



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU ANNOUNCES APPLICATION PROCESS FOR ENTITIES INTERESTED IN PARTICIPATING IN THE RURAL BROADBAND EXPERIMENTS

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I. INTRODUCTION

1. By this Public Notice, the Wireline Competition Bureau (Bureau) outlines the process that will be used to award up to \$100 million in rural broadband experiment support to bring next-generation voice and broadband service to high-cost areas of the country.¹ Specifically, we summarize the procedures, terms, and conditions governing the submission of rural broadband experiments applications, the post-selection review of winning bidders and other important information for parties seeking rural broadband experiment funding.

II. BACKGROUND

2. In the *Rural Broadband Experiments Order*, the Commission established certain parameters and requirements for the rural broadband experiments. Specifically, it adopted a budget of \$100 million for funding experiments in both high-cost and extremely high-cost price cap areas focused on bringing robust, scalable voice and broadband-capable networks to residential and small business locations in rural communities.² This budget is apportioned into three separate funding categories: \$75 million for projects in high-cost areas proposing to offer broadband service at 25 megabits per second (Mbps) downstream/5 Mbps upstream; \$15 million for projects in high-cost areas proposing to offer broadband service of 10 Mbps downstream/1 Mbps upstream; and \$10 million for projects proposing to serve extremely high-cost areas with broadband service of 10 Mbps downstream/1 Mbps upstream.³ The Commission encouraged the deployment of experiments aimed at providing new and innovative rural broadband solutions. The Commission stated “. . . we hope to learn more about interest in the deployment of various fixed wireless solutions, including broadband services using TV white space and/or hybrid solutions that combine fiber and fixed wireless technologies to offer broadband services in extremely high-cost areas.”⁴ The Commission concluded that rural broadband experiment proposals would be selected for funding solely based on cost effectiveness determined using two metrics – one metric for census blocks eligible for Phase II support as calculated by the Connect America Cost Model and one for census blocks identified as extremely high-cost in the model.⁵ The Commission also outlined the conditions that entities participating in the experiments are required to meet to continue to receive such support, including specific eligibility, build-out, and accountability requirements, and established the measures to ensure compliance with these conditions.⁶

III. APPLICATION PROCESS

A. Application Overview

3. Formal applications for participation in the rural broadband experiments are due 90 days after the July 14, 2014 release of the *Rural Broadband Experiments Order*. Because this 90-day period

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. July 14, 2014) (*Rural Broadband Experiments Order*).

² *Id.* at para. 7.

³ *Id.* at paras. 24-29.

⁴ *Id.* at para. 28.

⁵ *Id.* at paras. 30-38, 45 n.79.

⁶ *Id.* at paras. 72-85, 88-96.

expires on a weekend before a Federal holiday, the deadline for applications will be on **Tuesday, October 14, 2014**.⁷

4. The Bureau will conduct the application process over the Internet using the FCC Auction System. **The Bureau will not accept applications in hard copy or through the Electronic Comment Filing System (ECFS).**⁸

5. The Commission makes no warranty whatsoever with respect to the FCC Auction System. 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 business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to potential applicants in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System. We therefore encourage entities to leave adequate time for filing their applications prior to the October 14th deadline.

6. Those wishing to participate in this auction must submit a formal application (FCC Form 5610) electronically prior to **6:00 p.m. ET**, October 14, 2014, following the electronic filing procedures in this Public Notice and comply with all provisions outlined in this Public Notice and applicable Commission rules.

B. Application Requirements

1. General Information Regarding Applications

7. The selection process consists of two parts. In the first phase, each entity interested in participating in the rural broadband experiments must file an application, on FCC Form 5610, in which it certifies under penalty of perjury as to its qualifications. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that it has the legal, technical, and financial resources to participate in the rural broadband experiments and be able to meet the public interest obligations associated with the receipt of such support. In the second phase of the process, each winning bidder will be required to file additional information that Commission staff will use to conduct a technical and financial review (FCC Form 5620).

8. Every entity seeking rural broadband experiment support must file an application electronically via the FCC Auction System prior to 6:00 p.m. ET on October 14, 2014. The application will contain basic information about the applicant and the proposed project(s), bid forms for each proposed project, a descriptive data form, and certifications required by the Commission. The application will be used by the Bureau to rank proposals and determine which of the proposals is the most cost-effective within each funding category. Below we describe more fully the information disclosures and

⁷ Because the contents of the formal application are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), this deadline is contingent on receipt of PRA approval prior to this date. Therefore, the Bureau may adjust this deadline as necessary. We intend to announce a window of at least 15 days prior to the deadline for interested parties to file formal applications and will adjust the deadline accordingly to provide such a window. On August 18, 2014, the Bureau published a 30-day notice in the Federal Register seeking comment on Forms 5610 and 5620. *See Information Collection Being Reviewed by the Federal Communications Commission*, 79 Fed. Reg. 48747 (Aug. 18, 2014).

⁸ Once OMB approves the PRA request, the Bureau intends to release a public notice announcing the beginning of the application filing window and making available to potential applicants the bid form and descriptive data form, described below.

certifications required in the application. Each applicant is subject to the Commission's rule prohibiting certain communications, as described below.⁹

9. Each applicant bears full responsibility for submitting an accurate, complete, and timely application. Each applicant must certify on its application under penalty of perjury that it is legally, technically, financially, and otherwise qualified to receive universal service support funding.¹⁰ An applicant may modify its application within the filing window; however, once the filing window closes at 6:00 p.m. ET on October 14, 2014, applications can no longer be modified. The onus is on the applicant to ensure that the information contained in its application is accurate and timely.

10. An applicant may submit multiple bids within its application, but may not submit more than one application for participation in the rural broadband experiments. If a party submits multiple applications, only the latest submission prior to the deadline will be accepted for filing.

