

<sup>303</sup> See RWA Comments at 5-6 (proposing that an attorney retain any consultants or other experts because he or she is already subject to attorney ethical rules). But see WISPA Reply at 17 (observing that not all bidders will find it necessary to engage attorneys).

<sup>304</sup> See Rural Coalition Comments at 11 (recommending a safe harbor attestation that applicant is not purposely restricting competition).

<sup>305</sup> The Rural Coalition quotes New York’s New NY Broadband Program’s attestation that refers to “knowing[]” disclosures and “for the purposes of restricting competition.” Rural Coalition Comments at 11; see RWA Reply at 9. Similarly, RWA quotes a District of Columbia Bar rule that prohibits “knowing[]” disclosures. RWA Comments at 5 n.14.

<sup>306</sup> WISPA Comments at 5; see Rural Coalition Comments at 10.

<sup>307</sup> See WISPA Comments at 5-6 (suggesting a safe harbor for a single consultant providing advice relating to different CBGs); see also ACA Reply at 20; GeoLinks Reply at 5; RC Reply at 9; RWA Reply at 8-9; WISPA Reply at 16-17.

<sup>308</sup> See AT&T Reply at 12-13.

<sup>309</sup> *Id.* at 12.

<sup>310</sup> See 47 CFR § 1.21002(b). As noted below, applicants still must ensure that any such agreements are consistent with the antitrust laws.

prohibited communications. For instance, a consultant may be able to provide a tool to assist multiple bidders without conveying the bids or bidding strategies of one to the other(s). The specific facts of each circumstance, which potentially could include, e.g., records of communications between a consultant and the applicants, will help the Commission determine whether the applicants involved violated the prohibition.

151. Likewise, we cannot agree with some commenters that claim we should allow bidders to retain the same individual counsel, consultant, or expert in the auction because there is little risk of competitive harm from such conduct.<sup>311</sup> Communication of bids or bidding strategies between applicants disadvantages other applicants and thereby harms the competitive bidding process, even if we were to assume there would be no direct harm to the auction results.<sup>312</sup> Contrary to the Rural Coalition's claims, applicants in Auction 903 could benefit from coordinating their bidding, just as applicants could in the reverse auction of the broadcast incentive auction.<sup>313</sup> In both Auction 903 and the broadcast reverse auction, the bids each applicant places will help determine the amount that all winning bidders will receive. As a result, it would be unwise for us to take any action that would facilitate undesirable coordinated conduct in Auction 903.

152. We remind potential applicants that they may discuss the short-form application or bids for specific CBGs with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including state(s) selected on the short-form application, is conveyed to that individual. With respect to bidding, the same third-party individual could, *before* the short-form application deadline, assist more than one potential applicant with calculating how much support the specific applicant would require to provide service in each CBG for which it is interested in bidding.<sup>314</sup> If such work can be completed in advance of the short-form application deadline, it would eliminate the need for third-party bidding advice during the auction. Finally, to the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.<sup>315</sup>

153. We recognize that some potential applicants may be new to Commission auctions, and dealing for the first time with the prohibited communications rule and the application and bidding procedures we are adopting today. We concur with the Rural Coalition and AT&T that we should provide further education on the auction application and bidding procedures and on the prohibited communications rule,<sup>316</sup> and we describe the Bureaus' planned education opportunities in Section III.A. Moreover, both before and during the application and bidding processes, as in all Commission auctions, we will provide potential and participating bidders with secure ways to ask Commission staff questions concerning, *inter alia*, application of the rules and procedures. Although the comments contain numerous references to the "complexity" of the auction and claims that such complexity necessitates retaining third-

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<sup>311</sup> See Rural Coalition Comments at 7-12; RWA Comments at 3-6; WISPA Comments at 4-6.

<sup>312</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469, 475 (D.C. Cir. 2008) (rejecting the argument that communications that did not lower auction prices caused no harm in part because "insider dealing, especially if widespread, could reduce non-colluding parties' incentive to participate in future auctions").

<sup>313</sup> See Rural Coalition Comments at 10 (asserting that coordination was more likely in the broadcast reverse auction because applicants were more likely to overlap geographically and could easily share the cash proceeds of a winning bid).

<sup>314</sup> See AT&T Reply at 10-11.

<sup>315</sup> *BIA Guidance*, 30 FCC Rcd at 10802, para. 20.

<sup>316</sup> See Rural Coalition Comments at 9-11; AT&T Reply at 10; *see also* ACA Reply at 21 n.92.

party advisors,<sup>317</sup> much of what appears to be complex may be lack of familiarity with our bidding procedures.<sup>318</sup> Taking full advantage of the various education opportunities that will be offered will increase parties' familiarity with the auction procedures and assist potential bidders in developing approaches consistent with their specific circumstances.<sup>319</sup>

#### 5. Section 1.21001(b)(4) Certification

154. By electronically submitting a short-form application, each applicant in Auction 903 certifies its compliance with sections 1.21001(b)(4) and 1.21002.<sup>320</sup> In particular, an applicant must certify under penalty of perjury that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Phase II support.<sup>321</sup> Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 CFR § 1.21002.<sup>322</sup>

155. We caution, however, that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>323</sup> The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."<sup>324</sup> Any applicant found to have violated section 1.21002(b) may be subject to sanctions.<sup>325</sup>

#### 6. Duty to Report Prohibited Communications

156. Section 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate section 1.21002 must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>326</sup> An applicant's obligation to make such a report continues until the report has been made.<sup>327</sup>

157. In addition, section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.<sup>328</sup> Thus, section 1.65 requires an Auction 903 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the

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<sup>317</sup> See Rural Coalition Comments at 6; RWA Comments at 3; WISPA Comments at 4. AT&T disagrees with the parties' claims that Auction 903 is "overly complicated." AT&T Reply at 10.

<sup>318</sup> We address commenters' specific claims of complexity in the relevant sections of the bidding procedures below.

<sup>319</sup> See AT&T Reply at 10 (claiming that further education to bidders should make clear that they "do not need to hire . . . a full complement of consultants, experts, and attorneys to participate in any meaningful way in the auction").

<sup>320</sup> 47 CFR §§ 1.21001(b)(4), 1.21002.

<sup>321</sup> *Id.* § 1.21001(b)(4).

<sup>322</sup> *Id.* §§ 1.21001(b)(5), 1.21002.

<sup>323</sup> See *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

<sup>324</sup> *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

<sup>325</sup> See, e.g., 47 CFR § 1.2109(d).

<sup>326</sup> *Id.* § 1.21002(c); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

<sup>327</sup> 47 CFR § 1.21002(c).

<sup>328</sup> *Id.* § 1.65.



potential to affect bids or bidding strategy, unless such communication is made to or received from an applicant that is a member of a joint bidding arrangement identified on the application pursuant to section 1.21001(b)(4).<sup>329</sup>

158. Sections 1.65(a) and 1.21002 of the Commission's rules require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.<sup>330</sup> These rules are intended to facilitate the auction process by making information that should be publicly available promptly accessible to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.<sup>331</sup>

## 7. Procedure for Reporting Prohibited Communications

159. A party reporting any prohibited communication pursuant to sections 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of section 1.21002.<sup>332</sup> For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that allow such materials to be made available for public inspection.

160. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions.<sup>333</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.21002(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>334</sup> For Auction 903, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: [auction903@fcc.gov](mailto:auction903@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6-C217, Washington, DC 20554.

161. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.<sup>335</sup> We encourage such

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<sup>329</sup> See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

<sup>330</sup> *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*).

<sup>331</sup> *Id.*

<sup>332</sup> 47 CFR §§ 1.65, 1.21001(b)(3)-(5), 1.21002.

<sup>333</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes, which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

<sup>334</sup> *Id.*

<sup>335</sup> See 47 CFR § 0.459. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all the material to which the request applies. See *id.* § 0.459(a).

parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.<sup>336</sup>

### **8. Winning Bidders Must Disclose Terms of Agreements**

162. Each applicant that is a winning bidder may be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered.<sup>337</sup> This may apply to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

### **9. Additional Information Concerning Prohibition of Certain Communications in Commission Auctions**

163. Section 1.21002 is consistent with similar rules the Commission has applied in other Commission auctions. Applicants may gain insight into the public policies underlying section 1.21002 by reviewing information about the application of these other rules. Decisions applying these rules by courts and by the Commission and its bureaus in other Commission auctions can be found at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).<sup>338</sup> Applicants utilizing these precedents should keep in mind the specific language of the rule applied in past decisions, as well as any differences in the context of the applicable auctions.

### **10. Antitrust Laws**

164. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>339</sup> Compliance with the disclosure requirements of section 1.21002 will not insulate a party from enforcement of the antitrust laws.<sup>340</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>341</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.<sup>342</sup> Similarly, Commission staff have previously reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has

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<sup>336</sup> See *supra* Section VII (Contact Information).

<sup>337</sup> See 47 CFR § 54.315(b)(2)(viii) (applicants for Phase II support will need to provide “[s]uch additional information as the Commission may require”).

<sup>338</sup> Note that this website is not intended to—and does not—include every Commission document, judicial opinion, or civil enforcement action that refers to the prohibition of certain communications in Commission auctions.

<sup>339</sup> See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) (quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (*Fourth Memorandum Opinion and Order*).

<sup>340</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12. See also Press Release, Dep't of Justice, Justice Department Sues Three Firms Over FCC Auction Practices (Nov. 10, 1998).

<sup>341</sup> See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134.

<sup>342</sup> *Id.*

reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.<sup>343</sup>

165. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>344</sup> If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in Auction 903 and in future auctions, among other sanctions.<sup>345</sup>

#### H. Red Light Rule

166. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligation under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States, including debts owed to the Commission.<sup>346</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed.<sup>347</sup> Applicants seeking to participate in Auction 903 are subject to the Commission's red light rule.<sup>348</sup> Pursuant to the red light rule, unless otherwise expressly provided for, the Commission will withhold action on an application by any entity found to be delinquent in its debt to the Commission.<sup>349</sup>

167. Because robust participation is critical to the success of the Phase II auction, we find good cause to provide a limited waiver of the red light rule for any applicant seeking to participate in Auction 903 that is red-lighted for debt owed to the Commission at the time it timely files a short-form application.<sup>350</sup> Specifically, a red-lighted applicant seeking to participate in Auction 903 will have until the close of the application resubmission filing window to pay any debt(s) associated with the red light. No further opportunity to cure will be allowed. If an applicant has not resolved its red light issue(s) by the close of the initial filing window, its application will be deemed incomplete. If the applicant has not resolved its red light issue(s) by the close of the application resubmission window, Commission staff will immediately cease all processing of the applicant's short-form application, and the applicant will be deemed not qualified to bid in the auction. As noted above, this waiver is limited. It does not waive or otherwise affect the Commission's right or obligation to collect any debt owed to the Commission by an Auction 903 applicant by any means available to the Commission, including set off, referral of debt to the

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<sup>343</sup> *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995).

<sup>344</sup> *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2388, para. 226 (1994).

<sup>345</sup> *See id.*; 47 CFR § 1.2109(d).

<sup>346</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (*Debt Collection Report and Order*); 47 CFR Part 1, Subpart O.

<sup>347</sup> 47 CFR § 1.1910(b)(2).

<sup>348</sup> Parties familiar with spectrum license auctions should note that the stricter spectrum license application rules supersede the Commission's red light rules in the context of a spectrum license auction. *See* 47 CFR § 1.1902(f). No corresponding provision applies with respect to Auction 903, however. Accordingly, the Commission's standard red light rules will apply.

<sup>349</sup> 47 CFR § 1.1910(b)(2).

<sup>350</sup> 47 CFR § 1.3.

United States Treasury for collection, and/or by red lighting other applications or requests filed by an Auction 903 applicant.

168. Potential applicants for Auction 903 should review their own records, as well as the Commission's Red Light Display System (RLD), to determine whether they owe any non-tax debt to the Commission and should try to resolve and pay any outstanding debt(s) prior to submitting a short-form application. The RLD enables a party to check the status of its account by individual FCC Registration Numbers (FRNs) and links other FRNs sharing the same Tax Identification Number (TIN) when determining whether there are outstanding delinquent debts. The RLD is available at <http://www.fcc.gov/redlight/>. Additional information is available at [https://www.fcc.gov/debt\\_collection/](https://www.fcc.gov/debt_collection/).

169. Additionally, we recognize that an Auction 903 applicant may incur debt to the Commission after it files its short-form application and may fail to pay that debt when due. An applicant should note that the Commission will conduct additional red light checks prior to authorizing Phase II auction support. We therefore encourage qualified bidders to continue to review their own records as well as the RLD periodically during the auction and to resolve and pay all outstanding debts to the Commission as soon as possible. The Commission will not authorize any winning bidder to receive Phase II auction support until its red light issues have been resolved.

#### **I. USF Debarment**

170. The Commission's rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program.<sup>351</sup> Auction 903 applicants are reminded that those rules apply with equal force to the Phase II auction.

#### **J. Modifications to FCC Form 183**

##### **1. Only Minor Modifications Allowed**

171. After the initial FCC Form 183 filing deadline, an Auction 903 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules.<sup>352</sup> Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an FCC Form 183 (e.g., adding a state in which the applicant intends to bid, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change of certifying official, change in applicant's legal classification that results in a change in control) will not be permitted after the initial FCC Form 183 filing deadline.<sup>353</sup> If an amendment reporting changes is a "major amendment," as described in section 1.21001(d)(4), the major amendment will not be accepted and may result in the dismissal of the application.<sup>354</sup>

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<sup>351</sup> 47 CFR § 54.8.

<sup>352</sup> *See id.* § 1.21001(d)(5). Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application.

<sup>353</sup> *See id.* § 1.21001(d)(4). Contending that a change in control after the short-form application deadline should not disqualify a bidder from the auction, WISPA proposes that the Commission entertain waiver requests of the relevant rules prohibiting this type of major modification. *See* WISPA Comments at 6-7. While parties can always seek waiver of any Commission rules, we emphasize that we would be reluctant to depart from the Commission's well-established precedent on this issue because a change of control would effectively allow auction participation by parties that have not been subject to our pre-auction application review and qualification process.

<sup>354</sup> Any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed. We reiterate that, even if an applicant's FCC

(continued....)

## 2. Duty to Maintain Accuracy and Completeness of FCC Form 183

172. Pursuant to section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in the Phase II auction.<sup>355</sup> Consistent with the requirements for our spectrum auctions, an applicant for Auction 903 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 183 no more than five business days after the applicant becomes aware of the need for the amendment.<sup>356</sup> An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

## 3. Modifying an FCC Form 183

173. As noted above, an entity seeking to participate in Auction 903 must file an FCC Form 183 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 183 in the Auction Application System. An applicant that has certified and submitted its FCC Form 183 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and resubmit its FCC Form 183 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.<sup>357</sup>

174. An applicant will also be allowed to modify its FCC Form 183 in the Auction Application System, except for certain fields,<sup>358</sup> during the resubmission filing window and after the release of the public notice announcing the Auction 903 qualified bidders. During these times, if an applicant needs to make permissible minor changes to its FCC Form 183, or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65, it must make the change(s) in the Auction Application System and then re-certify and re-submit its application to confirm and effect the change(s).

175. An applicant's ability to modify its FCC Form 183 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window and between the closing of the resubmission filing window and the release of the public notice announcing the Auction 903 qualified bidders. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC

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Form 183 is dismissed, the applicant would remain subject to the communication prohibitions of section 1.21002 until the long-form application filing deadline, which will be established after the auction closes.

<sup>355</sup> See 47 CFR § 1.65. For purposes of section 1.65, an applicant's FCC Form 183 and associated attachments will remain pending until the release of a public notice announcing the close of Auction 903. However, we remind Auction 903 applicants that they remain subject to the section 1.21002 prohibition of certain communications until the post-auction deadline for filing long-form applications for winning bids. An applicant's post-auction long-form application (FCC Form 683) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the long-form application is no longer subject to reconsideration by the Commission or to review by any court. See 47 CFR § 1.65(a).

<sup>356</sup> See 47 CFR §§ 1.65; 1.2105(b)(4). We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130, 14134, para. 11 (EB 2011).

<sup>357</sup> We strongly advise applicants to retain a copy of this confirmation page.

<sup>358</sup> Specifically, an applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official.

Form 183 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 183, or changes to maintain the accuracy and completeness of its application pursuant to section 1.65, the applicant must submit a letter briefly summarizing the changes to its FCC Form 183 via email to [auction903@fcc.gov](mailto:auction903@fcc.gov). The email summarizing the changes must include a subject line referring to Auction 903 and the name of the applicant, for example, “Re: Changes to Auction 903 Auction Application of XYZ Corp.” Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 183 application electronically in the Auction Application System once it is again open and available to applicants.

176. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (e.g., correcting a misstatement of the applicant’s legal classification).<sup>359</sup> If an applicant needs to make a permissible minor change of this nature, it must submit a written request by email to [auction903@fcc.gov](mailto:auction903@fcc.gov), requesting that the Commission manually make the change on the applicant’s behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then recertify and resubmit its FCC Form 183 in the Auction Application System to confirm and effect the change(s).

177. As with filing the FCC Form 183, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

178. Applicants must not submit application-specific material through the Commission’s Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.21002 or the limited information procedures adopted for Auction 903. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant’s state and/or performance tier and latency selection(s) or specific information about bid(s), should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.21002.

179. Questions about FCC Form 183 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

### **III. PREPARING FOR BIDDING IN AUCTION 903**

#### **A. Bidder Education**

180. Prior to the deadline for applications to participate in Auction 903, detailed educational information will be provided in various formats to would-be participants.

