



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU ANNOUNCES RURAL BROADBAND EXPERIMENTS SUPPORT FOR 15 PROVISIONALLY SELECTED BIDS IS READY TO BE AUTHORIZED AND RELEASES UPDATED FREQUENTLY ASKED QUESTIONS

Listed Rural Broadband Experiment Provisionally Selected Bidders Must Submit Letters of Credit and Legal Counsel's Opinion Letters by June 10, 2015

WC Docket No. 10-90
WC Docket No. 14-259

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that it is ready to authorize rural broadband experiments support for the provisionally selected bids identified in Attachment A of this Public Notice. The bids that are ready to be authorized cover 2,091 census blocks in 8 states for a total of \$12,573,494.45 in support. To be authorized to receive the support listed in Attachment A, the provisionally selected bidders identified in that attachment are required to submit at least one acceptable irrevocable stand-by letter of credit (LOC) and Bankruptcy Code opinion letter from their legal counsel in accordance with the instructions provided below by the applicable deadline – **June 10, 2015 at 11:59 p.m. ET.**¹

On December 5, 2014, the Commission announced the first round of provisionally selected bidders for the rural broadband experiments.² Within 10 business days of the public notice announcing the provisionally selected bidders, these entities were required to submit technical and financial information, including the most recent three consecutive years of audited financial statements, a description of the technology and system design that will be used to deliver voice and broadband service, including a network diagram certified by a professional engineer, and for entities proposing to use wireless technologies, a description of spectrum access requirements.³ Within 60 days of the public notice, provisionally selected bidders were required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by LOC.⁴ And within 90 days of the public notice, provisionally

¹ *Connect America et al.*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788-93, paras. 54-71 (2014) (*Rural Broadband Experiments Order*).

² *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (Dec. 5, 2014) (*Provisionally Selected Bidders Public Notice*).

³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, paras. 52, 54.

⁴ *Id.* at 8787-88, para. 54.

selected bidders were required to submit appropriate documentation of their ETC designations in all of the areas for which they will receive support and certify that the information submitted is accurate.⁵

For each of the provisionally selected bidders identified in Attachment A, the Bureau has reviewed the submitted materials. Based on our review, the Bureau is prepared to authorize support for the provisionally selected bids identified in Attachment A, subject to submission of the required LOC(s) and Bankruptcy Code opinion letter(s) for the identified bids.

Technical and Financial Information. We find that all of the provisionally selected bidders listed in Attachment A have submitted the required technical and financial information for the identified bids. Based on our review of these materials, we conclude that we are ready to authorize these bidders.⁶

LOC Commitment Letter. We find that all of the provisionally selected bidders listed in Attachment A have submitted timely letters from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to that entity.⁷

ETC Designation. We find that each of the provisionally selected bidders listed in Attachment A has submitted documentation that demonstrates that they have obtained ETC designation from the relevant state authority to serve the census blocks covered by the provisionally selected bids listed in Attachment A.

We find good cause to grant in part Skybeam, LLC's (Skybeam) petition for waiver of the March 5th deadline for obtaining an ETC designation.⁸ In the *Rural Broadband Experiments Order*, the Commission noted that it would "presume an entity to have shown good faith" in attempting to obtain an ETC designation by the deadline if that entity filed its application within the 15 days of the public notice announcing that the entity had been selected as a provisionally selected bidder.⁹ Skybeam's wholly-owned subsidiary Essex Telecom, Inc. d/b/a T6 Broadband (T6 Broadband) was designated after the March 5 deadline as an ETC by the Illinois Commerce Commission (ICC) on March 25, 2015 for the census blocks included in two of the provisionally selected bids identified in Attachment A.¹⁰ Skybeam filed its ETC designation application with the ICC on December 19, 2014, within 14 days of the December 5, 2014 public notice announcing Skybeam as a provisionally selected bidder.¹¹ We therefore

⁵ *Id.* at 8778-79, 8788, paras. 22-23, 54.