11. Each applicant also should note that submission of an application 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. Submission of 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.

12. Once the Bureau announces the winning bidders, the proposals submitted by the winning bidders will be made publicly available. However, in order to prevent these proposals from affecting another potential bidder's behavior in the Phase II competitive bidding process, all other proposals will remain confidential, pending the completion of the Phase II competitive bidding process.

2. Applicant Information

13. In FCC Form 5610, each applicant must provide: the identity and address of the applicant; the applicant's legal classification; a responsible party for the applicant; a contact party for the applicant; and the identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant. This threshold information will ensure that Commission staff can properly identify each applicant and know who to notify after selecting winning bidders.

3. Disclosure of Bidding Arrangements

14. Each applicant will be required to identify in its application all parties in interest to any agreements relating to the participation of the applicant in the competitive bidding for rural broadband experiment support and certify the accuracy of this information under penalty of perjury.¹¹ If an applicant has had discussions, but has not reached an agreement by the application deadline, it should not include the names of parties to the discussions on its application.

4. Ownership Disclosure Requirements

15. Each applicant must comply with the ownership disclosure standards required by section 1.2112 of the Commission's rules.¹² Specifically, in completing the application, an applicant will be required to disclose fully information on the ownership structure of the applicant, including both direct

⁹ See *infra* paras. 38-49.

¹⁰ See 47 C.F.R. § 1.21001(b)(6).

¹¹ See 47 C.F.R. §§ 1.21001(b)(3), (b)(4).

¹² See 47 C.F.R. § 1.2112.

and indirect ownership interests of 10 percent or more.¹³ Each applicant is responsible for ensuring that information submitted in its application is complete and accurate.

5. Project Information

16. Pursuant to the *Rural Broadband Experiments Order*, formal proposals must include background information on the applicant and its qualifications to provide voice and broadband service; a description of the proposed projects, service areas, planned voice and broadband service offerings, including a description of what Lifeline services the applicant will offer if awarded support, whether the applicant will have a broadband offering for low-income consumers, and whether it will permit qualifying consumers to apply the Lifeline discount to bundled voice and data services; the technology or technologies to be used; and the number of locations, including community anchor institutions, within the project area.¹⁴ The Bureau will not be selecting applicants based on the information contained in the formal proposal; rather, as described below, winning bidders will be selected solely based on the objective metric of cost-effectiveness.

6. Bid Forms

17. Each applicant must upload a completed bid form in .csv file format for each project on which it bids. This bid form will be used to rank proposals from the most cost-effective to the least cost-effective. The bid form will be released by the Bureau prior to the opening of the filing window. Applications without a completed bid form will not be considered for experiment funding.

18. As noted above, applicants will be required to upload a completed bid form for each individual project on which they bid. For example, if an applicant is submitting bids for five separate projects, the applicant will be required to upload five separate bid forms. Each bid form requires an applicant to provide: a unique FCC Registration Number,¹⁵ the funding category for the project (one, two, or three); a unique project identification number; the census blocks to be served (CBFIPS); the total number of eligible locations to be served; the total number of extremely high-cost locations to be served; and the total support requested. If the applicant proposes a project in funding category three (serving only extremely high-cost census blocks), the applicant will be required to identify whether that project is contingent on winning a separate project in funding categories one or two.

19. Applicants are reminded that the Commission adopted per-project funding limits for each experiment funding category to ensure that support is awarded to multiple projects within each category. Specifically, applicants may receive no more than \$20 million per project in funding category one; no more than \$7.5 million per project in funding category two; and no more than \$5 million per project in funding category three.¹⁶ Applicants also are subject to an overall limit of \$20 million per entity, including its affiliates.¹⁷ This limit applies to the total amount of funding an applicant may be awarded

¹³ *Id.*

¹⁴ See *Rural Broadband Experiments Order*, FCC 14-98, at para. 49.

¹⁵ Each applicant should use only one FCC Registration Number for all of its bids.

¹⁶ *Rural Broadband Experiments Order*, FCC 14-98, at para. 41.

¹⁷ *Id.* at para. 42. An affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent. Person is defined to include an individual, partnership, association, joint-stock company, trust, or corporation. 47 U.S.C. §§ 153(2), (39).

across all three funding categories.¹⁸ This limit also applies in situations where an entity is in more than one consortium.¹⁹ Once an applicant reaches the per-project or per-entity funding limits, it will not be considered for any further rural broadband experiment support, even if its bids are the most cost-effective.

a. Bid Project Identifiers

20. Each applicant must identify each bid it submits with a unique project identifier. This identifier will be sequential and number-based. For example, the first bid form an applicant submits should be identified as project number (1), the second bid form the applicant submits should be identified as project number (2), and so on. The sample bid forms below provide further guidance.²⁰