181. We will provide various materials on the pre-auction process in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing Form 183. In addition, we will provide an online application procedures tutorial covering information on pre-auction preparation, completing short-form applications, the application review process, and Phase II rules. Moreover, we will conduct a workshop or webinar on the pre-auction application process, with an opportunity for participants to ask questions.

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<sup>359</sup> This is the case because certain fields on the FCC Form 183 will no longer be available to/changeable by the applicant after the initial filing window closes.



182. We will provide separate educational materials on the bidding process in advance of the start of the mock auction, beginning with release of a user guide for the bidding system, followed by an online bidding procedures tutorial. We will also conduct a workshop or webinar on the bidding process with an opportunity for participants to ask questions.

183. Based on our experience with past auctions, parties interested in participating in this auction will find these educational opportunities an efficient and effective way to further their understanding of the application and bidding processes. The Auction 903 online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and a timeline with deadlines for auction preparation. The online tutorials will be accessible on the “Education” tab of the Phase II auction website at <https://www.fcc.gov/connect-america-fund-phase-ii-auction>. Once posted, the tutorials will be accessible anytime.<sup>360</sup>

184. Finally, as proposed, the Commission’s Office of Communications Business Opportunities will engage with small providers interested in the auction process.<sup>361</sup>

### **B. Short-Form Applications: Due Before 6:00 p.m. ET on March 30, 2018**

185. In order to be eligible to bid in this auction, applicants must first follow the procedures to submit a short-form application (FCC Form 183) electronically via the Auction Application System, following the instructions to be released with a public notice in advance of the opening of the filing window. This short-form application will become available with the opening of the initial filing window and must be submitted **prior to 6:00 p.m. ET on March 30, 2018. Late applications will not be accepted.** No application fee is required.

186. Applications may be filed at any time beginning at noon ET on March 19, 2018, until the filing window closes at 6:00 p.m. ET on March 30, 2018. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on March 30, 2018.

187. An applicant must always click on the CERTIFY & SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 183 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 183 will be provided in a separate public notice. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

### **C. Application Processing and Minor Modifications**

#### **1. Public Notice of Applicant’s Initial Application Status and Opportunity for Minor Modifications**

188. After the deadline for filing auction applications, the Bureaus will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding, and subsequently will issue a public notice with applicants’ initial application status identifying (1) those that are complete and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will

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<sup>360</sup> The Illinois Electric Cooperative expressed support for multiple types of bidder educational opportunities, including webinars, tutorials, and in-person workshops, in its comments. See IEC Comments at 4-5.

<sup>361</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Red at 6260, para. 71.

include the deadline for resubmitting corrected applications and a paper copy will be sent to the contact address listed in the FCC Form 183 for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

189. After the initial application filing deadline on March 30, 2018, applicants can make only minor modifications to their applications.<sup>362</sup> Major modifications (e.g., change control of the applicant, change the certifying official, or selecting additional states in which to bid) will not be permitted.<sup>363</sup> After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 903.

190. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 183, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf.<sup>364</sup> Authorizations may be sent by email to [auction903@fcc.gov](mailto:auction903@fcc.gov).

## 2. Public Notice of Applicant's Final Application Status

191. After the Bureau review resubmitted applications, they will release a public notice identifying applicants that have become qualified bidders. The *Auction 903 Qualified Bidders Public Notice* will be issued at least 15 business days before bidding in Auction 903 begins. Qualified bidders are those applicants with submitted FCC Form 183 applications that are deemed timely filed and complete.

### D. Auction Registration

192. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 183 and will include the SecurID® tokens that will be required to place bids and the Auction Bidder Line phone number.

193. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on July 9, 2018, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

194. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

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<sup>362</sup> See *supra* Section II.J (Modifications to FCC Form 183).

<sup>363</sup> 47 CFR § 1.2105(b); see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035, 12039, para. 8 (1999).

<sup>364</sup> In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 183 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 183. See *infra* Section III.D (Auction Registration).



### E. Remote Electronic Bidding via the CAF II Bidding System

195. Bidders will be able to participate in Auction 903 over the Internet using the CAF II Bidding System.<sup>365</sup> Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID tokens. **For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 183.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 903. Please note that the SecurID® tokens can be recycled and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

196. **The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the CAF II Bidding System, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the CAF II Bidding System. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the CAF II Bidding System.**

197. To the extent an issue arises with the CAF II Bidding System itself, the Bureaus will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the CAF II Bidding System or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the CAF II Bidding System, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the CAF II Bidding System.

### F. Mock Auction

198. All qualified bidders will be eligible to participate in a mock auction, which will be scheduled during the week before the first day of bidding in Auction 903. The mock auction will enable qualified bidders to become familiar with the CAF II Bidding System and to practice submitting bids prior to the auction. We strongly recommend that all qualified bidders, including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the Auction 903 Qualified Bidders Public Notice.

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<sup>365</sup> In this Public Notice, the CAF II Bidding System is also referred to as the "bidding system." Telephonic bidding will not be available for Auction 903 because it would not be feasible given the number of eligible geographic areas and the manner in which bids will be uploaded. However, the Auction Bidder Line will be available during the mock auction and actual auction for bidder questions. The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder.

#### IV. BIDDING IN AUCTION 903

##### A. Auction Structure: Reverse Auction Mechanism

###### 1. Multi-Round Reverse Auction Format

199. As proposed in the *CAF II Auction Comment Public Notice*, we will conduct Auction 903 using a multi-round, descending clock auction.<sup>366</sup>

200. At a very high level, bidding in Auction 903 works as follows: In each round of the auction, a bidder will be asked whether it is willing to provide service to an area, at a performance tier and latency it indicates, in exchange for a support amount that is at least as high as an amount announced by the bidding system. In each subsequent round, the announced support amount will be less than the amount from the previous round. To the extent that the bidder is willing to accept the announced amount, it will so indicate by submitting a “bid” on a spreadsheet indicating the area, the tier and latency, and the current amount that it accepts. If the current round’s announced support amount becomes too low for the bidder, the bidder can simply stop bidding for the area or alternatively, can enter a bid that indicates the lowest amount it will accept (an amount higher than the round’s announced amount and lower than the last round’s announced amount) in exchange for providing the service.<sup>367</sup>

201. As set forth in the sections below, the announced support amount that the bidder responds to in a round depends on a percentage—applicable to bidding for all areas—as well as the reserve price for the specific area and the level of service that the bidder proposes to provide if it is assigned support for the area. These factors are linked through a formula. However, the bidding template—the spreadsheet—will show the support amount for a bid as well as the various factors determining that support amount in a given bidding round. Therefore, to bid effectively, a bidder need only determine the lowest amount of support it will accept in exchange for providing service to an area and bid for support that is at least that amount.

202. In adopting the bidding procedures set forth below, we are mindful of the need to make the bidding process as simple as possible, while ensuring an orderly, fair, and transparent auction. In response to commenter input, we have modified some of our proposed bidding procedures to simplify a bidder’s choices, as set forth below.<sup>368</sup> Moreover, we will provide ample bidder education prior to the auction to help ensure that all potential auction participants are confident of the bidding procedures we adopt.

###### 2. Minimum Geographic Area for Bidding

203. We will use CBGs containing one or more eligible census blocks as the minimum geographic area for bidding in the auction. In December 2017, WCB released a list of eligible census blocks based on December 31, 2016 FCC Form 477 data.<sup>369</sup> This list included approximately 214,000

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<sup>366</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6259, para. 71. The Commission expressed its preference for a multi-round auction in the *Phase II Auction Order* because multiple rounds would enable bidders “to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.” *Phase II Auction Order*, 31 FCC Rcd at 5978-79, para. 88. No commenter disagrees. ACA endorses this auction format because it promotes “price discovery, transparency, fairness, and efficiency.” ACA Reply at 3.

<sup>367</sup> As addressed below, the bidding process can be simplified further if the bidder wishes to enter its “bottom-line support amount” early in the auction, instructing the auction system to enter a proxy bid automatically in each round, without bidding lower than the bidder’s lowest acceptable support amount. See *infra* Section IV.B.3.f (Bids Placed by Proxy Bidding Instructions).

<sup>368</sup> See *infra* Sections IV.B.3.d.ii (Tier and Latency Combinations) and IV.B.3.g (Activity Rules).

<sup>369</sup> See *Eligible Census Block List*.

eligible census blocks, which are located in approximately 30,300 CBGs. As discussed above, WCB will release a revised map and list of eligible census blocks.

### 3. Auction Delay, Suspension, or Cancellation

204. By announcement, the auction may be delayed, suspended, or cancelled in the event of natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding.<sup>370</sup> In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the point at which the auction was suspended or cancel the auction in its entirety.

## B. Bidding Procedures

### 1. Bidding Overview

205. We will use a descending clock auction to identify the providers that will be eligible to become authorized to receive Phase II support, subject to post-auction application review.<sup>371</sup> This auction also will establish the amount of support that each winning bidder will be eligible to receive using a “second-price” rule.<sup>372</sup> Pursuant to the *Phase II Auction Order*, the auction assigns winning bids based on the percentage each bid represents of its respective area’s reserve price and determines support amounts that take into account the performance tier and latency specified in the bid.<sup>373</sup> In the sections below, we explain the details of the auction format and procedures that we adopt. We also direct the Bureaus to compile and release a guide that provides further technical and mathematical detail regarding the bidding, assignment, and support amount determination procedures we adopt here, as well as examples for potential bidders.<sup>374</sup>

206. The Bureaus will conduct the Phase II auction over the Internet, and bidders will upload bids in a specified file format for processing by the bidding system. Before each bidding round, the bidding system will announce a new base clock percentage, which will set a lower limit on the range of percentages for which bids will be accepted during that round. The percentage specified in a bid implies an annual support amount for the area, based on the specified performance tier and latency combination, consistent with the approach outlined in the *Phase II Auction FNPRM Order*.<sup>375</sup>

207. The opening base clock percentage implies a support amount that is equal to the full reserve price, and the base clock percentage then descends from one round to the next. In a round, a

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<sup>370</sup> See generally 47 CFR § 1.2104(i).

<sup>371</sup> As described below, before a winning bidder can receive support, the bidder will need to submit a long-form application and letter of credit and obtain an ETC designation in the relevant areas. Commission staff will evaluate the information submitted to determine whether an applicant has demonstrated that it is reasonably capable of meeting the relevant Phase II auction public interest obligations in the specific areas where it has been selected as a winning bidder.

<sup>372</sup> A second-price rule in this context generalizes the concept that the winning bidder for an area will be awarded support at the price (or in this case, percentage) at which the budget clears or its next closest competitor drops out of bidding, which will be at least as high as the winning bidder’s bid price. Specific procedures are set forth below in Sections IV.B.4.b (Bid Processing in the Clearing Round) and IV.B.4.c (Bids and Bid Processing in Rounds After the Clearing Round).

<sup>373</sup> *Phase II Auction Order*, 31 FCC Rcd at 5976-77, paras. 84-85.

<sup>374</sup> This guide will be comparable to the guide the Bureaus released to further explain the proposed bidding procedures in the *CAF II Auction Comment Public Notice*. See *Technical Guide on Proposed Bidding Procedures for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 5812 (WCB/WTB 2017).

<sup>375</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1627-28, para. 15.

bidder can submit a bid for a given area at any percentage that is greater than or equal to the round's base clock percentage and less than the previous round's base clock percentage. As of the close of a round, each bid represents an irrevocable offer to meet the terms of the bid if it becomes a winning bid.<sup>376</sup> That is, a bid indicates that the bidder is willing to provide service to the locations in the area in accordance with its specified performance tier and latency requirements in exchange for support. The support amount will be no less than the support amount implied by the bid percentage.

208. The base clock percentage will continue to descend in a series of bidding rounds, implying decreasing support amounts, until the aggregate amount of support represented by the bids placed in a round at the base clock percentage is no greater than the budget. At that point, when the budget "clears," the bidding system will assign support to bidders in areas where there are no competing bids. Bidding will continue, however, for areas where there are competing bids, and the clock will continue to descend in subsequent rounds. When there is no longer competition for any area, the auction will end. A winning bidder may receive support in amounts at least as high, because of the second-price rule, as the support amounts corresponding to the percentages of their winning bids.

209. The bidding procedures we adopt implement the Commission's prior decisions on bidding in the Phase II auction in a straightforward and simple way.<sup>377</sup> Accordingly, to compete effectively in the auction, a potential bidder need only determine the percentage corresponding to the lowest amount of support it will accept to serve a given area using its chosen technology and bid in the auction down to that percentage.<sup>378</sup> Below we set forth the rules governing how the auction system collects bids and determines winning bids and support amounts. We address these in detail so that potential participants can understand exactly how the auction works. Among the bidding rules we address are procedures for two optional variations on the basic bid submission approach, namely, procedures for instructing the system to submit proxy bids on behalf of the bidder and procedures for a type of package bidding. We include these options because we find that they will simplify the bidding process for those bidders that choose to use them, without unfairly disadvantaging bidders that do not choose to use them.

## 2. Reserve Prices

210. We adopt the Commission's proposals regarding reserve prices for the reasons discussed in the *CAF II Auction Comment Public Notice*.<sup>379</sup> The reserve price for each CBG is the sum of the amounts calculated as described below, for each eligible census block in that CBG. For all eligible high-cost census blocks (i.e., census blocks with average costs above the funding threshold but below the extremely high-cost threshold), we set a reserve price based on the annual support per-location calculated by the CAM for that census block. For census blocks with average costs that exceed the extremely high-cost threshold, we will impose a \$146.10 per-location-per-month funding cap so that the reserve price will be equal to \$146.10 multiplied by the number of locations in that census block as determined by the CAM multiplied by 12 months.<sup>380</sup> These procedures will ensure that no census blocks will receive more Phase

<sup>376</sup> See *supra* para. 79.

<sup>377</sup> As addressed in the *Phase II Auction Order*, the Commission determined that winning bids would be those that accept the lowest percentage of a model-based reserve price and that support amounts would be adjusted for different performance tiers and latencies using a schedule of weights. See *Phase II Auction Order*, 31 FCC Rcd at 5976-77, paras. 84-85.

<sup>378</sup> Below and in supplementary materials, we explain how to convert an area's reserve price, a performance tier and latency combination, and a bidding percentage to an implied support amount.

<sup>379</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6258-59, paras. 65-70.

<sup>380</sup> *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90 (deciding to cap the amount of support per location provided to extremely high-cost census blocks). This cap is calculated by starting with the extremely high-cost benchmark of \$198.60 and subtracting the funding threshold of \$52.50 that WCB determined could reasonably be recovered through end-user charges. See *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905,

(continued....)

II support than the CAM calculates is necessary for deploying and operating a voice and broadband-capable network in that census block.<sup>381</sup> The list of eligible census blocks is accompanied by the corresponding CBG list, which identifies the reserve price, on an annual basis, for each CBG.<sup>382</sup>

211. Finally, for administrative simplicity, we round the calculated reserve prices for each CBG (based on the sum of the reserve prices for each eligible census block in the CBG) to the nearest dollar. For example, if the calculated annual reserve price for a CBG is \$15,000.49, the reserve price will be rounded down to \$15,000 for the auction; and if a reserve price is \$15,000.50, the reserve price will be rounded up to \$15,001. Thus, any CBG with a calculated annual reserve price of less than \$0.50 is ineligible for the Phase II auction.

### 3. Bid Collection

#### a. Round Structure

212. The Phase II descending clock auction will consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round, as proposed.<sup>383</sup> As is typical for Commission auctions, the Bureaus retain the discretion to change the bidding schedule—with advance notice to bidders—in order to foster an auction pace that reasonably balances speed with giving bidders sufficient time to review round results and plan their bidding. The Bureaus may modify the amount of time for bidding rounds, the amount of time between rounds, and/or the number of rounds per day, depending on bidding activity and other factors.

#### b. Base Clock Percentage

213. Before each bidding round, the bidding system announces a base clock percentage that determines the range of acceptable price point percentages for bids submitted in the round.<sup>384</sup> Except in Round 1, a bid may be submitted at the base clock percentage, or at any higher price point percentage up to but not including, the base clock percentage from the previous round. In Round 1, a bid may be submitted at the base clock percentage or at any higher price point percentage, up to and including the opening base clock percentage.

214. A bid submitted at the base clock percentage indicates that the bidder is willing to provide the required service in the bid area in exchange for a payment at least as large as that implied by the base clock percentage.<sup>385</sup> A bid submitted at a higher price point percentage indicates that the bidder will provide service in the area at a support payment at least as great as that implied by the price point percentage of its bid, but not at lower support amounts.

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3905 n.1 (WCB 2015) (indicating that the extremely high-cost benchmark for the offer of model-based support was \$198.60); *CAM Inputs Order*, 29 FCC Rcd at 4033-41, paras. 164-82.

<sup>381</sup> The Commission decided to average costs at the census block level for the Phase II auction, which differs from the approach taken in the offer of model-based support for price cap carriers where the CAM calculated the costs associated with each carrier, wire center, or splitter separately, on a sub-census block basis. *Phase II Auction Order*, 31 FCC Rcd at 5971-72, paras. 64-65.

<sup>382</sup> As noted earlier, the list of census block groups can be found at <https://www.fcc.gov/files/caf2auctionpublishcbgcsv>.

<sup>383</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6260, para. 75.

<sup>384</sup> A single base clock percentage applies to bidding for all areas.

<sup>385</sup> Implied support amounts are addressed in Section IV.B.3.c (Implied Support Amounts Based on Performance Tier and Latency Weights). Under the second-price rule, a winning bidder will receive an annual support amount that is at least as great as the support amount implied by the bid percentage.