⁶ *Id.* at 8787, para. 52.

⁷ *Id.* at 8787, para. 54.

⁸ Skybeam, LLC Petition for Waiver of Deadline for ETC Designations, WC Docket No. 10-90 et al. (filed Mar. 5, 2015) (Skybeam Petition). We note that Skybeam also sought waiver of the deadline for its ETC designations for bids not listed in Attachment A. At this time we only grant the requested waiver for the Illinois ETC designation. The Commission may waive any provision of its rules on its own motion for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *Northeast Cellular*, 897 F.2d at 1166.

⁹ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52.

¹⁰ *Essex Telecom, Inc. d/b/a T6 Broadband Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support for the Purpose of Participating in the FCC's Rural Broadband Experiment Program*, 14-0746, Order (Ill. Comm. Comm'n rel. Mar. 25, 2015), <http://www.icc.illinois.gov/docket/files.aspx?no=14-0746&docId=226884>.

¹¹ Skybeam Petition at 2; *Provisionally Selected Bidders Public Notice*, 29 FCC Rcd 14684.

conclude that Skybeam demonstrated a good faith effort to obtain ETC designation, and we allow it to submit evidence of the designation after the deadline. We note that the ICC did not rule on T6 Broadband's ETC designation application until it had a bench session scheduled for March 25, 2015.¹² The Commission stated that a waiver of the ETC designation deadline would be appropriate in circumstances such as this where the state did not schedule a meeting to consider an application until a date after the March 5th deadline.¹³ Accordingly, we grant Skybeam's petition for waiver of the March 5th deadline and find that it timely submitted documentation of its ETC designation in Illinois.

Challenge Process. In the *Rural Broadband Experiments Application Public Notice*, the Bureau noted that any census blocks that were deemed served by an unsubsidized competitor in the Phase II Challenge Process would be deemed ineligible for rural broadband experiments support, and the provisionally selected bidder that proposed to serve that census block would have its support reduced proportionally.¹⁴ A census block included in one of Northeast Rural Services, Inc.'s (Northeast Rural Services) bids identified in Attachment A was deemed to be served by an unsubsidized competitor in the Phase II challenge process.¹⁵ The amount of support that Northeast Rural Services will receive if authorized to begin receiving support for this bid has been correspondingly reduced by \$4,212.55.

LOC and Opinion Letter Requirement. No later than 10 business days after the release of this Public Notice, the provisionally selected bidders identified in Attachment A must submit at least one irrevocable stand-by LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix A of the *Rural Broadband Experiments Order* by a bank that is acceptable to the Commission.¹⁶ At a minimum, the LOC must be equal to the amount of the first disbursement of support.¹⁷ The Bureau previously released information regarding LOCs that provisionally selected bidders may find helpful in obtaining their LOCs.¹⁸

Provisionally selected winners may submit a separate LOC and opinion letter for each of their bids identified in Attachment A, or may submit a LOC for all of their bids identified in Attachment A. Note that the LOC attached in Appendix A of the *Rural Broadband Experiments Order* does not permit partial draws.¹⁹ Thus, if a provisionally selected winner submits one LOC that covers all of its bids, those bids will be considered one project for determining whether the provisionally selected winner has defaulted. If the provisionally selected winner defaults on one of the projects and does not cure the default within the allotted timeframe, the Bureau will draw on the LOC for all of the support that has been disbursed for all of the bids covered by the LOC.²⁰

¹² Skybeam Petition at 3.

¹³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52.

¹⁴ *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, Public Notice, 29 FCC Rcd 10016, 10035-36, paras. 64-66 (Wireline Comp. Bur. 2014).

¹⁵ *See Connect America Fund, Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Order, DA 15-383 (Wireline Comp. Bur. rel. Mar. 30, 2015).

¹⁶ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, 8805, para. 54, App. A.

¹⁷ *Id.* at 8791, para. 62.