Bid Project ID	Entity FRN	Category Type	CBFIPS
1	0007318025	1	020200003001104
			020200003001105
			020200003001107
~~~~~			
Bid Project ID	Entity FRN	Category Type	CBFIPS
2	0007318025	1	170810503002009
			170810503002010

**b. FCC Registration Numbers**

21. Each applicant must utilize a FCC Registration Number (FRN). Any applicant that currently does not have a FRN must first register with the Commission’s “Commission Registration System” (CORES), after which it will be assigned a FRN. In the case of multiple entities forming a partnership to submit a single application, we require only one entity in the partnership to be registered with a FRN.

22. The purpose of the FRN is two-fold. First, each applicant will be required to log in to the FCC Auction System using its specific FRN. Additionally, an applicant must identify each of its bids with its respective FRN. The FRN will be combined with the bid project ID to ensure that each bid has a unique identifier. For example, if an entity submits two separate bids for projects in funding category one, each bid will be identified by a combination of the applicant’s FRN and bid project ID. The sample bid forms below provide further guidance.

¹⁸ For example, if an entity is awarded \$18 million in funding category 1, that entity and any of its affiliates would be precluded from winning support for another project that exceeds \$2 million, regardless of whether the second project was also submitted in funding category one, or was submitted in funding categories two or three.

¹⁹ For example, if an applicant is a member of consortium A, which is awarded \$15 million in support for its project, but is also a member of consortium B (with an entirely different group of entities than consortium A) that submitted a less cost-effective project requesting \$10 million in support, consortium B would be precluded from winning because the applicant overlapping both consortia would exceed the \$20 million per-entity limit.

²⁰ As noted above, applicants are required to upload a separate bid form for each project on which they bid. *See supra* paras. 17-18. As shown in the sample bid forms, separate bid forms are signified by the double wavy line.

Bid Project ID	Entity FRN	Category Type	CBFIPS
1	0007318025	1	020200003001104
			020200003001105
			020200003001107
Bid Project ID	Entity FRN	Category Type	CBFIPS
2	0007318025	1	170810503002009
			170810503002010

**c. Funding Category Identifiers**

23. Each applicant must identify the funding category type for each of their bids. Consistent with the funding categories adopted in the *Rural Broadband Experiments Order*, applicants should identify projects in high-cost areas offering at least one service plan of 25 Mbps downstream/5 Mbps upstream or higher as funding category one, projects in high-cost areas offering at least one service plan that provides at least 10 Mbps downstream/1 Mbps upstream, but not 25 Mbps downstream/5 Mbps upstream, as funding category two, and projects proposing to serve exclusively extremely high-cost areas as funding category three.²¹ The sample bid forms below provide further guidance.

Bid Project ID	Entity FRN	Category Type	CBFIPS
1	0007318025	1	020200003001104
			020200003001105
			020200003001107
Bid Project ID	Entity FRN	Category Type	CBFIPS
2	0007318025	1	170810503002009
			170810503002010

24. The Commission recognized that certain applicants proposing projects in funding category three may only be interested in undertaking that project if they also are selected to receive support in funding categories one or two. We address these contingent bidding situations below.²²

²¹ See generally *Rural Broadband Experiments Order*, FCC 14-98, at paras. 24-29.

²² See *infra* paras. 34-35.

**d. Census Block Identifiers**

25. As directed by the Commission,²³ the Bureau has released a list of census blocks eligible for support in the rural broadband experiments, with the amount of support determined by the model for each block, and the number of locations in each of those blocks.²⁴

26. Each applicant must identify the census block identification number (CBFIPS) for each census block it proposes to serve in each project for which it bids. For example, if a project proposes to serve 100 census blocks, the CBFIPS for all 100 census blocks must be listed on the applicant’s bid form. The sample bid forms below provide further guidance.

<b>Bid Project ID</b>	<b>Entity FRN</b>	<b>Category Type</b>	<b>CBFIPS</b>
1	0007318025	1	020200003001104
			020200003001105
			020200003001107

  

<b>Bid Project ID</b>	<b>Entity FRN</b>	<b>Category Type</b>	<b>CBFIPS</b>
2	0007318025	1	170810503002009
			170810503002010

27. In the *Rural Broadband Experiments Order*, the Commission adopted a 25 percent bidding credit for applicants seeking support for proposed experiments in Tribal areas.²⁵ Bids eligible for this credit must propose to serve exclusively Tribal census blocks; if a bid proposes to serve even one census block that is not designated as Tribal, it will not receive the Tribal bidding credit. Applicants should consult the list released by the Bureau on July 25, 2014 to ascertain which census blocks are designated as Tribal for purposes of the rural broadband experiments.²⁶ Applicants have the burden of ensuring that any bids submitted for which they expect to receive the Tribal bidding credit encompass only Tribal census blocks. The sample bid form below provides further guidance.

²³ *Rural Broadband Experiments Order*, FCC 14-98, at para. 15 n.38.

²⁴ *Wireline Competition Bureau Releases List of Census Blocks Eligible for Rural Broadband Experiments and Announces Enhancements to Map Depicting Initial Phase II Eligible Areas*, WC Docket No. 10-90, Public Notice, DA 14-1021 (Wireline Comp. Bur. rel. July 25, 2014) (*Rural Broadband Experiments Eligible Areas PN*). As described more fully in that Public Notice, the list of eligible census blocks indicates which blocks are deemed to be Tribal lands for purposes of the rural broadband experiments.

²⁵ *Rural Broadband Experiments Order*, FCC 14-98, at para. 37.

²⁶ See *Rural Broadband Experiments Eligible Areas PN*.

Bid Project ID	Entity FRN	Category Type	CBFIPS
1	0007318025	1	020200016021003
			020200016021006
			020200016021008
			020200016021014
~~~~~			
Bid Project ID	Entity FRN	Category Type	CBFIPS
2	0007318025	1	350319460003210
			350319460003219
			350319460003222
			350319460003224

All census blocks in this bid are designated as Tribal.

This census block is NOT designated as Tribal.

In this example, the applicant’s first bid consists entirely of census blocks designated as Tribal for the rural broadband experiments. As a result, the 25 percent Tribal bidding credit would be applied to the amount of support requested by the applicant per eligible locations to be served,²⁷ and compared against the model-determined support per eligible locations to serve those same census blocks. Conversely, the applicant’s second bid contains three census blocks designated as Tribal and one census block not designated as Tribal; as such, the applicant’s project would not qualify for the Tribal bidding credit.

e. Total Support Amount Requested

28. Each applicant must provide the total amount of support it is requesting for each bid it submits. We remind applicants seeking funding for category one and category two that the total support they request to serve the census blocks that encompass their bid should be at or below the model-estimated support to serve those same census blocks. As a result, applicants should consult the list released by the Bureau to determine the amount of support determined by the model for each of the census blocks on which it is bidding.²⁸ **The information released by the Bureau shows the annual support amount; because the Commission is providing support over a 10-year term, the maximum bid for a given block would be ten times the annual support amount.** The sample bid form below provides further guidance.