**(i) Opening Base Clock Percentage**

215. As proposed, the bidding system will set the opening base clock percentage at 100 percent of an area's reserve price plus an additional percentage equal to the largest weight corresponding to the performance tier and latency combinations submitted by any qualified bidder in the auction.<sup>386</sup> For example, if any applicant is qualified to bid to provide service at the Minimum performance tier and high latency—a T+L combination with an assigned weight of 90—the opening base clock percentage will be 190 percent. Starting the clock at this level will allow bidders with higher-weighted performance tier and latency combinations to compete, for multiple bidding rounds, with bidders offering performance tier and latency combinations with lower weights.<sup>387</sup>

**(ii) Clock Decrements**

216. The bidding system will decrement the base clock percentage by 10 percentage points in each round.<sup>388</sup> However, the Bureaus have the discretion to change that amount during the auction—within certain limits—if it appears that a lower or higher decrement would better manage the pace of the auction. For example, if bidding is proceeding particularly slowly, the bid decrement may be increased to speed up the auction, with advance notice to bidders, recognizing that a bidder has the option of bidding at an intra-round price point percentage if the base clock percentage falls to a percentage corresponding to an amount of support that is no longer sufficient. The bidding system will use a decrement of 10 percent at the start of the auction, and any further changes to the decrement will be limited to between 5 percent and 20 percent.

**c. Implied Support Amounts Based on Performance Tier and Latency Weights**

217. To calculate the implied annual support amount at a bid percentage, an area-specific reserve price is adjusted for the bid percentage and the weights for the performance tier and latency combination of the bid, set forth below, with implied support not to exceed the reserve price. This approach is consistent with previous Commission decisions regarding the Phase II auction.<sup>389</sup>

218. The base clock percentage in each round will imply, for each performance tier and latency (T+L) combination, a total amount of annual support in dollars for each area available for bidding. The annual support amount implied at the base clock percentage will be the smaller of the reserve price and the annual support amount obtained by using a formula that incorporates the performance tier and latency weights. Specifically:

$$\text{Implied Annual Support Amount (at the base clock percentage)} = \min \left\{ R, \left( \frac{BC - (T + L)}{100} \right) R \right\}$$

where:

- R denotes the area's reserve price
- T denotes the tier weight
- L denotes the latency weight
- BC denotes the base clock percentage

<sup>386</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6267-68, para. 108.

<sup>387</sup> At base clock percentages above 100, the implied support amounts of bids at higher performance tier and latency combinations with lower weights may not decrease from round to round, remaining instead at the area's full reserve price.

<sup>388</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6268, para. 110.

<sup>389</sup> See *id.* at 6261, paras. 77-78 (citing the Commission's prior decisions on performance tiers and latency in the *Phase II Auction Order* and on weights to compare bids in the *Phase II Auction FNPRM Order*).

219. Minimum performance tier bids will have a 65 weight; Baseline performance tier bids will have a 45 weight; Above Baseline performance tier bids will have a 15 weight; and Gigabit performance tier bids will have zero weight.<sup>390</sup> Moreover, high latency bids will have a 25 weight and low latency bids will have zero weight added to their respective performance tier weight. The lowest possible weight for a performance tier and latency combination is 0, and the highest possible weight is 90. Each weight uniquely defines a performance tier and latency (T+L) combination, as shown in the table below.

Weights for Performance Tiers and Latencies							
Minimum		Baseline		Above Baseline		Gigabit	
High Latency	Low Latency	High Latency	Low Latency	High Latency	Low Latency	High Latency	Low Latency
90	65	70	45	40	15	25	0

220. As the formula indicates, the implied support amount for an area cannot exceed an area's reserve price. As long as the base clock percentage remains at or above 100 plus the weight for the tier and latency combination of the bid (100+T+L), the implied annual support for a bid will be equal to the area's reserve price.<sup>391</sup> Therefore, in some rounds when the base clock percentage is above 100, there may be a bid for a given area at a tier and latency combination with implied annual support equal to the reserve price, and another bid for the same area at a higher weighted performance tier and latency combination, with implied support below the area's reserve price. However, once the base clock percentage is decremented below 100, the implied annual support for all area, performance tier, and latency combinations will be below each area's respective reserve price.

221. The formula above (the "implied support formula") can be used to determine the implied support at any price point percentage by substituting a given percentage for the base clock percentage.

222. The clock auction format we adopt today with a base clock percentage and weights for performance tier and latency combinations implements the Commission's prior decisions and provides a simple way to compare bids of multiple types.

#### d. Acceptable Bids

223. Under the procedures we adopt, to submit a bid for support to provide service to an area in the auction, the bidding system will require that a bidder specify the area, a performance tier and latency combination, and a price point percentage, which will in turn correspond to an indicated implied support amount for the bid. Such a bid is an offer to serve the eligible census blocks within the specified CBG at the indicated performance tier and latency, for a total amount of annual support that is at least the implied support amount of the bid. Several requirements, set forth below, will also apply to bid submission; the bidding system will advise bidders if a bid that the bidder attempts to submit does not meet these conditions. A bid may optionally include additional information for package bidding, as described in the following section.

<sup>390</sup> *Id.* at 6261, para. 78.

<sup>391</sup> For example, consider a bid at the Baseline performance tier with low latency, which has a T+L weight of 45. If the base clock percentage is 170, the implied support for the bid is equal to the lower of the reserve price for the area, R, and  $\{(170-45)/100\} * R$ , which is  $(125/100) * R$  or  $1.25 * R$ . Since R is less than  $1.25 * R$ , the implied support for the bid is equal to the reserve price. The implied support for a bid at this tier and latency combination will continue to be equal to the reserve price as long as the base clock percentage is equal to or above 145.

**(i) One Bid per Geographic Area per Round**

224. As proposed, a bidder will be able to place only one bid on a given CBG in a round, be it a bid for only that area or a package bid including the area.<sup>392</sup> Further, a bidder will be able to bid only for CBGs in states for which it is qualified to bid after review of its short-form application.<sup>393</sup>

225. The restriction on overlapping bids by a single bidder will simplify bid strategies for bidders and eliminate the need for the bidding system to use mathematical optimization to consider multiple ways to assign winning bids to a bidder, thus simplifying bid processing. Accordingly, the bidding system will not accept multiple bids by a bidder in a round that include the same area. USTelecom briefly contends that allowing bidders to group the same CBG in multiple packages would contribute to auction efficiency,<sup>394</sup> but we disagree and, for the reasons cited, we decline to accept that suggestion.

226. As addressed above, we also adopt application procedures prohibiting commonly controlled applicants or applicants subject to joint bidding arrangements from selecting any of the same states on their applications. This prohibition will ensure that such entities jointly will not be able to submit overlapping bids for the same geographic areas.<sup>395</sup> These application procedures, together with the requirement that a single bidder place only a single bid on a given area in a round, will reduce the potential for undesirable strategic bidding during the auction.<sup>396</sup>

**(ii) Tier and Latency Combinations**

227. We modify our proposed procedures and will not allow a bidder to change the performance tier and latency combination in a bid for a particular area from round to round. Instead, we adopt procedures to require that once a bidder has submitted a bid for a CBG at a particular performance tier and latency combination, any bids in subsequent rounds by that bidder for the same CBG must specify the same performance tier and latency combination. We find that this change to our proposal will simplify bidding strategies without an appreciable loss in useful flexibility for bidders that are eligible to bid for more than one performance tier and latency combination in a given area.

228. No commenters claim that such flexibility would be valuable to them, and indeed, we acknowledge that it is unclear how many auction participants even would have been eligible to make changes to their T+L combinations as proposed.<sup>397</sup> Several parties argue that the proposal to allow changes to the T+L combination of a bid adds complexity to the auction process.<sup>398</sup> We recognize that allowing for such changes to the T+L combination of a bid may make it more difficult for a bidder to

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<sup>392</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6263, para. 86.

<sup>393</sup> See *supra* Section II.E.1 (State Selections and Impermissible State Overlaps).

<sup>394</sup> See USTelecom Comments at 8.

<sup>395</sup> See *supra* Section II.E.1 (State Selections and Impermissible State Overlaps).

<sup>396</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6263, para. 87.

<sup>397</sup> As set forth in Section II.E.4 (Eligibility to Bid for Performance Tier and Latency Combinations), in order to be able to bid at more than one performance tier and latency combination in an area, a bidder must qualify for all such T+Ls at the short-form application stage.

<sup>398</sup> See, e.g., ACA Comments at 5, 7; Rural Coalition Comments at 7; WISPA Comments at 26; Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 17-182 et al., at 2 (filed Dec. 1, 2017) (USTelecom Dec. 1, 2017 *Ex Parte* Letter) (“[T]he ability to change performance tiers between rounds appeared to contribute more to views that the auction is unnecessarily complex than to the needs of existing broadband providers.”).



understand the competitive environment of the auction, as a commenter claims.<sup>399</sup> Accordingly, we modify our proposal.

229. We disagree with ACA and others, however, that the proposed flexibility would have led to undesirable strategic bidding behavior.<sup>400</sup> Strategic opportunities using changes to T+L combinations would be limited by our activity rules. As set forth below, a bidder's total activity cannot increase from round to round, so a bidder would be limited in the extent to which it could switch to tier and latency combinations that imply higher support amounts in the areas in which it has been bidding. Nor could a bidder use bids at T+L combinations implying high support amounts to "park" significant amounts of eligibility, later switch to T+Ls with lower associated support, and then use the excess eligibility to bid in other areas—as some commenters suggest bidders would do—since the switching percentage constrains such moves.<sup>401</sup> Finally, we see no advantage to attempting such bidding strategies.

### (iii) Acceptable Bid Amounts

230. In each round, as proposed,<sup>402</sup> a bidder may submit a bid at the base clock percentage for the round, or at any price point percentage greater than the base clock percentage and less than the previous round's base clock percentage.<sup>403</sup> The price point percentage of the bid may be specified with up to two decimal places (e.g., 98.44%).

231. By providing bidders the option to bid at intermediate price points, we can shorten the bidding process by using larger decrements to the base clock percentage without running the risk that a large drop in aggregate implied support from one round to the next will leave a significant amount of the budget unspent. The option to bid at intermediate price point percentages will also allow a bidder to indicate more precisely the minimum amount of support it will accept for an area, and it reduces the likelihood of ties.<sup>404</sup>

232. A bid must specify a percentage that implies a support amount that is one percent or more of an area's reserve price to be acceptable.<sup>405</sup> In other words, the bidding system will only accept a bid for a price point percentage that is at least T+L+1.<sup>406</sup> One percent represents a sufficiently small fraction of the model-derived reserve price to serve as a minimum acceptable bid for bidders with legitimate support

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<sup>399</sup> See Rural Coalition Reply at 6 ("Allowing switching would make it more difficult for bidders to understand the competitive environment and make informed decisions on where to enter bids, potentially deterring less sophisticated providers from participating in the Auction.").

<sup>400</sup> See, e.g., ACA Comments at 7; ACA Reply at 10; IEC Reply at 3; WISPA Reply at 18-19.

<sup>401</sup> "Parking" eligibility generally refers to strategies to hold back on bidding for desired areas while maintaining the flexibility to bid on the areas in a later round. Our discussion of the activity rules' limitation on switching areas is in Section IV.B.3.g (Activity Rules).

<sup>402</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6262, para. 82.

<sup>403</sup> In the first round of the auction only, a bidder may place a bid at the base clock percentage for the round, or at any price point percentage greater than the base clock percentage and less than *or equal to* the opening base clock percentage. See *supra* Section IV.B.3.b (Base Clock Percentage). A bidder may also submit a bid at a price point percentage less than the base clock percentage for the round. The bidding system will treat this as a bid at the base clock percentage for the current round and proxy instructions to bid in subsequent rounds. See *infra* Section IV.B.3.f (Bids Placed by Proxy Bidding Instructions).

<sup>404</sup> These benefits are noted by ACA. See ACA Reply at Attach. at 13.

<sup>405</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6262, para. 83.

<sup>406</sup> For example, for a T+L weight of 45 (a Baseline bid with low latency), a bid of 45 would imply support of 0: implied support equals the lower of the reserve price R, and  $\{(45-45)/100\} * R$ , which is 0. Such a bid would not be acceptable. A bid made at a price point percentage of 46 or higher, however, would be acceptable, since it is at least 1 percent higher than the reserve price:  $\{(46-45)/100\} * R$  equals  $(1/100) * R$ .

needs. We disagree with ACA that the minimum acceptable support amount should be zero. A bidder that requires—or receives—no Phase II support to build out in an area is free to provide service in the area if it wishes, and furthermore, it can do so without the requirements of Phase II support recipients. Moreover, we are not convinced that tied bids would be significantly less likely to occur if the minimum bid were zero rather than one percent of the reserve price, as ACA contends would occur,<sup>407</sup> given that we do not anticipate that bidders will compete for such *de minimis* amounts of support.

**e. Bids for a Package of Areas**

233. We establish procedures to give bidders the option of placing a package bid to serve multiple CBGs. We also adopt bid processing procedures that may assign fewer than all the areas in the bid to the bidder provided that the support associated with the assigned areas is at least equal to a bidder-specified minimum scale percentage of the support requested for the full list.

234. Under these procedures, a bidder will specify a package bid by specifying the CBGs in the bid, a performance tier and latency combination for each CBG, a single price point percentage for the bid, and a minimum scale percentage no higher than 75 percent that indicates the bidder's lowest acceptable partial assignment of the package.<sup>408</sup>

235. Every CBG in a package bid must be in the same state, but we do not limit the total amount of implied support that may be included in a single package.<sup>409</sup> Different CBGs in the bid may have different performance tier and latency combinations. For a given round, a CBG can appear in at most one bid—either a single bid or a package bid—submitted by the bidder.

236. Commenters that address our proposed package bidding procedures generally either oppose allowing package bids or favor a stronger form of package bidding that would reduce or eliminate the scope for assigning fewer than all of the areas in a package. After considering the arguments, however, we adopt a minimum scale percentage slightly modified from our proposed percentage and find that doing so correctly balances the needs of all parties and best promotes the goals of the Phase II auction.

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<sup>407</sup> See ACA Reply at Attach. at 13-14.

<sup>408</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6264, para. 90. For example, a bidder may specify a package of five CBGs with a minimum scale percentage of 75 percent. Assume that the total implied support for the five CBGs is \$100. The bidding system may assign any or all of the five CBGs as long as the total implied support for the assigned CBGs is at least \$75. When determining whether the minimum scale condition is met, the system will use support amounts as implied at the bid percentage.

<sup>409</sup> We are not persuaded by U.S. Cellular's argument to limit packages to the county level so as to limit the ability of larger carriers to use package bidding to engage in undesirable strategic manipulation of the auction. See U.S. Cellular Comments at 12-14. U.S. Cellular does not describe how it believes such manipulation would take place, and further, its frequent references to its own and other entities' comments in other auction proceedings indicate that it believes that the rules and dynamics of significantly different package bidding proposals are applicable here. For example, U.S. Cellular refers to "combinatorial" bidding and claims that package bidding "drastically increases the number of bid possibilities." *Id.* at 3, 10. Under the rules that were proposed and that we adopt, no combinations of bids are considered when assigning winning bids, and because a bidder can include a given area in at most one bid per round, the number of bids can only decrease. We also decline to adopt USTelecom's suggestion to limit the number of CBGs allowed in a package to 25 in conjunction with raising the minimum scale percentage to 100 percent. See USTelecom Dec. 1, 2017 *Ex Parte* Letter at 1. We find that the effects of such a limit would be extremely uneven, given the variation in the numbers of CBGs per state and in the number of locations per CBG. And for the reasons cited below, we decline to increase the minimum scale percentage to 100 percent.

237. Those commenters that oppose a package bidding option argue that it adds complexity to the auction process and/or that the proposed procedures create a strategic disadvantage for bidders with more narrowly targeted bidding interests.<sup>410</sup> We disagree with both assertions.

238. Regarding concerns about potential complexity, we emphasize that the use of package bidding is optional: A bidder that is not interested in package bidding can bid for support in individual areas just as though there were no package bidding provisions. The bidding experience for a bidder that chooses not to use package bidding will be no more complicated than if package bidding were not an option. Additionally, the package bidding procedures we adopt include measures that minimize complexity. Because all bidders will be limited to placing only one bid on a CBG in a round, and because the implied support amount of a package bid is simply the sum of the implied support amounts of the CBGs in the package—that is, the bidding system does not have any inherent bias toward assigning packages—the option of package bidding does not increase the number of options a bidder has to consider. Bid options regarding packages are also simplified by a constraint on the composition of packages after the clearing round: Once a bidder bids for a package, it can only bid on the same package or smaller subsets of the package in subsequent rounds.

239. Moreover, and importantly, the bidder's chances of winning support for an area cannot be reduced if a competing bid for an area is submitted as part of a package bid rather than as an individual area bid, as some commenters suggest would occur.<sup>411</sup> That is, a large bidder cannot increase its chances of winning support for an area by including the area in a package with many other areas, thereby disadvantaging a bidder with narrower bidding interests also competing for the area. Under the bid processing rules we adopt, bids are considered for assignment in ascending bid percentage order, so a package bid including an area cannot win over an individual area bid at a lower bid percentage.<sup>412</sup> Furthermore, because a bidder can include a given area in only one bid, the information available to bidders regarding the number of bids placed for an area will accurately reflect the number of bidders for the area, which eliminates any ability for a package bidder to manipulate information about competition by including a given area in multiple packages. With package bids, a bidder can bid for no more and no fewer areas than it can with individual area bids, so a package bidding option does not complicate bid processing by increasing the number of bids that must be evaluated by the auction system or bidders.