¹⁸ *See Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket Nos. 10-90, 14-259, Public Notice, 29 FCC Rcd 333 (Wireline Comp. Bur. 2015).

¹⁹ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8806, App. A.

²⁰ *Id.* at 8798-800, paras. 88-96 (explaining the non-compliance measures for the rural broadband experiments).

The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.²¹ Those requirements vary for U.S. banks and non-U.S. banks. In addition, a provisionally selected bidder is required to provide with each LOC 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, under section 541 of the Bankruptcy Code, the LOC or proceeds of the LOC as property of the provisionally selected bidder's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiments recipient-related entity requesting issuance of the LOC.²²

After review of the LOCs and opinion letters submitted by the provisionally selected bidders identified in this Public Notice, the Bureau will authorize support for the specific provisionally selected bidders for which all requirements, including submission of the LOC(s) and opinion letter(s), have been met.²³

Instructions for Submission of Letter of Credit and Opinion Letter. Provisionally selected bidders identified in Attachment A of this Public Notice must submit at least one LOC for the provisionally selected bids identified in Attachment A.

The original of the LOC(s) and opinion letter(s) must be submitted to the Universal Service Administrative Company by the applicable deadline – **June 10, 2015 at 11:59 p.m. ET**, at the following address: Rural Broadband Experiments LOC, USAC, 2000 L Street NW, Suite 200, Washington, DC 20036. We recommend that each provisionally selected bidder send the original of the LOC(s) and the opinion letter(s) by means of delivery requiring signature.

A copy of the LOC(s) and opinion letter(s) must also be uploaded to the FCC Form 5620 by the applicable deadline. An applicant must provide this required information in two attachments. The LOC attachment should be designated as “Letter of Credit” and the opinion letter attachment should be designated as “Opinion Letter.”

Any provisionally selected bidder that fails to meet this deadline will no longer be eligible to receive rural broadband experiments support for the relevant bids.

Frequently Asked Questions. The Bureau also announces that it has posted updated answers to Frequently Asked Questions (FAQs) regarding the rural broadband experiments on the Commission's website. The FAQs are available at <http://www.fcc.gov/encyclopedia/rural-broadband-experiments>.

For additional information on this proceeding, contact Heidi Lankau (Heidi.Lankau@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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²¹ *Id.* at 8790, para. 59.

²² *Id.* at 8789, para. 58.

²³ *Id.* at 8788, para. 54.

Attachment A

Ready to Authorize Provisionally Selected Bidders and Bids

Category One

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid
Northeast Rural Services, Inc. ²⁴				
	OK	1	\$246,783.00	16
	OK	4	\$194,944.45	14
	OK	6	\$357,404.00	43
	OK	12	\$84,744.00	13
Skybeam, LLC ²⁵				
	IL	3	\$1,076,282.00	357
	IL	7	\$1,504,014.00	674
	KS	8	\$880,216.00	267
	TX	2	\$1,066,849.00	201

²⁴ Northeast Rural Services was also provisionally selected in the first round for bid numbers 8 & 10. *See Provisionally Selected Bidders Public Notice*, 29 FCC Rcd at 14687, Attach. A. These bids are still undergoing post-selection review.

²⁵ Skybeam was also provisionally selected in the first round for bid numbers 4, 10, & 11. *See Provisionally Selected Bidders Public Notice*, 29 FCC Rcd at 14687, Attach. A. These bids are still undergoing post-selection review.

Category Two

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid
First Step Internet, LLC				
	ID, WA	1	\$415,855.00	116
Allamakee-Clayton Electric Cooperative, Inc.				
	IA	1	\$71,782.00	12
	IA	2	\$136,835.00	20
	IA	3	\$76,269.00	11
	IA	4	\$1,168,707.00	166

Category Three

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid
Consolidated Communications Networks, Inc.				
	ND	2	\$3,096,810.00	103
Delta Communications LLC				
	IL	2	\$2,196,000.00	78