²⁷ If an applicant’s bid includes “split” census blocks that contain both eligible locations and extremely high-cost locations, it should include all of those locations on its bid form, as they will be included in its cost-effectiveness calculation. See *infra* para. 32. Similarly, if an applicant determines it is economically feasible to serve certain extremely high-cost locations in adjacent extremely high-cost census blocks, it may add those locations to its bid form, and those locations will be included in its cost-effectiveness calculation. See *infra* para. 33.

²⁸ See *Rural Broadband Experiments Eligible Areas PN*.

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested
1	0007318025	1	020200003001104	77,000
Total dollar amount of support requested to serve these five census blocks over a 10-year term of support.			020200003001105	
			020200003001107	
			020200003001108	
			020200003001110	

In this example, the total amount of annual support determined by the model for the five census blocks in this project is \$7,978.12. This amounts to a total of \$79,781.20 over the 10-year term of support. The applicant has requested a total of \$77,000 in support to serve these five census blocks—which is below the \$79,781.20 determined by the model.

f. Total Eligible Locations To Be Served

29. Each applicant must provide the total number of eligible locations for each bid it submits. Applicants should consult the list released by the Bureau on July 25, 2014 to ascertain the number of eligible locations determined by the model for each of the census blocks on which it bids.²⁹ For funding category one and two bids, an applicant’s total support requested will be divided by the number of eligible locations it proposes to serve³⁰ and will be compared to the model-determined support divided by the number of eligible locations for the same census blocks to calculate the cost-effectiveness of a specific bid. The sample bid form below provides further guidance.

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested	Total Eligible Locations
1	0007318025	1	020200003001104	77,000	79
Total number of eligible locations in these five census blocks.			020200003001105		
			020200003001107		
			020200003001108		
			020200003001110		

In this example, the applicant has requested a total of \$77,000 in support to serve these 79 eligible locations, while the model-determined support to serve the same 79 locations over the 10-year term is \$79,781.20. The applicant’s cost-effectiveness score for such a proposal would be .965.³¹

30. We remind applicants that they are required to serve the total number of price cap locations in the census blocks on which they bid, which may be more than the number of locations that are eligible for funding. However, their total requested support will be divided only by the number of

²⁹ See *id.*

³⁰ See *supra* note 27.

³¹ $(77,000 \div 79) \div (79,781.20 \div 79) = .965$. This score will be calculated by the FCC Auction System software. See *infra* paras. 62-63.

eligible locations in the census blocks on which they bid in order to compare that support to the support determined by the model for those same eligible locations.³²

g. Total Extremely High-Cost Locations To Be Served

31. Pursuant to the *Rural Broadband Experiments Order*, each applicant must provide the total number of extremely high-cost locations for each funding category three bid it submits.³³ Applicants should consult the census block list released by the Bureau to ascertain the number of extremely high-cost locations determined by the model for each of the census blocks on which it bids.³⁴ An applicant’s category three bid total support requested will be divided by the number of extremely high-cost locations it proposes to serve to calculate the total cost per location of a specific bid, with the lowest cost per location bids selected. The sample bid form below provides further guidance.

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested	Total Eligible Locations	Total Extremely High-Cost Locations
5	0007318025	3	020130001001101	180,000	0	9
Total number of extremely high-cost locations in these three census blocks.			020130001001194			
			020130001001197			

In this example, the applicant has requested a total of \$180,000 in support to serve these 9 extremely high-cost locations. The applicant’s total cost per location for such a proposal would be \$20,000.³⁵

32. We also note that a number of the census blocks eligible for rural broadband experiment funding are “split” blocks that contain both eligible high-cost locations and extremely high-cost locations. Pursuant to the *Rural Broadband Experiments Order*, entities selected to receive rural broadband experiment funding must commit to serve the total number of price cap locations in each block for which they receive funding.³⁶ However, the cost-effectiveness score for applicants whose bids contain “split” census blocks will be calculated using not only the number of eligible locations they propose to serve, but also the number of extremely high-cost locations in those “split” census blocks. Applicants are reminded that they must include both the eligible locations and extremely high-cost locations in these blocks on their bid forms. The sample bid form below provides further guidance.

³² See *supra* note 27.

³³ *Rural Broadband Experiments Order*, FCC 14-98, at para. 37.

³⁴ See *Rural Broadband Experiments Eligible Areas PN*.

³⁵ 180,000 ÷ 9 = 20,000.

³⁶ *Rural Broadband Experiments Order*, FCC 14-98, at para. 15. This includes not only eligible locations and extremely high-cost locations, but also any low-cost locations (i.e., locations for which the model calculates an average cost below the funding threshold).

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested	Total Eligible Locations	Total Extremely High-Cost Locations
1	0007318025	1	350319731001057	90,000	15	7
Two "split" census blocks are part of this bid.			350319731001058			
			350319731001060			
			350319731001114			
			350319731001118			
				Extremely high-cost locations in these "split" census blocks.		

In this example, the applicant has requested a total of \$90,000 in support to serve these five census blocks. Of these five census blocks, two are "split" census blocks that contain both eligible locations and extremely high-cost locations; there are 15 eligible locations in the five census blocks combined, and seven extremely high-cost locations in the two "split" census blocks combined. The model-determined support to serve these same five census blocks over the 10 year term is \$91,639.40. The applicant's cost-effectiveness score for such a proposal would be .670.³⁷

33. Finally, we also permit applicants seeking support in funding categories one or two to increase the cost-effectiveness score of their bids by committing, to the extent they determine it is economically feasible to do so, to serve locations in adjacent extremely high-cost census blocks (which receive no model-based support) and to add these locations to their bids. An applicant is not required to serve all the extremely high-cost locations in this adjacent census block; it may opt to serve a subset of the total number of extremely high-cost location. If an applicant decides to do so, it must list the CBFIPS of the adjacent census block in which the extremely high-cost locations are located. The sample bid form below provides further guidance.