240. Some commenters urge us to modify the proposed package bidding procedures to give a bidder greater control over whether a partial package is assigned. USTelecom, AT&T, and Verizon suggest increasing the cap on the minimum scale percentage from the proposed 80 percent to 90 percent

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<sup>410</sup> See, e.g., ACA Comments at 7; U.S. Cellular Comments at 2-14; Hughes Reply at 5; Rural Coalition Comments at 7; WISPA Comments at 26; RWA Reply at 1-6. *But see* ACA Nov. 21, 2017 *Ex Parte* Letter at 2 (supporting package bidding if census blocks were the minimum geographic unit for bidding).

<sup>411</sup> The particular bidding and assignment rules we adopt here are significantly different from package bidding formats the Commission has considered in other contexts and work together to simplify the bidding process and eliminate the potential for undesirable strategic behavior. Some commenters appear to be thinking of other package bidding formats, such as that proposed for Auction 31, where there can be a coordination problem for bidders in individual areas in trying to compete against a package bid, as evidenced by such comments as “to the extent larger carriers’ package bids included rural sparsely populated rural areas, smaller carriers targeting these sparsely populated areas would have difficulty competing against the package bids of larger carriers.” U.S. Cellular Comments at 6-7 & n.17 (citing AWS-3 Comments); *id.* at 10 n.28 (referring to complexity of combinatorial bidding in Auction 31); *see also* RWA Reply at 2-3; Rural Coalition Reply at 4.

<sup>412</sup> However, it is possible that an individual bid for an area may win over a package bid (including the area) that is submitted at a lower bid percentage if the minimum scale percentage of the package bid cannot be met when the package bid is considered (because other areas in the package already were assigned). Bid assignment procedures are set forth in Section IV.B.4 (Bid Processing), and the Bureaus’ forthcoming technical guide will provide examples.

or even 100 percent.<sup>413</sup> We decline to do so, however, because a higher minimum scale percentage could prevent support from being assigned to a potentially much larger number of areas, as stated in the *CAF II Auction Comment Public Notice*, thereby increasing the risk of unspent funds in the Phase II auction.<sup>414</sup> Under the bid processing procedures we adopt, when determining the clearing percentage, the bidding system allows for funds in the budget to cover support to assigned areas and to unassigned areas with competing bids at the base clock percentage. If a package bid at the base clock percentage cannot be assigned in subsequent rounds because the competing bids continue to keep the minimum scale percentage from being met, the support amounts for the unassigned areas in the package are not used. A high minimum scale percentage, especially one approaching 100 percent, will be harder to meet, increasing the likelihood that the package cannot be assigned and increasing the likelihood that the support amounts for some areas in unassigned package bids will remain unspent.

241. For this reason, another commenter suggests that even the proposed minimum scale percentage of 80 percent creates too high a possibility of unspent funds.<sup>415</sup> In response to this concern, we find that a 75 percent cap on the minimum scale percentage will appropriately balance a package bidder's interest in ensuring an adequate scale of support for an aggregation of areas with the public interest in distributing Phase II monies as efficiently as possible.

242. We also are not persuaded that we should adopt other suggestions to give a bidder greater control over partial package assignments. We will not allow a bidder to specify that a package bid not be assigned unless certain CBGs can be awarded support, as a commenter suggests.<sup>416</sup> Such a rule would make it more likely that a package bid could not be assigned and, as with raising the cap on the minimum scale percentage, also increases the risk of unused funds. We further decline a suggestion to allow package bidders to specify a minimum assigned density for a package rather than a minimum scale of funding<sup>417</sup> because this approach would complicate bidding and bid processing procedures.

243. To help all bidders—both large and small—understand the bidding procedures related to package bidding, the Bureaus will provide further educational opportunities and materials well in advance of the auction. This should help bidders determine how best to place their bids and whether to make use of package bidding.

#### **f. Bids Placed by Proxy Bidding Instructions**

244. We adopt procedures to give a bidder the option of placing bids via proxy bidding instructions in Auction 903, as proposed in the *CAF II Auction Comment Public Notice*.<sup>418</sup> These procedures will reduce a bidder's need to submit bids manually every bidding round and provide the bidder with a safeguard against accidentally failing to submit a bid, as long as the bidding percentage of

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<sup>413</sup> See USTelecom Comments at 6-8; AT&T Reply at 6-7; Verizon Reply at 2-3; see also USTelecom Dec. 1, 2017 *Ex Parte* Letter at 1 (suggesting a limit on the number of CBGs allowed in a package in conjunction with a minimum scale percentage of 100 percent). For the reasons cited above, we decline to impose an additional limit on the number of CBGs permitted in a package and to increase the minimum scale percentage to 100 percent.

<sup>414</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6264, para. 92 (proposing an upper limit of less than 100 percent so that small overlaps in the areas included in package bids do not prevent support from being assigned to a potentially much larger number of areas). The Rural Coalition has expressed concern over unspent funds in this context. See Rural Coalition Comments at 14.

<sup>415</sup> See Rural Coalition Reply at 6.

<sup>416</sup> See Sacred Wind Comments at 5-7; see also AT&T Reply at 7-8 (agreeing with Sacred Wind's proposal).

<sup>417</sup> See AT&T Reply at 8-9.

<sup>418</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6265, paras. 94-95.

the proxy instruction is below the current round's base clock percentage.<sup>419</sup> Proxy procedures will make it possible for a bidder to simplify greatly its auction participation by setting its proxy instruction at the lowest amount of support that the bidder is willing to accept, so that the bidder need not bid again in the auction.

245. Specifically, when a bidder places a bid, the bidder may specify a price point percentage that is below the base clock percentage for the round in which the bid is placed.<sup>420</sup> Doing so results in both a bid at the current round's base clock percentage and proxy instructions for bids at lower percentages in subsequent rounds. The bidding system will generate a bid in any subsequent bidding round in which the percentage specified in the proxy instruction (the "proxy bid percentage") is equal to or below the base clock percentage for the round. If the proxy bid percentage is greater than the base clock percentage of a round but lower than the prior round's base clock percentage, then the bidding system will generate a bid at the proxy bid percentage. If the proxy instruction is not subsequently updated, this will be the last round in which the proxy instruction will automatically place a bid.

246. Bids generated according to proxy instructions will be processed in the same way as any other bids placed in the auction. Proxy instructions may be used for bids for individual areas and for package bids. Proxy instructions will carry forward in rounds after the clearing round for areas that have not been assigned, as long as the proxy bid percentage is still valid.<sup>421</sup> A bidder may override a bid generated according to proxy instruction, cancel, or enter new proxy bidding instructions at any time during a round.

247. Bidders are responsible for actively monitoring the status of their bids, including any proxy instructions as well as the overall progress of the auction, using the reports and files available in the bidding system. The Commission will not provide additional alerts to bidders that their proxy instructions are expiring, as one commenter suggests.<sup>422</sup> Providing bidding-related information only through the bidding system assures that non-public information is available only to individuals that are authorized bidders for entities that have been found qualified to bid through our pre-auction processes. This is consistent with our anonymous bidding procedures, protects against possible misuse of bidding information, and promotes auction integrity.

248. As the Commission proposed,<sup>423</sup> proxy bidding instructions will be treated as confidential information and will not be disclosed to the public at any time after the auction concludes because they may reveal private cost information that would not otherwise be made public (e.g., if proxy bidding instructions are not fully implemented because the base clock percentage does not fall as low as the specified proxy percentage).<sup>424</sup>

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<sup>419</sup> Commenters IEC, ACA, and the Rural Coalition support the availability of proxy bidding in Auction 903. See IEC Comments at 5; ACA Reply at Attach. at 4; Rural Coalition Reply at 7.

<sup>420</sup> A bidder may not specify a price point that is lower than T+L+1. See *supra* Section IV.B.3.d.iii (Acceptable Bid Amounts).

<sup>421</sup> As set forth below, proxy instructions will carry forward after the budget clears, including proxy instructions for packages and any unassigned remainder areas in the package that carry forward. See *infra* Section IV.B.4.c (Bids and Bid Processing in Rounds After the Clearing Round).

<sup>422</sup> See IEC Comments at 5.

<sup>423</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6265, para. 97.

<sup>424</sup> However, the amount of support associated with any assigned bid will be publicly disclosed after the close of bidding and announcement of auction results, regardless of whether the bid was placed by the bidder or by the bidding system according to proxy bidding instructions.

### g. Activity Rules

249. We adopt activity rules to encourage bidders to express their bidding interests early and consistently, which will generate reliable information for bidders about the level of bidding in the various CBGs in the auction. As proposed, and for the reasons explained in the *CAF II Auction Comment Public Notice*, a bidder's overall bidding activity in a round, measured as the sum of implied support dollars for all its bids, may not exceed the bidder's activity from the previous round.<sup>425</sup> We also adopt a switching rule, slightly modified from the proposal in the *CAF II Auction Comment Public Notice*, to limit a bidder's ability in a round to switch to areas on which it did not bid at the base clock percentage of the previous round. This switching ability is based on a certain percentage of the implied support of the bidder's bids at the base clock percentage in the previous round.<sup>426</sup> We additionally adopt our proposal to give the Bureaus discretion to change the switching percentage, with notice, during the auction, although we do not at this time anticipate needing to do so.<sup>427</sup>

250. Instead of the uniform 10 percent switching percentage proposed in the *CAF II Auction Comment Public Notice*, we adopt a switching percentage of 20 percent for the second bidding round of the auction only. Therefore, a bidder's activity in the second round of the auction for areas on which it did not bid at the first round's base clock percentage may not exceed 20 percent of its total implied support from bids at the first round's base clock percentage. We make this change in the switching percentage for the second round in response to several commenters that favor a higher switching percentage to give bidders greater flexibility to shift their bidding as information is revealed about the extent of competition for various areas.<sup>428</sup> In this regard, the ability to switch bidding areas will be most useful in the second round because the greatest amount of new information about bidding across CBGs will be made available after the first round of bidding.

251. We limit the higher switching percentage to the second round, however, to encourage an orderly bidding process that generates reliable information about aggregate cost and competition across areas. Accordingly, for the third and subsequent rounds up until the budget has cleared, the switching percentage will be 10 percent, as proposed.<sup>429</sup> No switching of areas is permitted after the clearing round, since bidding in any additional round is limited to areas with bids at the previous base clock percentage that have not been assigned.<sup>430</sup>

### 4. Bid Processing

252. We adopt the bid processing procedures we proposed.<sup>431</sup> Except as noted below, we received little comment on these procedures.

253. Once a bidding round closes, the bidding system will consider the submitted bids to determine whether an additional round of bidding at a lower base clock percentage is needed to bring the

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<sup>425</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6265, para. 98.

<sup>426</sup> Note that a bidder's activity considers all bids at the bid percentage of each bid, which may not be the base clock percentage, while the switching percentage is based only on the bidder's bids at the base clock percentage.

<sup>427</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6266, para. 99.

<sup>428</sup> USTelecom proposes a decreasing switching percentage that would start at 100 percent and be reduced in subsequent rounds. See USTelecom Comments at 9-11. USTelecom asserts that such flexibility would be especially useful in earlier rounds when the amount of new information is greatest. *Id.* at 10. Several reply commenters support the USTelecom proposal or a version thereof. See Verizon Reply at 3; Hughes Reply at 6; see also WISPA Reply at 19 (proposing unlimited switching if package bidding were impermissible).

<sup>429</sup> ACA supports the proposed uniform 10 percent switching percentage. See ACA Reply at 11-12.

<sup>430</sup> If bids for additional areas were permitted after the budget cleared, there could be insufficient funds in the budget to support them.

<sup>431</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6266-67, paras. 102-06.

amount of requested support down to a level within the Phase II auction budget.<sup>432</sup> If the total requested support at the base clock percentage exceeds the budget, the bidding system will initiate another bidding round with a lower base clock percentage.

254. If, instead, the system determines that the total requested support from bids at the base clock percentage has fallen to an amount within the budget, the just-concluded round will be deemed the clearing round, and the bidding system will begin the process of assigning winning bids and determining support amounts using a second price rule. If, in the clearing round, there are multiple bids for any area at the base clock percentage, the bidding system will commence another round of bidding to resolve the competition for support in those areas only.

255. After the clearing round, bidding rounds will continue for these areas at lower base clock percentages until, for each of the contested areas, there is a single lowest bid. The winning bidder for an area will then generally be assigned support at the price point percentage of the second lowest bid.<sup>433</sup>

256. As a result of these bid processing procedures, the bids that can be assigned under the budget in the clearing round and in any later rounds will determine the areas that will be provided support under Phase II. At most, one bid per area will be assigned support. The specifications of that bid, in turn, determine the performance tier and latency combination at which service will be provided to the locations in the eligible census blocks in the area.

257. The bid processing procedures we adopt fall into three categories: before, during, and after the round in which the budget clears. We address them in order below. Additional details and examples of bid processing will be provided in the technical guide released by the Bureaus.

**a. Bid Processing in Rounds Before the Clearing Round**

**(i) Aggregate Cost at the Base Clock Percentage**

258. After each bidding round until the budget has cleared, in order to determine whether the budget will clear in that round, the bidding system will calculate an “aggregate cost,” an estimate of what it would cost to assign support at the base clock percentage to the bids submitted in the round. Specifically, the aggregate cost is the sum of the implied support amounts for all the areas receiving bids at the base clock percentage for the round, evaluated at the base clock percentage. The calculation counts support for each area only once, even if the area receives bids, potentially including package bids, from multiple bidders. If there are multiple bids for an area at different performance tier and latency combinations, the calculation uses the bid with the highest implied support amount. If the aggregate cost for the round exceeds the budget, the bidding system will implement another regular bidding round with a lower base clock percentage.

**(ii) Clearing Determination**

259. The first round in which the aggregate cost, as calculated above, is less than or equal to the overall support budget is deemed the clearing round. In the clearing round, the bidding system will further process bids submitted in the round, to determine those areas that can be assigned and the support amounts winning bidders will receive. Once the clearing round has been identified, the system no longer calculates the aggregate cost, even if there are subsequent bidding rounds.

**b. Bid Processing in the Clearing Round**

260. In the clearing round, the bidding system will consider bids in more detail to determine those bids that can be assigned in that round; the “second prices” corresponding to those bids, subject to

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<sup>432</sup> See *infra* Section IV.B.4.a.i (Aggregate Cost at the Base Clock Percentage) (discussing how requested support in this context is calculated).

<sup>433</sup> To clarify, the winning bidder’s T+L will be used in calculating assigned support.

post-auction application review; and those bids that will carry over for bidding in an additional bidding round or rounds. We set forth our procedures for these determinations below.

261. Until the clearing round, the auction is generally driven by cross-area competition for the budget, and implied support amounts for all areas are reduced in proportion to the reduction in the base clock. In estimating cost, the system does not determine which of the multiple bids competing for support in the same area will be assigned, although it does take into account that only one bid per area may be assigned. Processing during the clearing round and subsequent rounds considers intra-area competition as well, assigning support to bids at the lowest bid percentage for a given area, as long as any assigned package bids meet the bid's minimum scale percentage. Bid processing in the clearing round also determines support amounts for assigned bids according to a second-price rule, so that bids are supported at a price percentage at least as high as the bid percentage.

**(i) Assignment**

262. Once the bid processing procedures establish that the current round is the clearing round, the bidding system will begin to assign winning bids with support to at most one bid for a given area. The system will first assign bids made at the base clock percentage for areas not bid on by another bidder at the base clock percentage. Any package bids at the base clock percentage that include areas bid on by another bidder at the base clock percentage must meet the package bidder's minimum scale percentage without those areas in order to be assigned.

263. The system then considers all other bids submitted in the round in ascending order of price point percentage to see if additional bids can be assigned and, considering the bids assigned so far, to determine the highest price point percentage at which the total support cost of the assigned bids does not exceed the budget (the "clearing price point").<sup>434</sup> Bids at price point percentages above the clearing price point are not assigned.

264. As it considers bids in ascending price point percentage order, the system assigns a bid if no other bid for the same area has already been assigned, as long as the area did not receive any bid at the base clock percentage and the areas to be assigned in a package bid meet the bid's minimum scale percentage.<sup>435</sup> The bidding system also checks to ensure that sufficient budget is available to assign the bid.<sup>436</sup>

265. To determine whether there is sufficient budget to support a bid as it is considered for assignment, the bidding system keeps a running sum of support costs.

266. At each ascending price point increment, starting at the base clock percentage, the running cost calculation is the sum of support for three types of bids. First, for assigned bids for which there were no other bids for support for their respective areas at price points lower than the currently considered price point percentage, the system calculates the cost of providing support as the amount of support implied by the currently considered price point. Second, for assigned bids for areas that did receive other bids at price points lower than the currently considered price point, support is generally calculated as the amount implied by the next-higher price point at which the area received a bid (where next-higher is relative to the price point of the assigned bid, not the currently considered price point).<sup>437</sup>

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<sup>434</sup> Recall that a bid may be placed at any price point percentage equal to or greater than the current base clock percentage and less than the previous round's base clock percentage.

<sup>435</sup> Ties are broken by using the highest pseudo-random numbers.

<sup>436</sup> If the bidding system encounters a bid that cannot be supported within the remaining budget, it will skip that bid and continue to consider other bids in ascending price point percentage order.

<sup>437</sup> The only exception to this arises if there is a bid for the area with a bid percentage below the bid percentage of the assigned bid for the area and the former bid cannot be assigned because it is a package bid that does not meet the

(continued...)



Third, areas bid at the base clock percentage that were not assigned in the round are evaluated as they are in the pre-clearing aggregate cost calculation: only one bid per area is included in the calculation, and if there are bids for an area at different performance tier and latency combinations, the calculation uses the bid with the highest implied support amount, all evaluated at the base clock percentage.

