

Consortium Agreement

This Consortium Agreement (“the Agreement”) is made and entered into this 13th day of July 2020 (“the Effective Date”) by Interlakes Wireless, LLC (“Interlakes”), having a place of business at 524 North Kansas Avenue, Madison, South Dakota 57042; and Wavelength, LLC (“Wavelength”), having a place of business at 1612 N. 20th St., Aberdeen, South Dakota 57401; each of which may be referred to individually as a “Member” and collectively as “Members” of a consortium known as “Consortium 2020.”

Preamble

WHEREAS, the Federal Communications Commission (“FCC”) has established rules, procedures and dates for the Rural Development Opportunity Fund (“RDOF”) Phase I auction (Auction 904) to make available up to \$16 Billion to be distributed over ten (10) years to fund fixed broadband deployment in unserved rural areas of the United States;

WHEREAS, each Member is interested in participating in Auction 904 to secure funding to finance and support expansions of their respective fixed broadband service offerings to unserved areas of several states; and

WHEREAS, the Members are interested in jointly preparing the short-form application and bidding in Auction 904 consistent with the FCC’s rules and to minimize out-of-pocket expenditures to participate fully in Auction 904 to secure funding for the deployment of fixed broadband services in unserved rural areas.

The Members agree as follows:

1. **Name.** The consortium shall be referred to as “Consortium 2020” (sometimes referred to as “the Consortium”).
2. **Applicable Rules.** Consortium 2020 is established and shall operate consistent with the rules and requirements of the FCC governing Auction 904, including *Public Notice, Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, FCC 20-77 (rel. June 11, 2020); *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*. Report and Order, WC Docket Nos. 19-129 and 10-90, FCC 20-5, (rel. February 7, 2020) (“Report and Order”); and the rules and requirements referenced or set forth therein and as may be amended or interpreted by the FCC, collectively the “Auction 904 Rules.”
3. **Objectives of the Consortium:** The principal objectives of the Consortium include the following:
 - a. Prepare a single Short-Form application in the name of the Consortium that submits the required information to identify each Member consistent with

Auction 904 Rules, supplementing the information as may be requested by the FCC. To implement this objective, the Members shall obtain a Federal Registration Number (FRN) in the name of Consortium 2020.

- b. Select the Member that will provide (1) its financial statements for 2019 to meet the financial showing, and (2) its operational history as a broadband provider as evidenced by its three most recent FCC Forms 477 to satisfy the threshold operational history for the Consortium to bid in Auction 904.
- c. Execute the Bidding Addendum to this Agreement that will name the three authorized bidders, including a primary bidding Member, and establish the rules and procedures governing the Consortium's bidding in Auction 904.
- d. In preparing the Short-Form application, determine one or more performance tiers and latency combinations ("T+L combinations") for the bidding areas of interest for each Member. For each potential T&L combination, develop the responses to the Questions set out in Appendix A of the Instructions to Completing the Short-Form and the *Public Notice*.
- e. Select the Member primarily responsible for answering the Questions for the Proposed Networks in response to Appendix A of the *Public Notice*.

4. Consortium Rules and Commitments

- a. Each Member will cooperate in maintaining the efficient functioning of the Consortium, including attending conference calls, promptly providing information to complete the Short-Form application, responding to any follow-up inquiries from the FCC, agreeing on the distribution of costs for consultants and counsel and bidding facilities, and recognizing that multiple conferences (in person or via teleconference) will be necessary to prepare the short-form application and to participate in the bidding.
- b. Each Member will identify its bidding areas of interest recognizing that each Member is responsible for determining the lowest possible bid percentage (price point) that it is willing to accept to provide fixed broadband service in each of its bidding areas of interest or discontinue bidding prior to any round of Auction 904, and, as it may reasonably determine, elect not to bid in Auction 904.
- c. Each Member that is a winning bidder in one more of its selected bidding areas, as specified in an Exhibit to the Bidding Addendum, shall consent to assignment of such winning bids in the Divide Winning Bids portion of the Long-Form application, or replacement documents developed by the FCC, and prepare and submit its Long-Form application for its winning bids in a timely manner and otherwise consistent with the Auction 904 Rules.