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested	Total Eligible Locations	Total Extremely High-Cost Locations
1	0007318025	1	020130001001101	77,000	79	5
Adjacent extremely high-cost census block.			020200003001104			
			020200003001105			
			020200003001107			
			020200003001108			
			020200003001110			
				Added extremely high-cost locations.		

In this example, the applicant has requested a total of \$77,000 to serve 79 eligible locations and five extremely high-cost locations.³⁸ The model-determined support to serve these six census blocks over the 10-year term is \$79,781.20. The applicant's cost-effectiveness score for this proposal would be .908.³⁹

³⁷ $(90,000 \div (15+7)) \div (91,639.40 \div 15) = .670$.

³⁸ Note that in census block 020130001001101, there are a total of seven extremely high-cost locations, but the applicant here has chosen to serve only a subset of those total locations.

h. Contingent Funding Category Three Bids

34. Pursuant to the *Rural Broadband Experiments Order*, each applicant submitting a bid for a funding category three project must indicate whether that bid is contingent upon the applicant being selected as a winner for one or more of its funding category one or two project bids.⁴⁰ To ensure that Commission staff is able to determine which project bids are contingent, each applicant also must indicate the bid project ID of the funding category one or two bid upon which its funding category three bid is contingent. The sample bid forms below provide further guidance.

Bid Project ID	Entity FRN	Category Type	CBFIPS	Total Support Requested	Total Eligible Locations	Total Extremely High-Cost Locations	Contingent Bid Project Id(s)
1	0007318025	1	020200003001104	63,000	69	0	None
			020200003001105				
			020200003001107				
Bid Project ID	Entity FRN	Category Type	CBFIPS	Total	Total Eligible Locations	Total Extremely High-Cost Locations	Contingent Bid Project Id(s)
			Funding category three bid is contingent upon bid project ID 1				
5	0007318025	3	020130001001101	15,000	0	8	1
			020130001001194				

In this example, the applicant’s funding category three bid (bid project ID 5) is contingent upon the applicant being selected as a winning bidder for its funding category one bid (bid project ID 1). Therefore, if the applicant is not selected as a winning bidder for its funding category one bid, its funding category three bid also will not be selected as a winning bid, regardless of whether that bid is among the most cost-effective.

35. Applicants may list more than one contingent bid project ID. For example, if an applicant wanted to make its funding category three bid contingent upon winning all of its funding category one or two bids, it should list the bid project ID for each of those funding category one or two bids. Applicants for only funding categories one and two projects, applicants for only funding category three projects, or applicants that do not wish to make their funding category three bids contingent upon any other bids should enter “None” in this column.

7. Descriptive Data Forms

36. Each applicant must upload a completed descriptive data form in .csv file format. The descriptive data form will be provided by the Bureau prior to the opening of the filing window.⁴¹ For each individual project on which an applicant bids, it will be required to provide: its unique FRN; the funding category of the specific project; its entity type; its provider type; what type of technology it will

(Continued from previous page) _____

³⁹ $(77,000 \div 84) \div (79,781.20 \div 79) = .908$. Note that the addition of the five extremely high-cost locations lowered this applicant’s cost-effectiveness score from .965 (in footnote 31 above) to .908.

⁴⁰ *Rural Broadband Experiments Order*, FCC 14-98, at para. 37.

⁴¹ As noted above, we plan to release a public notice announcing the beginning of the application filing window and making the bid form and descriptive data form available to applicants. *See supra* note 8.

use; whether it has already been designated as an Eligible Telecommunications Carrier (ETC) for the proposed service area that the project covers, and whether, if selected, it will elect to receive 30 percent of its funding upfront with a commitment to deploy to 25 percent of eligible locations within 15 months.

8. Certifications

37. At the conclusion of its application, each applicant must certify that it meets or will meet certain threshold requirements. Among other things, an applicant will be required to certify that it is already designated as an ETC or will seek designation as an ETC; it has available funds for all project costs that exceed the amount of rural broadband experiment support it may receive; it will offer service in supported areas at rates that are reasonably comparable to rates for similar service plans offered by voice and broadband providers in urban areas; and it meets the service requirements for each funding category in which it submits bids.⁴² As noted above, submission of a false certification can result in penalties, including monetary forfeitures, the forfeiture of universal service support, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution. An 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.

C. Additional Rules and Disclaimers

1. Prohibited Communications

38. Section 1.21002 of the Commission's rules prohibits an applicant 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. Applicants for the rural broadband experiments must comply with section 1.21002 after the deadline for submitting applications to participate, unless such applicants are members of a joint bidding arrangement identified on their application. Following review of the submitted bids, the Bureau will release a public notice announcing the winning bidders and beginning the post-selection review process; winning bidders will then have 10 business days to provide certain financial and technical materials.⁴³ Therefore, prohibited communications may not occur beginning **October 14, 2014** through the date by which winning bidders must submit the required financial and technical materials.

a. Entities Subject to Rule on Prohibited Communications

39. Section 1.21002's prohibition on certain communications will apply to any applicant participating in the rural broadband experiments.⁴⁴ Thus, unless applicants have identified each other on their applications as parties with whom they have entered into agreements under section 1.21001(b)(3), applicants must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy during the application submission window.⁴⁵

⁴² See *Rural Broadband Experiments Order*, FCC 14-98, at paras. 26-29.

⁴³ See *infra* para. 68.

⁴⁴ Section 1.21002 defines "applicant" broadly to include the applicant, each party capable of controlling the applicant, including all officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant. See 47 C.F.R. § 1.21002(a).