267. The bidding system continues to assign bids meeting the assignment criteria in ascending price point order as long as the cost calculation does not exceed the budget. The highest price point at which the running total cost will not exceed the budget is identified as the clearing price point.

**(ii) Support Amount Determination**

268. Bids that are assigned for areas that receive no other bids at less than the clearing price point are supported at an amount implied by the clearing price point percentage.

269. Bids assigned in the clearing round, when there is also a bid for the area at a price point below the clearing price point, are generally supported at an amount determined by the bid percentage of the lowest unassigned bid for the area.<sup>438</sup> For example, applying the second price rule, if there are two bids for an area, the lower bid is supported at the bid price point percentage of the higher bid.

**c. Bids and Bid Processing in Rounds After the Clearing Round**

**(i) Carried-Forward and Acceptable Bids**

270. After the clearing round, there will be further bidding to resolve competition for areas where more than one bidder is still bidding for support at the base clock percentage in the clearing round. After the clearing round and any subsequent round, bidding will continue only for areas where there were multiple bids at the previous round's base clock percentage that could not be assigned. Such bids may have been for a given unassigned area that received multiple single bids, package bids that were not assigned because the bidder's minimum scale percentage for the package was not met, or remainders of package bids—unassigned areas from package bids that were partially assigned.

271. As the Commission proposed,<sup>439</sup> bids at the base clock percentage for unassigned areas will carry over automatically to the next bidding round at the previous round's base clock percentage, since the bidder had previously placed a bid at that percentage. In the round into which the bids are carried forward, a bidder with a carried-forward bid for an area may also bid for support for these areas at the current round's base clock percentage or at intermediate price points. In rounds after the clearing round, a bidder cannot switch to bidding for an area for which it did not bid in the previous round.<sup>440</sup>

272. Although a bid for an unassigned package will carry over at the previous clock percentage, the bidder for such a package may group the bids for the areas in the package into smaller packages and bid on those smaller packages at current round percentages.<sup>441</sup> However, the unassigned remainders of assigned package bids—that is, the areas for which there are competing bids—will carry over as individual area bids. Any bids the bidder places for the remainder areas at the new round percentages must be submitted as individual area bids—that is, the bidder cannot create a new package of

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minimum scale percentage. In that case, the support is calculated as the amount implied by the bid percentage of the assigned bid.

<sup>438</sup> Exceptions are that if the bid percentage of the lowest unassigned bid for the area is less than (e.g., a package bid that did not meet the minimum scale percentage) or equal to (i.e., tied with) the bid percentage of the assigned bid, then the assigned bid is supported at its own bid percentage.

<sup>439</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6270, para. 126.

<sup>440</sup> A commenter appears to suggest that bidders be able to switch to bidding in different areas after the clearing round. See Hughes Comments at 8-9. As addressed above, we decline to adopt that change.

<sup>441</sup> See USTelecom Comments at 8-9 (noting the importance of this proposal).

any of the unassigned remainders.

273. If a proxy instruction is at a price point percentage below the base clock percentage of the previous round, it will continue to apply in rounds after the clearing round under the same conditions that apply to other bids. For package bids made by proxy that are only partially assigned because there are multiple bids at the base clock percentage, the proxy instructions will continue to apply to the unassigned areas in the package bid. That is, the price point percentage specified in the proxy instructions will apply to each of the individual remainder areas.

#### (ii) Bid Processing in Rounds After the Clearing Round

274. As in the clearing round, in subsequent rounds, the system considers bids for assignment and support amount determination in ascending price point percentage order. The system first considers bids at the new round's base clock percentage. The system will assign any bids for areas that received no other bids at the base clock percentage as long as any package bid meets the minimum scale percentage of the bid. The system then processes bids in ascending price point order, assigning those bids for as yet unassigned areas, as long as any package bids meet the minimum scale condition.

275. If there is only one bid for an area in a round in addition to a carried-forward bid or bids, the assigned bid is paid at the base clock percentage for the previous round, consistent with the second-price rule. If an assigned bid is for an area that received more than one bid in the round, the assigned bid is supported at the next higher price point percentage at which there is a bid for the area.<sup>442</sup>

276. If there is more than one bid for an area at the current base clock percentage, there will be another bidding round at a lower base clock percentage, with the same restrictions on bids and following the same assignment and pricing procedures.<sup>443</sup>

#### C. Availability of Bidding Information

277. As in past Commission auctions, bidders will have secure access to certain non-public bidding information while bidding is ongoing. As proposed,<sup>444</sup> after each round ends, and before the next round begins, we will make the following information available to individual bidders:

- The base clock percentage for the upcoming round.
- The aggregate cost at the previous round's base clock percentage up until the budget clears.
  - The aggregate cost at the base clock percentage is not disclosed for the clearing round or any later round.
- The bidder's activity, based on all bids in the previous round, and activity based on bids at the base clock percentage.
  - In rounds after the clearing round, the bidder's assigned support and the implied support of its carried-forward bids will be available.
- Summary statistics of the bidder's bidding in the previous round, including:<sup>445</sup>

<sup>442</sup> The only exception to this arises when there is a bid for the area with a bid percentage below the bid percentage of the winning bid for the area and the former bid cannot be assigned because it is a package bid that does not meet the minimum scale percentage. In that case, the support is calculated as the amount implied by the bid percentage of the winning bid.

<sup>443</sup> If all bidders for an area with carried forward bids decline to submit lower bids in a subsequent round, the bid with the highest pseudo-random number will be considered first for assignment according to our tie breaking procedures.

<sup>444</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6271-72, para. 135.

<sup>445</sup> A bidder will also have access to a downloadable file with all its bids submitted for each round.

- The number of CBGs for which it bid, at the base clock percentage and at other price points, and for which proxy instructions are in effect for future rounds.
- After the clearing round, CBGs and support amounts it has been assigned and those for which it is still bidding, including a list of its carried-forward bids.
- For all eligible areas in all states, including those in which the bidder was not qualified to bid or is not bidding, whether the number of bidders that placed bids at the previous round's base clock percentage was 0, 1, or 2 or more.
  - The performance tier and latency combinations of the bids are not disclosed.
  - For the clearing round and any subsequent round, bidders are also informed about which areas have been assigned.

278. Prior to each round, as proposed, we will also make available to individual bidders the implied support amounts, corresponding to the areas and performance tier and latency combinations for which they are eligible to bid.<sup>446</sup> These implied support amounts are calculated at the round's base clock percentage.

279. In adopting these proposals, we balance our interest in providing bidders with sufficient information about the status of their own bids and bidding across all eligible areas to allow them to bid confidently and effectively, while restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding.<sup>447</sup>

280. We adopt the proposal to withhold information on the progress of the auction from the general public until after the close of bidding when auction results are announced.<sup>448</sup> Accordingly, during the auction, the public will not have access to such interim information as the current round, base clock percentage, aggregate cost, or any summary statistics on bidding or assigned bids that may reveal or suggest the identities of bidders associated with any specific bids. Although auction participants will have access to information that is needed to inform their bidding, such information will be made publicly available only after the close of the auction in order to help preserve the integrity of the auction while it is in progress.

281. As proposed in the *CAF II Auction Comment Public Notice*,<sup>449</sup> after the close of bidding and announcement of auction results, we will make publicly available all bidding data, except for proxy bidding instructions.<sup>450</sup> This promotes our interest in a transparent auction process and is consistent with the Commission's typical practice post-auction.<sup>451</sup>

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<sup>446</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6272, para. 136.

<sup>447</sup> See *id.* at 6271, para. 135.

<sup>448</sup> See *id.* at 6273, para. 140.

<sup>449</sup> *Id.* at 6273, para. 141.

<sup>450</sup> Bidding data does not include the confidential short-form application information that we address in Section II.F (Procedures for Limited Disclosure of Application Information).

<sup>451</sup> See, e.g., *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4766-67, para. 147; *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 8428-29, para. 149. No commenter objected to the Commission's proposal even though the Phase II auction bidding data released would presumably include bids for eligible areas that do not receive Phase II support (and information about which areas did not receive bids) and therefore may be eligible for Remote Areas Fund (RAF) support in a subsequent auction.

**D. Closing Conditions**

282. As proposed,<sup>452</sup> the auction will end once the overall budget has cleared and there are no longer competing bids for any areas.

283. We recognize, as some commenters observe, that the procedures we adopt in this Public Notice may result in some fraction of the budget not being awarded. We disagree, however, with the Rural Coalition that the particular circumstances to which they refer are likely to occur and that if they were to occur, they would have a significant impact on the assigned budget.<sup>453</sup>

284. Specifically, the Rural Coalition suggests that a significant fraction of bidders could drop out of bidding between one round and the next so that requested support suddenly falls far below the budget, leaving unspent funds.<sup>454</sup> We find that scenario to be unrealistic for several reasons. The diverse pool of bidders, areas, and technologies that we expect to be represented in the auction means that bidders will likely drop out over a wide range of price points rather than all at a given base clock percentage. Moreover, a bidder will have an incentive to indicate precisely within the range of acceptable bid amounts the point at which it wishes to stop bidding in order to increase its chances of being assigned support, rather than dropping out at the base clock percentage of the previous round, as the Rural Coalition suggests. Further, the size of the bidding decrement will be set taking into account the extent to which aggregate cost is decreasing from round to round, providing an additional means of minimizing the chances that such an outcome could occur.<sup>455</sup>

285. The Rural Coalition also notes that there may be unassigned funds because package bids may not be assigned due to the minimum scale percentage not being met.<sup>456</sup> We acknowledge that this may occur, but only under narrow circumstances. Some funds may remain unassigned when a package bid carries over to bidding rounds after the clearing round and ultimately is not assigned because other bids for areas in the package, which prevent the minimum scale percentage from being met, are assigned at lower percentages. The likelihood of these circumstances resulting in significant unspent funds is further minimized by the 75 percent cap on the minimum scale percentage and the procedures we adopt to allow a package bidder to bid for subsets of its original package in rounds after the clearing round.<sup>457</sup>

286. Consequently, aside from the change to 75 percent from the proposed 80 percent minimum scale percentage, we do not modify our bid processing procedures to take these concerns into account. We find that the bid processing procedures we adopt will ensure that the Phase II auction budget will be assigned in the most cost-effective way possible while minimizing any unspent funds. As we have made clear in this proceeding, the Phase II auction is not expected to be the last universal service

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<sup>452</sup> See *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6271, para. 133.

<sup>453</sup> The Rural Coalition outlines particular bidding scenarios and conditions under which a significant portion of the budget is unspent. See Rural Coalition Comments at 12-15. Moreover, the possible remedies the Rural Coalition suggests may further complicate the auction and interfere with current incentives for straightforward bidding that allow the auction system to assign the most cost-effective bids. See Letter from Rebekah P. Goodheart, Jenner & Block LLP, Counsel to Midwest Energy Cooperative et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed July 26, 2017) (Rural Coalition July 26, 2017 *Ex Parte* Letter).

<sup>454</sup> See Rural Coalition Comments at 13-14; see also Rural Coalition July 26, 2017 *Ex Parte* Letter at 3.

<sup>455</sup> Reducing the size of the decrement is among the remedies suggested by the Rural Coalition. See Rural Coalition July 26, 2017 *Ex Parte* Letter at 3.

<sup>456</sup> See Rural Coalition Comments at 14; Rural Coalition Reply at 5-6. Additionally, the Rural Coalition asserts that a package bidder may “drive[] out all competition.” Rural Coalition Reply at 5. We find this statement unclear since a bidder for an individual area that it is willing to accept a lower support amount will always win over the package bidder. See *supra* Section IV.B.3.e (Bids for a Package of Areas).

<sup>457</sup> See *supra* Sections IV.B.3.e (Bids for a Package of Areas) and IV.B.4.c.i (Carried-Forward and Acceptable Bids).

proceeding for fixed voice and broadband services.<sup>458</sup>

**E. Auction Announcements**

287. The Bureaus will use auction announcements to report necessary information to bidders. All auction announcements will be available by clicking a link in the CAF II Bidding System.

**F. Auction Results**

288. The Bureaus will determine the winning bids as described elsewhere in this Public Notice.<sup>459</sup> After the Bureaus announce the auction results, they will provide a means for the public to view and download bidding and results data.

**V. POST-AUCTION PROCEDURES**

**A. General Information Regarding Long-Form Applications**

289. For the Phase II auction, the Commission adopted a two-phase auction application process. Pursuant to section 1.21004(a), each Auction 903 winning bidder is required to file an application for Phase II support, referred to as a long-form application, by the applicable deadline.<sup>460</sup> Shortly after bidding has ended, the Bureaus will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadline for the long-form application. Winning bidders will use the new FCC Form 683 and the Auction Application System to submit their long-form applications. Details regarding the submission and processing of long-form applications will be provided in a public notice after the close of the bidding. After a long-form applicant's application has been reviewed and is considered to be complete, and the long-form applicant has submitted an acceptable letter of credit and accompanying Bankruptcy Code opinion letter as described below, a public notice will be released authorizing the long-form applicant to receive Phase II support.<sup>461</sup>

**B. Long-Form Application: Disclosures and Certifications**

290. Unless otherwise provided by public notice, within 10 business days after release of the Auction 903 closing public notice, a long-form applicant must electronically submit a properly completed long-form application (FCC Form 683) for the areas for which it (or its parent/holding company or consortium/joint venture) was deemed a winning bidder. Further instructions and filing requirements will be provided to winning bidders in the auction closing public notice.

**1. Ownership Disclosure**

291. A long-form applicant must fully disclose in its long-form application its ownership structure as well as information regarding the real party- or parties-in-interest in the applicant or application as set forth in section 1.2112(a).<sup>462</sup> A long-form applicant will already have ownership information on file with the Commission that was submitted in its short-form application during the pre-auction process, which may simply need to be updated as necessary.

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<sup>458</sup> See *Phase II Auction Order*, 31 FCC Rcd at 6018-20, 6025, paras. 195-204, 221 (discussing the Remote Areas Fund auction, which will occur after the Phase II auction; noting that the outcome of the Phase II auction will be observed before making final decisions on the Remote Areas Fund auction; and suggesting that ensuring adequate service to all rural Americans may be viewed holistically).

<sup>459</sup> See *supra* Section IV.B.4.b (Bid Processing in the Clearing Round).

<sup>460</sup> 47 CFR § 1.21004(a). As noted above, if the winning bidder is a holding/parent company or a consortium/joint venture that decides to designate an operating company as the entity that will be authorized to receive Phase II support, that operating company must file the long-form application in its own name.

<sup>461</sup> As noted above, we refer to an authorized long-form applicant as a "support recipient."

<sup>462</sup> 47 CFR §§ 1.2112(a), 54.315(b)(2)(i).

## 2. General Universal Service Certifications

292. A long-form applicant must certify in its long-form application that it is in compliance with all statutory and regulatory requirements for receiving the universal service support that it seeks as of the long-form application filing deadline,<sup>463</sup> or that it will be in compliance with such requirements before being authorized to receive Phase II support. A long-form applicant must also certify that it will comply with all program requirements, including service milestones.<sup>464</sup>

293. In addition, a long-form applicant must certify that it is aware that if it is not authorized to receive support based on its application, the application may be dismissed without further consideration and penalties may apply.<sup>465</sup>

294. We decline to require a long-form applicant to certify that it “will not use facilities constructed to provide voice and broadband service using Phase II support in eligible areas to provide any service in ineligible areas.”<sup>466</sup> We conclude that such a certification is unnecessary because we already require a long-form applicant to certify that it will “comply with all program requirements.”<sup>467</sup> This includes the requirement that all universal service support recipients “use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>468</sup> Moreover, this includes the requirement that the states that designated Connect America support recipients as ETCs (or the Connect America support recipients themselves if they were designated as ETCs by the Commission) certify that the support was used for its intended purposes in the preceding calendar year and will be used for its intended purposes in the coming calendar year.<sup>469</sup>

## 3. Financial and Technical Capability Certification

295. As in its pre-auction short-form application, a long-form applicant must certify in its long-form application that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support.<sup>470</sup> A long-form applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. A long-form applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

## 4. Public Interest Obligations Certification

296. A long-form applicant must certify in its long-form application that it will meet the relevant public interest obligations for each performance tier and latency combination for which it (or its parent/holding company or consortium/joint venture) was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the Commission’s reasonable comparability benchmarks for fixed services offered in urban areas.<sup>471</sup>

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<sup>463</sup> 47 CFR § 54.315(b)(2)(v).

<sup>464</sup> *Id.*

<sup>465</sup> 47 CFR § 54.315(b)(6).

<sup>466</sup> ACA Nov. 21, 2017 *Ex Parte* Letter at 2-3.

<sup>467</sup> 47 CFR § 54.315(b)(2)(v).

<sup>468</sup> *Id.* § 54.7(a).

<sup>469</sup> *Id.* § 54.314.

<sup>470</sup> *Id.* §§ 54.310(e)(1); 54.315(b)(2)(ii); *April 2014 Connect America Order*, 29 FCC Rcd at 7066, para. 47.

<sup>471</sup> 47 CFR § 54.315(b)(2)(iii); *Phase II Auction Order*, 31 FCC Rcd at 5987-88, para. 114.