- d. Each Member shall be responsible for completing at its sole expense its Long-Form application, including obtaining a commitment letter from a qualified financial institution, as defined under the Auction 904 Rules, that it will extend an irrevocable Letter of Credit (“LOC”) to the winning bidder as required under the Auction 904 Rules.

5. Prohibited Communications.

- a. In addition to the confidentiality obligations in Section 7, below, each Member shall comply with the prohibited communications rules and obligations of the Auction 904 Rules. The prohibited communications rules extend from the date the Consortium’s Short-Form application is filed with the FCC, no later than July 15, 2020 at 6:00 PM Eastern Standard Time, until the date that each member assigned winning bids submits its Long-Form application which will be due within several weeks of the date that the FCC ends the bidding in Auction 904.
- b. The prohibited communications rules prohibit each Member, the Member’s employees, agents, owners, consultants and financial advisors, from disclosing bidding strategies or decisions, such as but not limited to areas being bid, including states of interest, T&L combinations, minimum price points at which a bidder determines to discontinue bidding, decisions to bid or not or discontinue bidding, and the Bidding Addendum (“Prohibited Disclosures”). Such disclosures may have to be reported to the FCC. As a practical matter, these rules require the use of non-disclosure agreements with financial institutions with whom a Member discusses financing or to secure a Letter of Credit commitment letter and limiting Prohibited Disclosures to those employees, owners, and others that “need to know” the same. These rules apply to consultants and counsel retained by Consortium 2020 or by one or all Members in completing a Member’s Long-Form application.

6. Cost Allocation Principles. The Members shall determine how the costs for consultants and counsel incurred in preparation for and assistance during Auction 904 shall be allocated and paid by the Members, recognizing that consultants and counsel used in the preparation and filing of the Short-Form application and in supporting the bidding may be retained or not by each Member in preparing and submitting its Long-Form application, recognizing the costs for such services in connection with a Member’s Long-Form application and related matters shall be borne solely by the Member retaining such counsel or consultants for such services.

7. Confidential Information. In addition to the Prohibited Disclosures under Section 5, above, the terms and conditions and the existence of this Agreement and the actions and decisions of the Consortium shall be deemed Confidential Information and shall not be disclosed to third parties or otherwise published or referenced except as provided under this

Agreement or the Auction 904 Rules. Each Member shall limit internal distribution and discussion of this Confidential Information for the duration of this Agreement to its employees, agents, consultants and lenders who have a need to know, and shall take steps to ensure such dissemination is so limited. Upon the termination of this Agreement under Article 7.f. or any earlier termination, each Member shall manage the Confidential Information consistent with this Article 7 for at least two years or until disclosed by the Federal Communications Commission; provided, however, the Member(s) whose financial information was submitted in support of the Consortium's Short-Form application shall not be disclosed without that Member's express written consent.

8. Other Matters

- a. A Member may not assign, transfer or otherwise convey its rights or obligations under this Agreement.
- b. This Agreement and the cooperation contemplated herein shall not constitute or be deemed to constitute a legal entity between or among the Members nor make a Member the agent or the representative of another Member, except as provided in this Agreement with respect to matters related to Auction 904.
- c. Except as provided under Section 8.d., no Member shall be liable to another Member for indirect, special, or consequential damages, including lost profits or opportunity costs.
- d. Each Member shall indemnify, hold harmless and defend the other Members for all liabilities and costs, including FCC penalties, fines or forfeitures, attributable to a Member's non-compliance with the FCC rules governing Prohibited Disclosures, a winning bidder's failure to submit a timely complete Long-Form application, the failure to maintain its confidentiality obligations under Article 7, and/or any penalties, fines or forfeitures imposed against a winning bidder in the event of default (collectively referred to as "Compliance Obligations").
- e. This Agreement constitutes the full and complete understanding and agreement of the Members relating to the subject matter hereof and supersedes all prior understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by authorized representatives of the Members.
- f. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

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Interlakes Wireless, LLC

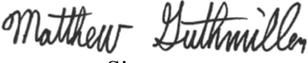
By: 
Joel A Brick (Jul 15, 2020, 08:39 CDT)
Signature

Name: Joel A Brick
Printed Name

Title: Owner, ILW LLC

Date: 7/13/2020

Wavelength, LLC

By: 
Signature

Name: Matthew Guthmiller
Printed Name

Title: Member

Date: 7/13/2020

Attachment: Bidding Addendum

Bidding Addendum

This Bidding Addendum to the Consortium Agreement dated July 13, 2020, is entered into by Wavelength LLC and Interlakes Wireless LLC to govern the bidding practices and obligations for Consortium 2020 in Auction 904. The Bidding Addendum is subject to the Terms and Conditions of the Consortium Agreement.