⁴⁵ Individuals and entities 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 competing applicant's bids or bidding strategies. For example, when an individual serves as an officer for two or more applicants, the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs. See, e.g., Letter to Colby M. May, (continued....)

40. Rural broadband experiment applicants are encouraged not to designate as their authorized bidder the same individual that another applicant has designated as its authorized bidder. A violation of section 1.21002 could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm or engineering firm or consulting firm), a violation similarly could occur.

b. Prohibited Communications

41. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. Section 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, but also communication of another applicant's bids or bidding strategy.⁴⁶ While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, applicants must ensure that they do not directly or indirectly communicate information that affects, or could affect, bids or bidding strategy.

42. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. 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."⁴⁷ Applicants also should use caution in their dealings with parties such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. An applicant's public statement of intent not to participate in the rural broadband experiments could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or post-auction market structures may violate section 1.21002.

c. Disclosure of Bidding Agreements and Arrangements

43. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their applications, as long as they disclose the existence of the agreement(s) in their applications.⁴⁸ Applicants must identify in their applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the rural broadband experiment support.⁴⁹

44. If parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its application, even if the agreement has not been reduced to writing.⁵⁰ If the parties have not agreed in principle by the

TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (Media Bur. and Wireless Telecom. Bur. 2005).

⁴⁶ See 47 C.F.R. § 1.21002(b). See also Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 para. 8 (1999).

⁴⁷ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 para. 12 (1994) (“*Competitive Bidding Memorandum Opinion and Order*”).

⁴⁸ 47 C.F.R. § 1.21001(b)(3)-(4).

⁴⁹ 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002.

⁵⁰ 47 C.F.R. § 1.21001(b)(3).

application deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the application deadline.⁵¹

d. Applicant Certifications

45. By electronically submitting an application, each applicant for the rural broadband experiments certifies its compliance with sections 1.21001(b)(3) and 1.21002.⁵² In particular, an applicant certifies under penalty of perjury that the application discloses all real parties in interest to any agreements involving participation in the rural broadband experiments, and that it and all applicable parties have complied with and will continue to comply with 47 C.F.R. § 1.21002.⁵³

46. The Bureau cautions, however, that such certification will neither outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.⁵⁴ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁵⁵ Any applicant found to have violated section 1.21001(b)(4) and (5) may be subject to sanctions.⁵⁶

e. Reporting Prohibited Communications

47. 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.⁵⁷ An applicant is therefore required to report to the Commission any communication it has made to or received from another applicant during the application window that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.21001(b)(4).⁵⁸ An applicant’s obligation to make such a report continues until the report has been made.⁵⁹

48. 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 1.21002.⁶⁰ 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 would allow such materials to be made available for public inspection.

49. Parties must file only a single report concerning a prohibited communication and must file that report with Commission personnel expressly charged with administering the Commission’s

⁵¹ See “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (Wireless Telecom. Bur. 1995) (“*Anti-Collusion Public Notice*”).

⁵² 47 C.F.R. §§ 1.21001(b)(3), 1.21002.

⁵³ 47 C.F.R. §§ 1.21001(b)(4)-(5), 1.21002.

⁵⁴ *Nevada Wireless Order*, 13 FCC Rcd at 11978 para. 13.

⁵⁵ *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

⁵⁶ See, e.g., 47 C.F.R. § 1.2109(d).

⁵⁷ 47 C.F.R. § 1.21002(c); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

⁵⁸ See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

⁵⁹ 47 C.F.R. § 1.21002(c).

⁶⁰ 47 C.F.R. §§ 1.65, 1.21001(b)(3)-(5), 1.21002.

auctions.⁶¹ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. For the rural broadband experiments, such reports, required by section 1.21002(c), must be filed by the most expeditious means available. Any such report should be submitted by e-mail to the following e-mail address: alexander.minard@fcc.gov. Alternatively, parties may submit a report in hard copy; hard copy reports must be delivered only to: Alexander Minard, Deputy Division Chief, Telecommunications Access and Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-B442, Washington, DC 20554.

2. Due Diligence

50. Parties interested in participating in the rural broadband experiments must familiarize themselves with the Commission's general universal service rules, contained in 47 C.F.R. Part 54. Potential applicants should also familiarize themselves with the Commission's decisions in both the *Tech Transitions Order* and *Rural Broadband Experiments Order*,⁶² as well as the competitive bidding rules for universal service support contained in 47 C.F.R. §§ 1.21000 – 1.21004, to the extent they have not been modified for the rural broadband experiments, and the procedures, terms, and conditions contained in this Public Notice and any subsequent public notices relating to participation in the rural broadband experiments. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to the rural broadband experiments. The Bureau will issue public notices to convey any new or supplemental information to applicants.

51. Applicants should be aware that the rural broadband experiments represent an opportunity to apply for universal service support, subject to certain conditions and regulations. The rural broadband experiments do not constitute an endorsement by the FCC of any particular service, technology, or product, nor does rural broadband experiment support constitute a guarantee of business success.

52. The Bureau reminds each potential applicant that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid in its rural broadband experiment application. Each bidder is responsible for assuring that, if it is selected to receive support, it will be able to build and operate facilities in accordance with the rural broadband experiment obligations and the Commission's rules generally, as well as any federal and state statutes to which it may be subject, even if not detailed in this Public Notice.⁶³ An applicant should perform its due diligence research and technical analyses before proceeding, as it would with any new business venture. Each potential applicant should assure itself that, should it become a winning bidder for rural broadband experiment support, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements.

53. The Bureau strongly encourages each applicant to conduct its own research prior to applying for rural broadband experiment support in order to determine the existence of pending

⁶¹ *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.

⁶² See *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order et al., 29 FCC Rcd 1433, 1462-79, paras. 82-136, 1498-1504, paras. 202-23 (2014) (*Tech Transitions Order*); *Rural Broadband Experiments Order*, FCC 14-98.