## 5. Eligible Telecommunications Carrier Certification

297. A long-form applicant must acknowledge in its long-form application that it must be designated as an ETC in the relevant areas prior to being authorized to receive Phase II support in those areas.<sup>472</sup> Specifically, the long-form applicant must certify that, if it has already been designated as an ETC in the relevant areas, it has provided a certification of its status in each such area and the relevant documentation supporting that certification in its long-form application. If the long-form applicant has not yet been designated as an ETC in the relevant areas, the long-form applicant must certify that it will submit a certification of its status as an ETC in each such area and the relevant documentation supporting that certification prior to being authorized to receive such support. As described below, this certification of ETC status and documentation must be submitted within 180 days after the release of the Auction 903 closing public notice.

## 6. Description of Technology and System Design

298. Pursuant to the Commission's rules and as proposed in the *CAF II Comment Public Notice*,<sup>473</sup> each long-form applicant will be required to demonstrate that it is technically qualified to meet the relevant Phase II public interest obligations in the areas covered by the winning bids by submitting technical information to support the operational assertions made in the short-form application. A long-form applicant is required to submit a detailed technology and system design description, including a network diagram that must be certified by a professional engineer.<sup>474</sup> The professional engineer must certify that the network can deliver, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements.<sup>475</sup> Because it may take time for a long-form applicant to create a detailed technology and system design description that is tailored to such areas, it may submit its technology and system design description in two stages.

299. *Initial Overview.* First, an applicant must submit with its long-form application (due within 10 business days after the release of the Auction 903 closing public notice) an overview of its intended technology and system design for each state in which winning bids were made. The overview must describe at a high level how the long-form applicant will meet its Phase II public interest obligations for the relevant performance tier and latency combination(s) using Phase II support (e.g., building a new network or expanding an existing network, deploying new technology or existing technology). This overview should avoid highly technical terminology or jargon unless such language is integral to the understanding of the project. The overview will be made publicly available.

300. *Detailed Description.* Second, within 60 calendar days after the release of the Auction 903 closing public notice, a long-form applicant must submit, for each state in which winning bids were made, a more detailed description of its technology and system design. This second submission must describe the network to be built or upgraded, demonstrate the project's feasibility, and include the network diagram certified by a professional engineer.<sup>476</sup> It must describe in detail a network that fully supports the delivery of consumer voice and broadband service that meets the requisite performance requirements to at least 95 percent of the required number of locations in each state by the end of the six-year build-out period and for the duration of the 10-year support term, assuming a 70 percent subscription rate by the final service milestone. It also must contain sufficient detail to demonstrate that the long-form

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<sup>472</sup> 47 CFR § 54.315(b)(5).

<sup>473</sup> *CAF II Comment Public Notice*, 32 FCC Rcd at 6247, 6257-58, paras. 29, 64; *see also* 47 CFR § 54.315(b)(2)(iv).

<sup>474</sup> 47 CFR § 54.315(b)(2)(iv); *Phase II Auction Order*, 31 FCC Rcd at 5987-88, para. 114.

<sup>475</sup> 47 CFR § 54.315(b)(2)(iv); *Phase II Auction Order*, 31 FCC Rcd at 5987-88, para. 114.

<sup>476</sup> A long-form applicant can submit the detailed description as early as its initial long-form application filing deadline (i.e., within 10 business days after the release of the public notice announcing the close of Auction 903), but no later than 60 calendar days after the public notice's release.

applicant can meet the interim service milestones if it becomes authorized to receive support. If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Phase II obligations, the long-form applicant will be asked to provide further details about its proposed network. We will treat all the information submitted with this second submission as confidential and will withhold it from routine public inspection.<sup>477</sup>

301. Below, we provide guidance on how a long-form applicant can successfully meet the requirement in section 54.315(b)(2)(iv) to provide a description of its technology and system design. Specifically, we describe the types of information we would expect a long-form applicant to include, at a minimum, in a detailed description of its technology and system design in order to demonstrate that it has the technical qualifications to meet its Phase II obligations.<sup>478</sup> Our guidance is informed by the types of information that long-form applicants submitted for rural broadband experiment support during the long-form application stage to demonstrate that they had the technical qualifications to meet the relevant rural broadband experiment public interest obligations.<sup>479</sup> These are also the types of information that we expect a technically qualified long-form applicant will have made preliminary decisions about in order to determine how much support it would need to meet the relevant Phase II auction public interest obligations and also to begin planning how it will meet the required service milestones.

302. A long-form applicant, regardless of the technology (or technologies) it proposes to use, is expected to:

- Describe the proposed last mile architecture(s) and technologies,<sup>480</sup> middle mile/backhaul topology,<sup>481</sup> and the architecture used to provide voice service.<sup>482</sup>
- Describe the network's scalability and features that improve reliability (such as redundancy).
- Indicate whether parts of the network will use the long-form applicant's or another party's existing network facilities, including non-wireless facilities extending from the network to customers' locations. For non-wireless facilities that do not yet exist, the description should indicate whether the new facilities will be aerial, buried, or underground.
- Provide technical information about the methods, "rules of thumb," and engineering assumptions used to size the capacity of the network's nodes (or gateways) and links. The information

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<sup>477</sup> As we do with short-form applications, we 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. *See* 47 CFR § 0.459(a)(4). If a request for public inspection under section 0.461 is made, however, the long-form applicant will be notified and will be required to justify confidential treatment of its request if the long-form applicant has any objections to disclosure. 47 CFR § 0.461.

<sup>478</sup> We recognize that because a Phase II support recipient has six years to fully build out its network, the information submitted by the long-form applicant may be based on a preliminary network design that may be modified as the network is built out.

<sup>479</sup> *See Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, para. 54 (requiring rural broadband experiment support recipients to "submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer").

<sup>480</sup> Such architectures and technologies include, for example, wireless licensed or unlicensed, fiber, coaxial cable, satellite, digital subscriber line, hybrids, etc.

<sup>481</sup> For example, describe ring, mesh, tree and branch, and hybrid topologies.

<sup>482</sup> This description should include the long-form applicant's Session Initiation Protocol (SIP) proxies, session border controllers, and various network databases. If the long-form applicant obtains these or other voice service functions as services from another provider or providers (for example, an over-the-top VoIP provider, or an incumbent or competitive local exchange carrier), the description should so indicate.



provided should demonstrate how the required performance for the relevant performance tier will be achieved during periods of peak usage, assuming a 70 percent subscription rate by the final service milestone.

- Provide a project plan that includes a network build-out schedule that includes but is not restricted to plans for construction of last mile and middle mile facilities. The build-out schedule should show the long-form applicant's projected milestones on an annual basis, including achievement of the interim service milestones described in section 54.310(c) of the Commission's rules and completion of the network by the end of the sixth year of funding authorization.<sup>483</sup> The project plan and included schedule should incorporate detailed information showing how the long-form applicant plans to offer, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service meeting the relevant performance requirements when the system is complete. The project plan and included schedule should also incorporate the long-form applicant's plans for monitoring and maintaining the performance of the service for the duration of the 10-year support term.

303. The network diagram, which must be certified by a professional engineer, should:

- Identify all wireline and wireless segments of the proposed networks.
- Uniquely identify (i) major network nodes<sup>484</sup> including their manufacturer and model, as well as their functions, locations,<sup>485</sup> and throughput/capacity;<sup>486</sup> (ii) access nodes or gateways,<sup>487</sup> including their technology, manufacturer and model, location, and throughput/capacity; and (iii) major inter-nodal links (not last mile),<sup>488</sup> and their throughput/capacity.
- Indicate how many locations will be offered service from each access node or from each gateway, and which performance tier or tiers will be supported at each access node.
- Indicate what parts of the network will be new deployment and what parts will use the long-form applicant's or another party's existing network facilities.
- Identify specialized nodes used in providing voice service.
- Explain how nodes or gateways are connected to the Internet backbone and Public Switched Telephone Network.

304. Additionally, a long-form applicant that proposes to use terrestrial fixed wireless technologies should:

- Explain, with technical detail, how the proposed spectrum can meet or exceed the relevant

<sup>483</sup> 47 CFR § 54.310(c); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

<sup>484</sup> Major nodes include, but are not necessarily restricted to, routers, SIP Proxies, softswitches, and databases used to route Internet communications and voice calls; and Points of Interconnection with the Public Switched Telephone Network and the Internet core.

<sup>485</sup> A long-form applicant should provide addresses if available. To the extent latitude and longitude coordinates are provided, a long-form applicant should include six digits after the decimal point.

<sup>486</sup> Capacity should be measured in Gigabits per second for routers, calls per hour for SIP proxies and softswitches, queries per minute for databases, and appropriate units for other nodes.

<sup>487</sup> An access node connects a customer's connection to the core of the network. Access nodes include wireless base stations, digital subscriber line access modules, cable modem termination systems, and optical line terminations, among others. Access nodes are sometimes referred to as aggregation nodes. When we reference gateways, we are referring to the gateway earth stations used by satellite providers.

<sup>488</sup> Include links that connect access nodes to the network core, among other major inter-nodal links. Each inter-nodal link should be identified by specifying the nodes at the ends of the link.

performance requirements at peak usage periods.<sup>489</sup>

- Provide the calculations used,<sup>490</sup> for each performance tier and frequency band, to design the last mile link budgets in both the upload and download directions at the cell edge,<sup>491</sup> using the technical specifications of the expected base station and customer premise equipment.
- Provide coverage maps for the planned and/or existing networks that will be used to meet the Phase II public interest obligations, indicating where the upload and download speeds will meet or exceed the relevant performance tier speed(s).<sup>492</sup> The coverage maps should be provided for each interim and final service milestone and should display the required service areas and target locations (or a representation thereof).
- Describe the underlying propagation model used to prepare the coverage maps and how the model incorporates the operating spectrum, antenna heights, distances, digital elevation, and clutter resolutions.<sup>493</sup>
- Describe, for each relevant performance tier and latency combination, the base station equipment that the long-form applicant plans to use.<sup>494</sup>
- Describe the planned customer premise equipment configuration.<sup>495</sup>

305. Additionally, a long-form applicant that proposes to use primarily satellite technologies should:<sup>496</sup>

- Describe how many satellites that are in view simultaneously from any specific location will be required to meet the relevant Phase II public interest obligations.
- Describe how many uplink and downlink gateway antenna beams will be required on each satellite, and the capacity of each beam in megabits per second.
- Describe how many uplink and downlink user antenna beams will be required on each satellite, and the capacity of each beam in megabits per second.

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<sup>489</sup> The justification should clearly define all relevant assumptions including, but not limited to, oversubscription ratio, number of locations, spectrum efficiency, bandwidth, peak periods required user data rate, and peak periods network loading.

<sup>490</sup> This should include a description of all design assumptions, including, but not limited to, coverage reliability, fade margins, required frame error rate, required signal-to-noise ratio, and modulation/coding scheme associated with frame error rate and signal to noise ratio.

<sup>491</sup> The term cell edge is commonly used to describe the edge of the base station coverage area beyond which performance goals cannot be achieved.

<sup>492</sup> Typically, a suitable received power figure or other technology dependent figure is used for such coverage plots.

<sup>493</sup> A long-form applicant should provide vendor references and publicly available publications for the utilized model, digital elevation, and clutter data.

<sup>494</sup> Such a description should include technology, speed, number of sectors, average number of subscribing locations per sector, frequency band, channel bandwidth, frequency reuse, antenna gain, diversity configuration, estimated losses, estimated height above ground, base station coordinate in NAD 83, and any other relevant information. A long-form applicant should also include vendor specification data sheets or other supporting documents.

<sup>495</sup> Such a description should include technology, applicable frequency band, speed options, antenna gain, diversity scheme and modem specifications. A long-form applicant should also include vendor specification data sheets or other supporting documents.

<sup>496</sup> This does not include long-form applicants that intend to use satellite technologies primarily for backhaul.

- Describe how the gateway capacity is connected to user beams on the satellite, in terms of beams and data capacity per beam.
- Describe whether the capacity on the uplink and downlink beams would be able to be reallocated once a satellite commences operation, if the subscription rate is less than 70 percent in one beam but more than 70 percent in another beam.

## 7. Available Funds Certification and Description

306. A long-form applicant must certify in its long-form application that it will have available funds for all project costs that exceed the amount of Phase II support to be received for the first two years of its support term.<sup>497</sup> A long-form applicant must also describe how the required construction will be funded in each state.<sup>498</sup> The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Phase II support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans. We will treat all the information submitted with this submission as confidential and will withhold it from routine public inspection.<sup>499</sup>

## 8. Spectrum Access

307. A long-form applicant that intends to use wireless technologies to meet the relevant Phase II public interest obligations must demonstrate that it currently has sufficient access to spectrum.<sup>500</sup> Specifically, as in its pre-auction short-form application, a long-form applicant must, in its long-form application (i) identify the spectrum band(s) it will use for the last mile, backhaul, and any other parts of the network;<sup>501</sup> (ii) describe the total amount of uplink and downlink bandwidth (in megahertz) that it has access to in each spectrum band for the last mile; (iii) describe the authorizations (including leases) it has obtained to operate in the spectrum, if applicable;<sup>502</sup> and (iv) list the call signs and/or application file numbers associated with its spectrum authorizations, if applicable.<sup>503</sup> To the extent that a long-form applicant will use licensed spectrum, it should provide details about how the licensed service area covers

<sup>497</sup> 47 CFR § 54.315(b)(2)(v); *Phase II Auction Order*, 31 FCC Rcd at 5989, para. 116.

<sup>498</sup> 47 CFR § 54.1005(b)(2)(vi); *Phase II Auction Order*, 31 FCC Rcd at 5989, para. 116.

<sup>499</sup> We will also 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. *See* 47 CFR § 0.459(a)(4). If a request for public inspection under section 0.461 is made, however, the long-form applicant will be notified and will be required to justify confidential treatment of its request if the long-form applicant has any objections to disclosure. 47 CFR § 0.461.

<sup>500</sup> *Phase II Auction Order*, 31 FCC Rcd at 5988, para. 111.

<sup>501</sup> A long-form applicant may propose to use more than one spectrum band to meet its Phase II public interest obligations. Each applicant must identify for which part of the network (e.g., last mile, backhaul, etc.) it intends to use each spectrum band.

<sup>502</sup> If the licensee is a different party than the long-form applicant, the licensee name and the relationship to the long-form applicant should be described. If the long-form applicant is leasing spectrum, the lease number should be provided along with the license information.

<sup>503</sup> As in the short-form application, an applicant that intends to provide service using satellite technology should describe its expected timing for applying for earth station license(s), and an applicant that intends to obtain microwave license(s) for backhaul should describe its expected timing for applying for microwave license(s) if these licenses have not already been obtained. *See supra* Section II.E.4.d (Specific Information Required from Applicants Proposing to Use Spectrum to Provide Service).

its winning bid area(s) (e.g., provide a list of geographic areas that the spectrum license covers and describe how those areas relate to the winning bid area(s)).

308. A long-form applicant must also certify that the description of the spectrum access is accurate and that it will retain such access for at least 10 years after the date on which it is authorized to receive support. Applications will be reviewed to assess the reasonableness of the certification.

### C. Letter of Credit Commitment Letter

309. Within 60 days after the release of the Auction 903 closing public notice, a long-form applicant must submit a letter from a bank acceptable to the Commission, as set forth in section 54.315(b)(3), committing to issue an irrevocable stand-by letter of credit, in the required form, to the long-form applicant.<sup>504</sup> The letter must, at a minimum, 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 B of the *Phase II Auction Order*.<sup>505</sup>

### D. Documentation of ETC Designation

310. Within 180 days after the release of the Auction 903 closing public notice, a long-form applicant is required to submit appropriate documentation of its high-cost ETC designation in all the areas for which it will receive support.<sup>506</sup> Appropriate documentation should include the original designation order, any relevant modifications, e.g., expansion of service area or inclusion of wireless, along with any name-change orders. A long-form applicant is also required to provide documentation showing that the designated areas (e.g., census blocks, wire centers, etc.) cover the relevant winning bid areas so that it is clear that the long-form applicant has high-cost ETC status in each winning bid area.<sup>507</sup> Such documentation could include maps of the long-form applicant's ETC designation area, map overlays of the winning bid areas, and/or charts listing designated areas. Additionally, a long-form applicant is required to submit a letter with its documentation from an officer of the company certifying that the long-form applicant's ETC designation for each state covers the relevant areas where the long-form applicant will receive support.<sup>508</sup>

### E. Audited Financial Statements

311. Within 180 days after the release of the Auction 903 closing public notice, a long-form applicant that did not submit audited financial statements in its pre-auction short-form application must submit the financial statements from the prior fiscal year that are audited by an independent certified public accountant.<sup>509</sup> Any long-form applicant that fails to submit the audited financial statements as required by the 180-day deadline will be subject to a base forfeiture of \$50,000, which will be subject to

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<sup>504</sup> 47 CFR § 54.315(b)(3), (c)(2). See also *id.* § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, paras. 119-40 (describing the letter of credit requirements).

<sup>505</sup> 47 CFR § 54.315(b)(3); *Phase II Auction Order*, 31 FCC Rcd at 6045-49, Appx. B.

<sup>506</sup> 47 CFR § 54.315(b)(5). A Lifeline-only ETC designation is not sufficient; the long-form applicant must obtain a high-cost ETC designation in areas where it seeks to be authorized to receive Phase II support.

<sup>507</sup> *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 141.

<sup>508</sup> 47 CFR § 54.315(b)(5); *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 141.