1. Matt Guthmiller of Wavelength is designated the Bidding Manager for Consortium 2020. He shall be identified as an authorized bidder in the Consortium 2020 Short-Form application, and he shall be responsible for executing the bidding instructions of each Member. Each Member shall be responsible for instructing the Bidding Member in a timely manner to permit the submission of bids by the Consortium in each bidding round.
2. The Members shall develop internal communications procedures to ensure that each Member will have adequate time and information to make its bidding decisions for each upcoming round, recognizing that one or all Members may utilize proxy bidding and that the FCC determines the periods of time between bidding rounds, the information conveyed to bidders during and between rounds, whether to adjust the base clock percentage decrement between rounds, and the time between bidding rounds.
 - a. All bidding information conveyed by the FCC's Bidding System between each bidding round shall be communicated promptly to each Member that is bidding in Auction 904.
 - b. The Bidding Manager shall distribute to each Member the FCC Final List of Eligible Areas for Auction 904 as it is released by the FCC.
3. Each Member shall provide the Bidding Manager with the following information at least one week prior to beginning of Auction 904:
 - a. The state(s) in which the Member elects to bid.
 - b. The bidding areas per state in which the Member intends to place bids recognizing the bidding areas must be in the states specified in the Consortium's Short-Form application.
 - c. The T&L combination the Member selects for each bidding area, recognizing the T&L combination selected in the bidding system at the start of the auction cannot be changed during the bidding.
 - d. At the Member's option, provide a price point at which the Bidding Manager or other authorized bidder will not place a bid.
4. A Member shall have the sole and irrevocable discretion to bid or not bid in Auction 904. A decision not to bid is made without penalty under this Addendum or the Auction 904 rules.
5. A Member may elect not to bid or to discontinue bidding at any time in one or more areas

at its sole discretion, but no later than 1 hour prior to initial or any subsequent bidding round, or later if the Bidding Manager can reasonably implement such instruction. A decision to discontinue bidding in one or all areas previously bid prior to the assignment of bids during the “clearing round” will be without penalty under the Auction 904 Rules except in a limited circumstance.

- a. The limited circumstance occurs when the Member -is assigned a winning bid based on its bid in the round prior to the “clearing round” even though it did not place a bid in the clearing round **and** the Member does not submit a timely long-form application.
6. Each Member recognizes that as it decides to discontinue further bids in all areas, it will have lost the opportunity to re-enter bidding during a later round Auction 904.
7. Each Member recognizes that as it decides to discontinue bidding for an area in a round, it may only place a bid for that area in a later round provided it has sufficient bidding activity to do so. Depending on its bids for other areas, this may not be doable.
8. Each Member recognizes that as a bid is placed in the Bidding System, the bid is an offer to accept assignment of the winning bid at the “implied support level” calculated at that bid’s price point and the T&L combination the Member selected for the bidding area.
9. Once a bid is assigned by the Bidding System, the bid may not be withdrawn.
 - a. The failure of a Member that is a winning bidder for one more areas to file its long-form application may result in fines and forfeitures for the other Member of the Consortium.
 - b. The Member responsible for these failures shall be subject to the indemnification obligations specified in the Consortium Agreement.

This Addendum may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

Interlakes Wireless, LLC

Wavelength LLC

By: Joel A Brick
Signature

By: Matthew Guthmiller
Signature

Name: Joel A Brick
Printed Name

Name: Matthew Guthmiller
Printed Name

Title: Owner, ILW LLC

Title: Member

Date: 7/13/2020

Date: 7/13/2020

Attachment A

Bidding Areas

Interlakes Wireless LLC

State(s)	Area(s)	T&L Combination(s)
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Wavelength LLC

State(s)	Area(s)	T&L Combination(s)
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Consortium Agreement Auction 904(R)

Final Audit Report

2020-07-15

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