⁶³ For example, certain recipients may be required to comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. See 47 C.F.R. Part 1, Subpart I.

administrative or judicial proceedings that might affect its decision to participate. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission – including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review – may affect applicants intending to participate in the rural broadband experiments. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on rural broadband experiment support available through this auction.

54. 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 the rural broadband experiments. 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 rural broadband experiment support. Each applicant is responsible for undertaking research to ensure that any support awarded 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.

55. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its 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, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

56. As is the case with many business investment opportunities, the Bureau warns potential applicants that some unscrupulous entrepreneurs may attempt to use the rural broadband experiments to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FCC as well as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC). Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC’s Consumer Call Center at (888) 225-5322 or by visiting <http://wireless.fcc.gov/csinfo#fraud>
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>
- the SEC at (202) 942-7040 or by visiting <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5>.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

3. Compliance with Antitrust Laws

57. We also remind applicants that, 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.⁶⁴ Compliance with the disclosure requirements of section 1.21002 will not insulate a

⁶⁴ See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 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 (continued....)”)

party from enforcement of the antitrust laws.⁶⁵ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted an application.⁶⁶

58. 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.⁶⁷ If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the rural broadband experiment application process, it may be subject to a forfeiture and may be prohibited from participating in future auctions, among other sanctions.⁶⁸

4. Commission Red Light Rules

59. Applications to participate in the rural broadband experiments are subject to the Commission's rules regarding an applicant with delinquent debts, often referred to as the Commission Red Light Rules. 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 as defined by the Red Light Rule.⁶⁹ Accordingly, parties interested in filing applications to participate in the rural broadband experiments should review the status of any debts that they owe the Commission before submitting their application and resolve any delinquent debts. The Commission maintains a Red Light Display System (RLD) to enable entities doing business with the FCC to determine if they have any outstanding delinquent debt. 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 http://transition.fcc.gov/debt_collection/.

5. USF Debarment

60. The Commission's rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program.⁷⁰ Applicants are reminded that those rules apply with equal force to the rural broadband experiments.

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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, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994)(“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

⁶⁵ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁶⁶ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. 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. *Id.*

⁶⁷ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

⁶⁸ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

⁶⁹ 47 C.F.R. § 1.1910(b)(2).

⁷⁰ 47 C.F.R. § 54.8.

IV. SELECTION METHODOLOGY AND PROCESS

A. Methodology

61. The most cost-effective proposals will be selected from each funding category. Applicants are encouraged to review the *Rural Broadband Experiments Order* for greater detail on the selection methodology.⁷¹

B. Winning Bids Selection Process

62. To select winning bidders, the FCC Auction System will rank bids from the most cost-effective to the least-cost effective within each funding category. For bidders claiming eligibility for a Tribal bidding credit, the auction system will reduce the Tribal entity's requested support amount per location by 25 percent for the purpose of comparing it to other bids, as described above.⁷²

63. The most cost-effective bids will be selected for funding until the budget for each specific funding category is exhausted. In the event we do not exhaust the entire budget for a particular funding category due to per-project or per-entity funding limits or insufficient amounts remaining in the budget to fund the next ranked project, we will not roll over any unused funds into the next category. The Bureau will announce the results by public notice and begin the challenge process described below. The Bureau also will release the formal proposals submitted by all winning bidders.

V. POST-SELECTION PROCEDURES

A. Challenge Process

64. In the *Tech Transitions Order*, the Commission reiterated its commitment to ensuring that Connect America funding is not used in areas where other providers are offering voice and broadband service meeting the Commission's service requirements.⁷³ For administrative efficiency, it concluded that challenges to the eligibility of areas proposed for experiments would be entertained after projects have been tentatively selected for funding.⁷⁴ This challenge process would focus on whether an area that a winning bidder proposed to serve with rural broadband experiment funding was actually already served by an unsubsidized competitor, and therefore ineligible for support.

65. The Phase II challenge process is currently ongoing, and the list of census blocks presumptively eligible for Phase II funding includes all of the census blocks eligible for rural broadband experiment funding. Any party that believes a block on that list is in fact served by an unsubsidized competitor presumably has filed a challenge to that block.⁷⁵ Given that the Phase II challenge process is occurring so close in time to the rural broadband experiments auction, we now conclude that it would be inefficient to conduct another challenge process just two months later, for the winning bidders of the rural broadband experiments. We conclude that the Commission's intent that there be a challenge process for the rural broadband experiments will be best served by reviewing the existing Phase II challenges and resolving expeditiously, on the existing record, any challenges to the blocks of winning bidders. Therefore, we will review the challenges and responses received in the Phase II challenge process to

⁷¹ See *Rural Broadband Experiments Order*, FCC 14-98, at paras. 30-44.

⁷² See *supra* para. 27.

⁷³ See *Tech Transitions Order*, 29 FCC Rcd at 1473, para. 113.

⁷⁴ *Id.*

⁷⁵ Phase II challenges were due on August 14, 2014. Based on preliminary review, parties have contested the status of approximately 34,000 census blocks as unserved, contending those blocks in fact are served by an unsubsidized competitor and therefore ineligible for Phase II support.

determine whether a census block or blocks that a winning bidder proposed to serve should be deemed ineligible for rural broadband experiment funding. We encourage potential applicants to review the Phase II challenge process to determine which, if any, census blocks they are interested in serving are subject to challenges.⁷⁶ In the event that census blocks are deemed ineligible for rural broadband experiment funding, support for any project selected for funding that includes such census blocks will be adjusted proportionally.⁷⁷