<sup>509</sup> 47 CFR § 54.315(b)(4). This option is only available to short-form applicants that indicated that they were not audited in the ordinary course of business and that certified in their short-form applications that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years. *Id.* § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, paras. 102-03.

adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines.<sup>510</sup>

#### **F. Letter of Credit and Bankruptcy Code Opinion Letter**

312. After a long-form applicant's application has been reviewed and is considered to be complete, the Commission will issue a public notice identifying each long-form applicant that may be authorized to receive Phase II support. No later than 10 business days after the release of the public notice, a long-form applicant must obtain an irrevocable standby letter of credit at the value specified in section 54.315(c)(1) from a bank acceptable to the Commission as set forth in section 54.315(c)(2) for each state where the long-form applicant is seeking to be authorized.<sup>511</sup> The letter of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix B of the *Phase II Auction Order*.<sup>512</sup>

313. In addition, a long-form applicant will be required to provide with the letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the long-form applicant's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.<sup>513</sup>

#### **G. Default Payment Requirements**

##### **1. Auction Forfeiture**

314. Any Auction 903 winning bidder or long-form applicant will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support.<sup>514</sup> 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 Phase II support by the Bureaus on delegated authority, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support.<sup>515</sup> Any such determination by the Bureaus shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure

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<sup>510</sup> *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 104. See also 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8). This forfeiture will be applied in lieu of the forfeiture we will impose for other auction defaults and will be applied per defaulting entity rather than per bid or minimum geographic unit. *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 104 n.206.

<sup>511</sup> 47 CFR § 54.315(c)(1), (c)(2). A long-form applicant may obtain multiple letters of credit for a state. However, because compliance is determined at the state-level, the Bureaus will authorize a draw on all the letters of credit covering all the bids in a state if a support recipient defaults. *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 n.242.

<sup>512</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, 6045-49, para. 122, Appx. B. If any Tribal Nation or Tribally owned and controlled long-form applicant for the Phase II auction is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Such long-form applicants must show, with evidence acceptable to the Commission, that the Tribal Nation is unable to obtain a letter of credit because of limitations on the ability to collateralize its real estate, that Phase II support will be used for its intended purposes, and that the funding will be used in the best interests of the Tribal Nation and will not be wasted. See *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 140.

<sup>513</sup> 11 U.S.C. § 541; 47 CFR § 54.315(c)(3); *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125.

<sup>514</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45.

<sup>515</sup> The Bureaus' technical guide will provide a detailed explanation of what is considered to be a winning bid.

through additional submissions, negotiations, or otherwise. Agreeing to such payment in the event of a default is a condition for participating in bidding in the Phase II auction.<sup>516</sup>

315. In the event of an auction default, we will impose a base forfeiture per violation of \$3,000 subject to adjustment upward or downward based on the criteria set forth in our forfeiture guidelines, as adopted in the *Phase II Auction Order*.<sup>517</sup> A violation is defined as any form of default with respect to the minimum geographic unit eligible for bidding. In other words, there shall be separate violations for each CBG assigned in a bid.<sup>518</sup> To ensure that the amount of the base forfeiture is not disproportionate to the amount of a winning bidder's bid, the Commission decided to limit the total base forfeiture to five percent of the bidder's total assigned support for the bid for the support term.<sup>519</sup>

316. ITTA proposes that, in the event of a default, we reallocate the funding amounts to the bidder with the next lowest score, which may or may not be in the same geographic area where the winning bidder or long-form applicant defaulted.<sup>520</sup> We decline to do so. In the spectrum license auction context, the Commission has long expressed a clear preference for re-auctioning a defaulted license rather than offering it to the next highest bidder, even though a re-auction imposes some delay.<sup>521</sup> This is because the passage of time between the auction and the default and intervening events may have resulted in changed circumstances for the value of the license and the next highest bidder.<sup>522</sup> There is also a risk that awarding a license to the next highest bidder would cause auction participants to adjust their bidding conduct based on the probability of default, thus affecting the integrity of the auction. Because these same concerns apply to a reverse auction for universal service support as well, we will not adopt ITTA's proposal.

## 2. Non-Compliance Measures Post-Authorization

317. A long-form applicant that has received notice from the Commission that it is authorized to receive Phase II support will be subject to non-compliance measures once it becomes a support

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<sup>516</sup> This forfeiture payment satisfies the requirements of section 1.21004(b) of the Commission's rules with respect to default payments. 47 CFR § 1.21004(b).

<sup>517</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143. See also 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8). In determining the final amount of the forfeiture, consistent with the Commission's rules, the Enforcement Bureau shall take into account the nature, circumstances, extent, and gravity of the violations. 47 CFR § 1.80(b)(8).

<sup>518</sup> A winning bidder or long-form applicant would violate the Commission's rules for each of the CBGs assigned in its defaulting bid. If a winning bidder or long-form applicant defaults on a bid that includes 10 CBGs, that entity could be subject to a base forfeiture of \$30,000 (10 CBGs multiplied by the base forfeiture of \$3,000).

<sup>519</sup> *Phase II Auction Order*, 31 FCC Rcd at 6000-01, para. 144. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A's winning bid includes 100 CBGs for \$100,000 over the ten-year support term. We would impose a base forfeiture of \$5,000 (5 percent of \$100,000) because otherwise the base forfeiture would be \$300,000 (\$3,000 x 100 CBGs), which is three times the entire bid amount. In contrast, if Bidder B's winning bid includes 100 CBGs for \$7,000,000 over the support term, we would impose a base forfeiture of \$300,000 (\$3,000 x 100 CBGs), which is 4.3 percent of the total bid.

<sup>520</sup> See ITTA Comments at 7-8.

<sup>521</sup> See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2383-84, paras. 204-05 (1994) ("We believe that, as a general rule, when an auction winner defaults on its final payment or is otherwise disqualified after having made the required down payment, the best course of action would be to re-auction the license.").

<sup>522</sup> *Id.*; see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 462, para. 153 (1997) ("[O]ther parties can argue that they would pay more for the license if given the opportunity. In addition, when more than one license is being auctioned, aggregation strategies may shift during the course of the auction, affecting the value placed on any individual license by a particular bidder.").

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.<sup>523</sup> As described in the *December 2014 Connect America Order* and the *Phase II Auction 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.<sup>524</sup> A support recipient may also be subject to other sanctions for non-compliance with the terms and conditions of Phase II support, including, but not limited to, potential revocation of ETC designations and suspension or debarment.<sup>525</sup> Additionally, a support recipient will be subject to any non-compliance measures that are adopted in conjunction with a methodology for high-cost support recipients to measure and report speed and latency performance to fixed locations.<sup>526</sup>

## VI. PROCEDURAL MATTERS

### A. Legal Authority

318. We establish procedures for the Phase II auction pursuant to the authority contained in sections 4(i)-(j), 214, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, and 303(r).

### B. Paperwork Reduction Act Analysis

319. This document implements the information collections adopted in the *Phase II Auction Order* and does not contain any additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission is currently seeking PRA approval for information collections related to the short-form application process and will in the future seek PRA approval for information collections related to the long-form application process. In addition, therefore, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>527</sup>

### C. Supplemental Final Regulatory Flexibility Analysis

320. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>528</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM*, the *April 2014 Connect America FNPRM*, and the *Phase II Auction FNPRM* (collectively, *Phase II FNPRMs*).<sup>529</sup> A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was also filed in the *CAF II Auction Comment Public Notice* in this proceeding.<sup>530</sup> The Commission sought written public comment on the proposals in the *Phase II FNPRMs* and in the *CAF II Auction Comment Public Notice*, including comments on the IRFAs and the Supplemental IRFA. No comments were filed addressing the IRFAs. The Commission included Final Regulatory Flexibility

<sup>523</sup> 47 CFR §§ 54.315(c)(4), 54.320.

<sup>524</sup> *Id.* §§ 54.315(c)(4), 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-701, paras. 142-57.

<sup>525</sup> 47 CFR § 54.320; *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

<sup>526</sup> *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 194.

<sup>527</sup> See 44 U.S.C. 3506(c)(4).

<sup>528</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>529</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18364-95, Appx. P, Initial Regulatory Flexibility Analysis; *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, Appx. D, Initial Regulatory Flexibility Analysis; *Phase II Auction FNPRM*, 31 FCC Rcd at 6078-103, Appx. D, Initial Regulatory Flexibility Analysis.

<sup>530</sup> *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6274-75, paras. 143-47.

Analyses (FRFAs) in connection with the *April 2014 Connect America Order*, the *Phase II Auction Order*, and the *Phase II Auction FNPRM Order* (collectively, *Phase II Orders*).<sup>531</sup> This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Phase II Orders* to reflect the actions taken in this Public Notice and conforms to the RFA.<sup>532</sup>

321. *Need for, and Objectives of, This Public Notice.* This Public Notice establishes procedures for the Connect America Fund Phase II auction (Phase II auction, auction, or Auction 903). In particular, this Public Notice establishes procedures for, among other things, how an applicant can become qualified to bid in the auction, how bidders will submit bids, and how bids will be processed to determine winners and assign support amounts.

322. Following the release of the *Phase II FNPRMs* and *Phase II Orders*, the Commission released the *CAF II Auction Comment Public Notice*.<sup>533</sup> The *CAF II Auction Comment Public Notice* proposed specific procedures for implementing the rules proposed in the *Phase II FNPRMs* and adopted in the *Phase II Orders*. The *CAF II Auction Comment Public Notice* did not change matters adopted in the *Phase II Orders*, but did request comment on how the proposals in the *CAF II Auction Comment Public Notice* might affect the previous regulatory flexibility analyses in this proceeding.

323. This Public Notice establishes procedures for awarding Phase II support in Auction 903 through a multi-round, reverse auction, the minimum geographic area for bidding in the auction, aggregating eligible areas into larger geographic units for bidding, setting reserve prices, capping the amount of support per location provided to extremely high-cost census blocks, and the availability of application and auction information to bidders and to the public during and after the auction. This Public Notice also establishes detailed bidding procedures for conducting Auction 903 using a descending clock auction format, including bid collection, clock prices, bid format, package bidding format, proxy bidding, bidder activity rules, bid processing, and how support amounts are determined.

324. To implement the rules adopted by the Commission in the *Phase II Orders* for the pre-auction process, this Public Notice establishes specific procedures and requirements for applying to participate and becoming qualified to bid in Auction 903, including designating the state(s) and performance tier/latency combinations in which an applicant intends to bid, and providing operational and financial information designed to allow the Commission to assess the applicant's qualifications to meet the Phase II public interest obligations for each area for which it seeks support. This Public Notice also sets forth information that a winning bidder will be required to submit in its post-auction long-form application in order to become authorized to receive Phase II support.

325. Accordingly, the procedures established in this Public Notice are consistent with the *Phase II Orders* and the prior regulatory flexibility analyses set forth in this proceeding, and no changes to our earlier analyses are required.

326. *Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA.* There were no comments filed that specifically addressed the proposed procedures presented in the Supplemental IRFA.

327. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010,<sup>534</sup> which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business

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<sup>531</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7190-215, Appx. C, Final Regulatory Flexibility Analysis; *Phase II Auction Order*, 31 FCC Rcd at 6050-77, Appx. C, Final Regulatory Flexibility Analysis; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1654-64, Appx., Final Regulatory Flexibility Analysis.

<sup>532</sup> See 5 U.S.C. § 604.

<sup>533</sup> See generally *CAF II Auction Comment Public Notice*.

<sup>534</sup> 5 U.S.C. § 604(a)(3).



Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.

328. The Chief Counsel did not file any comments in response to the auction procedures proposed in this proceeding.

329. *Description and Estimate of the Number of Small Entities to which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the procedures adopted herein.<sup>535</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>536</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>537</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>538</sup>

330. As noted above, FRFAs were incorporated into the *Phase II Orders*. In those analyses, we described in detail the small entities that might be significantly affected. In this Public Notice, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *Phase II Orders*.<sup>539</sup>

331. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The data, information and document collection required by the *Phase II Orders* as described in the previous FRFAs and the Supplemental IRFA in the *CAF II Auction Comment Public Notice* in this proceeding are hereby incorporated by reference.<sup>540</sup>

332. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”<sup>541</sup>

333. The analysis of the Commission’s efforts to minimize the possible significant economic impact on small entities as described in the previous *Phase II Orders* FRFAs are hereby incorporated by

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<sup>535</sup> *Id.* § 603(a)(4).

<sup>536</sup> *Id.* § 601(6).

<sup>537</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>538</sup> 15 U.S.C. § 632.

<sup>539</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7191-213, paras. 9-64; *Phase II Auction Order*, 31 FCC Rcd at 6052-73, paras. 7-62; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1655-62, paras. 7-24.

<sup>540</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7213, paras. 65-66; *Phase II Auction Order*, 31 FCC Rcd at 6073-75, paras. 63-74; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1662-63, paras. 25-26; *see also CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6274-75, paras. 143-47.

<sup>541</sup> 5 U.S.C. § 603(c)(1)-(4).

reference.<sup>542</sup> In addition, in establishing the bidding and application procedures for Auction 903, we anticipate the challenges faced by small entities. Specifically, the bidding procedures established in this Public Notice are designed to facilitate the participation of qualified service providers of all kinds, including small entities, in the Phase II program, and to give all bidders, including small entities, the flexibility to place bids that align with their intended network construction or expansion, regardless of the size of their current network footprints. For example, we will use census block groups (CBGs) containing one or more eligible census blocks as the minimum geographic area for bidding in the auction in order to provide bidders, including small providers, with flexibility to target their intended areas of network expansion or construction without significantly complicating the bidding process. To help ensure that all bidders—both large and small—understand the bidding procedures, including those related to package bidding, the Bureaus will provide further educational opportunities and materials well in advance of the auction.

334. Furthermore, the pre-auction application procedures set forth in this Public Notice are intended to require applicants to submit enough information to permit the Commission to determine their qualifications to participate in Auction 903, without requiring so much information that it is cost-prohibitive for any entity, including small entities, to participate. For example, we adopt a modified version of the proposal in the *CAF II Auction Comment Public Notice* regarding an applicant's financial qualifications that no longer places added emphasis on an applicant's score for the current ratio and equity ratio metrics in light of some commenters' concerns that those two thresholds are difficult for certain providers, including small providers, to meet.

335. Finally, recognizing that some entities may be new to Commission auctions, we announce the types of materials and other information we will make available to help educate parties that have not previously applied to participate or bid in a Commission auction. Specifically, the Bureaus will compile and release a guide that provides further technical and mathematical detail regarding the bidding, assignment, and support amount determination procedures. Two online tutorials will be available to serve as references for potential applicants and bidders, and two workshops/webinars will be held. Additionally, a mock auction will be conducted that will enable all qualified bidders, including small entities, to become familiar with the CAF II Bidding System and to practice submitting bids prior to the auction. By providing these resources, we seek to minimize any economic impact on small entities and help all entities—both large and small—fully understand the bidding and application procedures. The Bureaus also plan to work with the Commission's Office of Communications Business Opportunities to engage with small providers.

336. *Report to Congress.* We will send a copy of this Public Notice, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, we will send a copy of this Public Notice, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Public Notice, and Supplemental FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>543</sup>

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<sup>542</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7213-15, paras. 67-72; *Phase II Auction Order*, 31 FCC Rcd at 6075-77, paras. 75-82; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1663, paras. 27-30.

<sup>543</sup> See 5 U.S.C. § 604(b).

**VII. CONTACT INFORMATION**

337. Contact Information Table:

**General Auction 903 Information**General Auction Questions  
Auction Process and Procedures**FCC Auctions Hotline**(888) 225-5322, option two; or  
(717) 338-2868**FCC Email & Webpages**[Auction903@fcc.gov](mailto:Auction903@fcc.gov)<http://www.fcc.gov><https://www.fcc.gov/connect-america-fund-phase-ii-auction>**Auction 903 Legal Information**

Auction Rules, Policies, and Regulations

**Rural Broadband Auctions Task Force**

Chelsea Fallon, (202) 418-7991

Kirk Burgee, (202) 418-1599

Thom Parisi, (202) 418-1356

**Wireless Telecommunications Bureau****Auctions and Spectrum Access Division**

Mark Montano

Angela Kung

(202) 418-0660

**General Universal Service Questions****Wireline Competition Bureau****Telecommunications Access Policy Division**

Alex Minard

Heidi Lankau

Katie King

(202) 418-0660

**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

**Auction Bidder Line**

Will be furnished only to qualified bidders

**Press Information**

Mark Wigfield, (202) 418-0253

Charles Meisch, (202) 418-2943

**FCC Forms**

(800) 418-3676 (outside Washington, DC)

(202) 418-3676 (in the Washington area)

<http://www.fcc.gov/formpage.html>**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](mailto:fcc504@fcc.gov)

**Small Businesses**

Additional information for small and disadvantaged businesses

**Office of Communications Business Opportunities**

(202) 418-0990

<http://www.fcc.gov/ocbo/>

**Tribal Issues**

Additional information for entities seeking to provide service to Tribal lands and Tribal governments

**Office of Native Affairs and Policy**

(202) 418-2930

[native@fcc.gov](mailto:native@fcc.gov)

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## APPENDIX A

## Auction 903 Short-Form Application Operational Questions

Responses to these questions and any supporting documentation will be withheld from public disclosure.

Operational History (if applicable)

Answer on a nationwide basis:

Has the applicant previously deployed consumer broadband networks (Yes/No)? If so, identify the date range for when broadband service was offered and in which state(s) service was offered. What specific last mile and interconnection (backhaul) technologies were used? Provide an estimate of how many subscribers are currently served. (If the applicant is no longer providing service in any state, estimate the number of customers that were served at the beginning of the last full year that the applicant did provide service.) What services (e.g., voice, video, broadband Internet access) were provided?