66. For a census block to be considered “served” by an unsubsidized competitor,⁷⁸ a provider must offer voice service and broadband service with speeds of at least 4 Mbps downstream/1 Mbps upstream. Additionally, the service must provide a minimum usage allowance of at least 100 GB/month, round trip provider network latency of 100 ms or less,⁷⁹ and pricing reasonably comparable to that in urban areas. An unsubsidized competitor may offer a variety of service plans to consumers with different performance metrics, but the consumer must be able to purchase at least one plan that meets or exceeds all the minimum performance criteria and complies with the pricing requirement.⁸⁰

B. Post-Selection Review

1. General Information

67. The Bureau will conduct a review of each winning bidder to determine whether it has demonstrated the technical and financial qualifications to successfully complete its proposed project within the required timeframes and is in compliance with all statutory and regulatory requirements for the universal service support that it seeks. Commission staff will perform a review to ensure that the selected applicants meet our expectations for technical and financial capability to conduct an experiment before any support is provided. The Bureau will issue a public notice establishing the specific deadline for winning bidders to submit the financial and technical documentation described below. Winning bidders will use FCC Form 5620 and the FCC Auction System to submit this documentation. Details regarding the submission and processing of this documentation will be provided in a public notice after the close of the auction.

2. Required Disclosures and Documentation

a. Financial and Technical Materials

68. Within 10 business days of the public notice announcing the winning bidders and establishing post-selection review deadlines for winning bidders, winning bidders must provide the most recent three consecutive years of audited financial statements, including balance sheets, income

⁷⁶ The Bureau currently is reviewing the challenges filed in the Phase II process and expects in the weeks ahead to release a public notice listing the challenges that make a prima facie case, with responses to the challenges due 45 days after that public notice. That public notice will be available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process>.

⁷⁷ See *Rural Broadband Experiments Order*, FCC 14-98, at para. 51.

⁷⁸ An unsubsidized competitor is a facilities-based provider that does not receive high-cost support and is providing residential fixed voice and broadband service meeting defined characteristics to that census block.

⁷⁹ The network round trip latency is the time it takes for a signal to travel from the customer premises to the closest designated Internet core peering interconnection point (often referred to as an Internet Exchange Point or IXP) and back to the customer premises.

⁸⁰ For example, an unsubsidized competitor can offer an “economy plan” with speeds of 768 kbps downstream, 50 GB usage allowance, and latency of 200 ms, but also must offer a plan with speeds of at least 4 Mbps/1 Mbps, usage allowance of at least 100 GB/month, and latency no greater than 100 ms, at a price that is reasonably comparable to similar wireline services in urban areas.

statement, and statement of cash flow, and submit a description of the technology and system design that will be used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer.⁸¹ Winning bidders proposing to use wireless technologies also must provide a description of spectrum access⁸² requirements, such as licensed, unlicensed, or a combination thereof, including frequency bands and necessary bandwidths, for the areas for which they seek support.

b. Letter of Credit Commitment Letter

69. Within 60 days of the public notice establishing post-selection review deadlines for winning bidders, winning bidders must submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit (LOC) in the amount of the winning bid to that entity.⁸³ The commitment letter must, at a minimum, provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, found in Appendix A of the *Rural Broadband Experiments Order*.⁸⁴ The commitment letter must be from an acceptable bank, as defined in the *Rural Broadband Experiments Order*.⁸⁵

c. Documentation of ETC Designation

70. Within 90 days of the public notice establishing post-selection review deadlines for winning bidders, winning bidders must submit appropriate documentation of its ETC designation in all of the areas for which it will receive support and certify that that the information submitted is accurate.⁸⁶ Appropriate documentation should include the original designation order, any relevant modifications, *e.g.*, expansion of service area or inclusion of wireless technologies, along with any name-change orders.

d. Letter of Credit and Bankruptcy Code Opinion Letter

71. Once the Bureau has determined that the winning bidder is financially and technically qualified to receive experiment support and that the LOC commitment letter is sufficient, it will release a public notice stating that the entity is ready to be authorized for support. Within 10 business days of the public notice, the winning bidder must submit an irrevocable stand-by original LOC that has been issued and signed by the issuing bank. Specific requirements for the LOCs are outlined in the *Rural Broadband Experiments Order*.⁸⁷ Winning bidders must also provide an opinion letter from legal counsel that must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as

⁸¹ *See id.* at para. 54.

⁸² *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17741-47, paras. 393-99 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. May 23, 2014).

⁸³ Any Tribal Nation or Tribally-owned or -controlled applicant for the rural broadband experiments that is unable to obtain a LOC may file a petition for a waiver of the LOC requirement. *See Rural Broadband Experiments Order*, FCC 14-98, at paras. 67-68.

⁸⁴ *See id.* at App. A.

⁸⁵ *See id.* at paras. 59-61.

⁸⁶ The Commission expected that winning bidders would be able to confirm their ETC status within 90 days of the public notice announcing the winning bidders. A winning bidder may file for a waiver of this deadline if it is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe. *See id.* at para. 22. An entity is presumed to have shown good faith if it files its ETC application within 15 days of release of the public notice announcing the winning bidders. *See id.* at para. 22, n.52.

⁸⁷ *See id.* at paras. 55-57.

property of the account party's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiment recipient-related entity requesting issuance of the LOC under section 541 of the Bankruptcy Code.⁸⁸

VI. CONTACT INFORMATION

72. Contact Information Table:

General Questions

Wireline Competition Bureau Telecommunications Access Policy Division

Alex Minard
(202) 418-7400
Ian Forbes
(202) 418-7400

Technical Support

FCC Auction System (Hardware/Software
Issues)

FCC Auctions Technical Support Hotline

(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

FCC Copy Contractor

Additional Copies of
Commission Documents

Best Copy and Printing, Inc

445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpweb.com>

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

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

⁸⁸ 11 U.S.C. § 541.

FCC Internet Sites

<http://www.fcc.gov>

<http://www.fcc.gov/encyclopedia/rural-broadband-experiments>

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