Proposed Network(s) Using Funding from the Phase II Auction

Answer for each state the applicant selected in its application:

1. Which network architectures and technologies will be used in the applicant's proposed deployment? How will voice services be provided? How will broadband Internet access service be provided?
2. What are the relevant industry standards, if any, for the last-mile technologies in the applicant's proposed deployment? If the applicant is proposing to use non-standard technologies, the applicant should identify which vendor(s) and product(s) are being considered, and provide links to the vendors' websites and to publicly available technical specifications of the product(s). (If technical specifications for the non-standard technologies are not available on a vendor's website, they may be submitted with this application.) Regardless of whether the applicant proposes to use standard or non-standard technologies – what capabilities of this technology and proposed network will enable performance tier (speed and usage allowance), latency and (where applicable) voice service mean opinion score (MOS) requirements to be met?
3. Can the applicant demonstrate that the technology and the engineering design will fully support the proposed performance tier, latency and voice service requirements for the requisite number of locations during peak periods (Yes/No)? What assumptions about subscription rate and peak period data usage is the applicant making in this assertion? Describe concisely the information that can be made available to support this assertion.
4. Can the applicant demonstrate that all the network buildout requirements to achieve all service milestones can be met (Yes/No)? The applicant will be required to submit a detailed project plan in the long-form application if it is named as a winning bidder. Describe concisely the information that the applicant would make available in such a detailed project plan.
5. For the proposed performance tier and latency combination, can the applicant demonstrate that potential vendors, integrators and other partners are able to provide commercially available and fully compatible network equipment/systems, interconnection, last mile technology and customer premise equipment (CPE) at cost consistent with applicant's buildout budget and in time to meet

service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support this response.

6. Can the applicant describe how the network will be maintained and services provisioned (Yes/No)? Can the applicant demonstrate that it can provide internally developed operations systems for provisioning and maintaining the proposed network including equipment and segments, interconnections, CPE and customer services at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? If not, can the applicant demonstrate that potential vendors, integrators, and other partners are able to provide commercially available and fully compatible operations systems and tools for provisioning and maintaining the proposed network at cost consistent with applicant's buildout budget and in time to meet service milestones (Yes/No)? Describe concisely the information and sources of such information that the applicant could make available to support these responses.
7. If the applicant is using satellite technologies, describe concisely the total satellite capacity available and possible methods the applicant will utilize to assign bandwidth and capacity for each spot beam.

## APPENDIX B

## Auction 903 Spectrum Chart

Spectrum Band/Service	Paired Licensed		Unpaired Licensed	Unlicensed
	Uplink Freq. (MHz)	Downlink Freq. (MHz)	Uplink & Downlink Freq. (MHz)	Unlicensed (MHz)
600 MHz	663-698	617-652		
Lower 700 MHz	698-716	728-746	716-728 (Downlink only)	
Upper 700 MHz	776-787	746-757		
800 MHz SMR	813.5/817-824	858.5/862-869		
Cellular	824-849	869-894		
Broadband PCS	1850-1915	1930-1995		
AWS-1	1710-1755	2110-2155		
AWS (H Block)	1915-1920	1995-2000		
AWS-3	1755-1780	2155-2180	1695-1710 (Uplink only)	
AWS-4			2000-2020 2180-2200 (Downlink only)	
BRS/EBS			2496-2690	
WCS	2305-2315	2350-2360	2315-2320 2345-2350	
CBRS (3.5 GHz)			3550-3700	
UMFUS (terrestrial)			27,500-28,350 38,600-40,000	
70-80-90 GHz unpaired & 70-80 GHz paired (point-to-point terrestrial)	Point-to-Point Pairs for 70-80 GHz 71,000-76,000 with 81,000-86,000		71,000-76,000 81,000-86,000 92,000-95,000	
TV White Spaces				54-72 76-88 174-216 470-698
900 MHz				902-928
2.4 GHz				2400-2483.5
5 GHz				5150-5250 5250-5350 5470-5725 5725-5850
24 GHz				24,000-24,250
57-71 GHz				57,000 – 71,000
Ku Band (satellite)	12,750-13,250 14,000-14,500	10,700-12,700		
Ka Band (satellite)	27,500-30,000	17,700-20,200		
V Band (satellite)	47,200-50,200 50,400-52,400	37,500-42,000		

**Abbreviations**

AWS	Advanced Wireless Services
BRS/EBS	Broadband Radio Service / Education Broadband Service
CBRS	Citizens Broadband Radio Service
PCS	Personal Communications Service
SMR	Specialized Mobile Radio
UMFUS	Upper Microwave Flexible Use Service
WCS	Wireless Communications Service



## APPENDIX C

## Commenter Short Names

<b>Short Name</b>	<b>Name of Filer</b>
ACA	American Cable Association
ADTRAN	ADTRAN, Inc.
AT&T	AT&T Services, Inc.
GeoLinks	California Internet, L.P. DBA GeoLinks
Hughes	Hughes Network Systems, LLC
IEC	Illinois Electric Cooperative
ILSR	The Institute for Local Self-Reliance
ILSR et al.	The Institute for Local Self-Reliance
	Public Knowledge
	Appalshop
	Center for Rural Strategies
	Access Humboldt
	National Digital Inclusion Alliance,
	Virginia Rural Health Association
	Tribal Digital Village
	Broadband Alliance of Mendocino County, California
	Center for Rural Policy
	Access Sonoma Broadband
	The Utility Reform Network
ITTA	ITTA – The Voice of America’s Broadband Providers
Microsoft	Microsoft Corporation
Rural Coalition	Association of Missouri Electric Cooperatives
	Midwest Energy Cooperative
	Great Lakes Energy
	HomeWorks Tri-County Electric Cooperative
	Indiana Electric Cooperatives
	Alger Delta Cooperative Electric Association
	Arkansas Electric Cooperatives, Inc.
	National Rural Electric Cooperative Association
	NTCA—The Rural Broadband Association
	Utilities Technology Council
RWA	Rural Wireless Association, Inc.
SpaceX	Space Exploration Technologies Corp.
Sacred Wind	Sacred Wind Communications, Inc.
US Cellular	United States Cellular Corporation
USTelecom	USTelecom Association
WISPA	Wireless Internet Service Providers Association

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *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

The details are as dense as the impact will be profound: We're taking the final Commission-level steps necessary to kickstart the \$2 billion program to deliver fixed broadband to rural America—known as the Connect America Phase II (CAF II) auction.

And it's about time. Believe it or not, way back in 2011, the FCC said it expected CAF II competitive bidding disbursements to “ramp up in 2013.”<sup>1</sup> And all the while, rural America has waited. But pushing things off is no longer an option. In August, I said we'd hold an auction in mid-2018. And we're keeping that promise.

The acute need to close the digital divide is why we got to work on the CAF II auction immediately once I became Chairman. You'll recall in February 2017—only 30 days into my chairmanship—the FCC made several key decisions about the auction's framework. And last August, we adopted the *CAF II Comment Public Notice*. With our decisions today, we jump the last big hurdle before holding a first-of-its-kind universal service reverse auction.

I hope that the CAF II auction will attract a wide variety of providers. We need and want everyone to participate: rural telcos, electric co-operatives, cable operators, price-cap carriers, satellite companies, and fixed wireless providers. Of course, the most cost-effective technology for a particular area will vary. So regardless of how you deliver connectivity, please take a hard look at the CAF II auction.

To this end, we've done a lot to make sure the auction is accessible to everyone. We've simplified the bidding options and balanced the design to accommodate both those seeking to extend their networks and those planning larger projects. We've reviewed the financial-qualification and letter-of-credit requirements to enable bidding by smaller companies. We've created flexibility in our model so that bidders won't have to identify every location they plan to serve before the auction even starts. And our staff is working hard to make sure that the bidding interfaces are user-friendly. We'll also be holding several events to give bidders a chance to learn how things work and get questions answered.

Now, I understand that some didn't get exactly what they wanted in the auction rules and procedures. There are well-intentioned differences on how to best make sure communities get connected. That's understandable—these calls aren't easy. But at the end of the day, the perfect can't be the enemy of the good—especially when there's no agreement in this context on what “perfect” is. And I'll remind everyone that CAF II is only the beginning. In 2019, we will move on to the Remote Areas Fund for those areas still without high-speed broadband. Rural America has waited long enough.

The work from staff on these items has been top-notch. I want to highlight the work of the Rural Broadband Auctions Task Force, led by Chelsea Fallon along with Kirk Burgee, Michael Janson, and Thom Parisi, as well as its newest member, Nathan Eagan. And many thanks to Allison Baker, Mikelle Bonan, Cheryl Callahan, Talmage Cox, Katie King, Heidi Lankau, Ken Lynch, Alec MacDonnell, Sue McNeil, Suzanne Mendez, Alexander Minard, Kris Monteith, Ryan Palmer, Michael Qin, Steve Rosenberg, Gilbert Smith, Rodger Woock, and Cathy Zima from the Wireline Competition Bureau; Valerie Barrish, Craig Bomberger, Stephen Buenzow, Rita Cookmeyer, Bill Huber, Sasha Javid, Shabnam Javid, Angela Kung, Scott Mackoul, Eliot Maenner, Aalok Mehta, Charlie Meisch, Gary

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<sup>1</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17674, para. 25 (2011).

Michaels, Mark Montano, Erik Salovaara, Linda Sanderson, Paroma Sanyal, Blaise Scinto, Dana Shaffer, Ziad Sleem, Debbie Smith, Martha Stancill, Don Stockdale, Tom Tran, and Margie Wiener from the Wireless Telecommunications Bureau; Jose Albuquerque, Chip Fleming, Kerry Murray, and Kathryn O'Brien and the International Bureau; Paul Murray from the Office of Engineering and Technology; Evan Kwerel and Paul Lafontaine from the Office of Strategic Planning and Policy; Bill Dever, Doug Klein, Billy Layton, and Rick Mallen from the Office of General Counsel; and Laura Dean and Cathy Williams from the Office of the Managing Director.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN  
APPROVING IN PART AND CONCURRING IN PART**

Re: *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*

“When will high-speed broadband reach my community?”

Month after month, year after year, I have been asked that question by hundreds of consumers longing to be part of the digital economy. Consumers, who are spending hundreds of dollars on a cellular hotspot every month, those who have been quoted tens of thousands of dollars in construction costs just to bring a wire a few hundred feet to their home, and others in communities with no internet at all who have been told for years, that the business case just does not exist for bringing them service. Today, we take another step forward in our ability to answer that question for the millions of consumers who currently lack access to high-speed fixed broadband service.

Demographic data shows that most of these individuals live in areas marked by persistent poverty: communities that would benefit the most from connectivity; areas that are populated by those who are cut off from robust job opportunities; places that remain at a marked disadvantage, when it comes to education, healthcare, government services, and civic participation. Today, we act as a full Commission in laying the groundwork for an auction that kicks off later this year which will in the foreseeable future, bring hope to those currently stuck on the wrong side of the digital divide.

One thing that I have consistently sought in this quest, is to make it easier for smaller providers to participate in this competitive auction. Why? Because more bidders more often mean both a better bang for our universal service buck, and better, targeted service for local consumers. Two years ago, I asked that we allow smaller banks, including community banks, to provide letters of credit; and for enabling certain parties to provide audited financial statements after being selected as a winning bidder in the auction instead of before; and the creation of a flexible process to enable entities to use a range of technologies to provide service in unserved areas because greater participation is more often better for us all.

Fast forward to this item, and again the need called for more changes to enable smaller entities to more fully participate in the auction. I am pleased that we eased some of the burdens small providers face, including challenging financial qualifications and the use of consultants. I am also pleased that we put in place the means for robust educational efforts that could uniquely benefit smaller providers.

Yet I find myself still having to concur in part.

I am disappointed that we are unable to use smaller geographic units than census block groups. And, that despite our unified desire as a Commission to spur deployment on Tribal lands, we do not take any action here either. The FCC’s 2016 Broadband Progress Report found, that more than 68 percent of Americans living on Tribal lands in rural areas, lack access to fixed broadband of speeds of 25 Mbps down and 3 Mbps up. That we do nothing additional to incent Tribal broadband speaks volumes.

It is also cold comfort to me that many of these companies winning auction monies will be the only game in town, and that if by chance, they engage in blocking, throttling, or paid prioritization, there will be nowhere for those consumers to turn. The majority’s decision last month to dismantle net neutrality protections is to blame for this uncertainty, yet I am inspired by states like Montana and New York, that make clear of their intent to protect their consumers when the federal government has chosen not to do so.

Nonetheless, to the dedicated public servants on the Rural Broadband Auctions Task Force and in the Wireline Competition Bureau, I thank you for your unwavering commitment to universal service and for focusing on how to ensure that all Americans have access to the promise that broadband brings.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *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

With these two items, the full Commission completes its remaining tasks to finalize the Connect America Fund Phase II auction. The work on this auction has been a substantial undertaking spanning multiple chairmanships. It will be the first auction of ongoing universal service support using a multiple-round, reverse auction format – a structure I have strongly advocated for years. In fact, I recall drafting amendments on behalf of members of Congress to require reverse auctions for FCC high-cost programs back in 2005. Therefore, I am pleased that this long-awaited auction will soon come to pass.

I do remain concerned about the impact of certain decisions on participation in the auction. In particular, I still believe that the weights assigned to different service tiers will tip the scale towards funding gigabit service in a few communities at enormous costs while leaving many more unserved Americans with no broadband option whatsoever for many years to come. The weighting decision was made, in part, to encourage providers of fiber-based broadband to participate in the auction, and I truly hope they do. A successful auction will depend on the broadest possible participation. But, with some of those same providers expressing concern about the complexity of the auction, criticizing the FCC for excluding areas that our data show are now served, or inappropriately criticizing Chairman Pai's commitment to rural America, we cannot take their interest for granted. At the same time, the decision to unduly penalize other technologies, especially satellite service, could have a negative impact on participation, not only in this auction but in the Remote Areas Fund auction as well. This is not the balance I hoped to achieve and, therefore, I must concur on the failure to reconsider and recalibrate the auction weights.

In general, however, I am supportive of the policy decisions and procedures set forth in these items. I am particularly encouraged by the agency's efforts to ensure that our universal service decisions are based on accurate data. For example, when commenters raised concerns, which I shared, regarding potential shortfalls in the number of locations supposedly available in eligible areas, we were able to work together to reach an appropriate solution. Support recipients will be able to provide evidence, subject to potential audit, of the actual number of locations. If the number is less than what had been estimated, there will be a proportional reduction in support.

Now, it is up to would-be participants to thoroughly examine the rules and procedures, aided by education and outreach from our good staff. With short form applications due in March and the auction commencement scheduled for July 24, potential applicants should waste no time in undertaking the necessary due diligence to determine whether, where, and to what extent they will participate in the auction.

I look forward to the auction commencement and I hope it will be successful, bringing broadband access to additional unserved Americans who would not otherwise receive service. But make no mistake, completion of this auction, like the many steps before it, will not end the Commission's efforts to bring broadband to the farthest reaches of our nation.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *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*

When I think about broadband, I think about the jobs and opportunities it creates for millions of Americans around the country. That is why I continue to emphasize the importance of updating and reforming our infrastructure deployment rules. When we remove regulatory barriers, we make it easier for providers to extend broadband to even more communities.

But for large parts of the country, streamlining alone is not going to be enough. Without additional support, too many Americans will remain on the wrong side of the digital divide. With that in mind, today we reaffirm our commitment to bring the benefits of broadband to all Americans. The rules we finalize today will allow us to make nearly \$2 billion available over the next decade to help deliver broadband and voice service to areas that would otherwise be uneconomical to serve. And the schedule we adopt today will allow us to kick off the auction this summer.

The procedures we've put in place will also help maximize the value that the American people get out of this program. For instance, we target support to those geographic areas the Commission has identified as unserved based on our Form 477 data, which ensures that finite universal service funds are used where the need for them is greatest. And we include safeguards to address instances where our model might overpredict the number of customer locations. We also incentivize prudent spending by using a first-of-its kind reverse auction, which will award support to providers with relatively lower costs. And, as both the Order and the Public Notice make clear, we allow a range of providers and technologies—from fiber to fixed wireless and satellite—to compete, recognizing that there is no one-size-fits-all solution to getting broadband to unserved communities.

I believe this Commission is on the right path to removing the regulatory barriers that will help incent greater broadband deployment. But in those areas of the country where challenges persist, this auction will build on the good work we've done so far to make sure that no community gets left behind. Thank you to the staffs of the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Rural Broadband Auctions Task Force for your hard work on these items. They have my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *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

Mark your calendar. Today we put in place the final pieces of a \$2 billion reverse auction of universal service support that will kick off on July 24, 2018. This effort has been many years in the making. It's exciting—because with these decisions we are taking steps into the future of high-cost universal service. We are experimenting with new opportunities for providers to build broadband in some of our most rural communities that have been among our most challenging places to serve. This forward-thinking effort has my support.

I do have a concern, however, with the approach we take here. I would have preferred that we worked right now with our state partners—like Pennsylvania—who have stepped up and sought out new forms of federal-state collaboration when it comes to universal service. When our state partners express interest in working with us—and even offer up their own funds to do so—we should have that conversation. Instead of pursuing it with vigor, we put it off for another day. Going forward, we should do better than this.

Finally, I want to step back and acknowledge that while this auction will help expand broadband availability to more Americans, it is not the only auction we should be putting on the calendar. We currently do not have any major spectrum auction on the Commission calendar. Other nations are speeding ahead with plans for auctioning airwaves for the next generation of wireless services. South Korea, for instance, has already announced plans to auction the 28 GHz and 3.5 GHz bands between June and October of this year. But in the United States, all we have now is a blitz of bands being discussed in regulatory proceedings. If we want to lead in 5G we need to take action—and not the misguided effort to nationalize networks recently leaked to the press—but real action. It's time for the FCC to put our next major spectrum auction on the calendar. Because we can't rest on our laurels with the universal service auction we announce today.