

August 2017 FCC Meeting Recap: Commission Sets Reverse Auction Procedures for CAF Phase II Auction

August 9, 2017

At its August Open Meeting, the Federal Communications Commission (FCC) approved a [Public Notice](#) ("Notice") that addresses the procedures for its upcoming Connect America Fund ("CAF") Phase II auction ("Auction" or "Auction 903"), scheduled to begin in 2018. Auction 903 will be a competitive reverse auction wherein service providers will compete for up to \$1.98 billion in financial support as part of an ongoing effort by the FCC to revise the high cost universal service support program. The Notice seeks comment on the FCC's proposed process for how an applicant can become qualified to participate in the Auction, how bidders will submit bids, and how bids will be processed to determine winners and assign support amounts. **Comments are due by September 18, 2017 and reply comments are due by October 18, 2017.**

The Auction is the second part of CAF Phase II. The initial part of CAF Phase II occurred in 2015, when ten price cap carriers accepted offers of support calculated by a cost model in exchange for the providers' commitment to deploy and maintain voice and broadband service in high cost areas. Service providers that seek to participate in the Auction will bid on providing service to eligible high cost areas including those areas where incumbent price cap carriers declined the support calculated by the cost-model. In 2016, the FCC adopted the *Phase II Auction Order*, which established the rules for the Auction's bidding process including the bidder performance obligations, application mechanism, bidder eligibility criteria, eligible areas, and post-auction obligations. More recently, in March 2017, the FCC adopted bidding weights for the different performance category tiers for Auction 903 (as previously discussed [here](#)). The Notice takes final steps towards executing the Auction by resolving specific details of the mechanics established in these earlier proceedings.

The FCC previously decided that geographic areas eligible for bidding would be designated by census block but reserved the right to require bids be submitted based on census tracts in order to limit the number of discrete biddable units. In the Notice, the FCC proposes to use census block groups containing one or more census blocks as the minimum geographic area that can be bid on during the Auction. This is intended to provide flexibility to providers regarding the scope of the network area since the use of census tracts might require providers to bid on a broader geographic area than they want to cover. The Notice reaffirmed that the Wireline Competition Bureau will release an updated list of eligible census blocks using recently available Form 477 data at least three months prior to the deadline for short-form applications.

APPLICATION REQUIREMENTS

Auction 903 will involve a two-stage application process in which a short-form application will be used pre-auction to establish a bidder's eligibility to participate while the long-form application will

involve a more extensive review of bidder qualifications after bidding is complete. The Notice seeks comment on the type of information an applicant should be required to provide in both its short- and long-form applications. The FCC makes the proposals regarding the following matters in the Notice:

State Selection and Overlapping State Bids

An applicant must identify the states in which it intends to bid for support in the short-form application. The applicant will be restricted to bidding on eligible census blocks in the states identified in its application. Separate applicants that are commonly-controlled or are parties to a joint bidding agreement may not bid in the same states. The Notice provides entities with options to avoid running afoul of the restriction on overlapping bids. A company has the option of submitting a single application to qualify for the Auction then designating the operating company that would receive the support if the bid is successful. If a parent company or a consortium/joint venture is a winning bidder in the Auction, the FCC proposes to allow the entity to designate at least one operating company for each state that will be receiving Phase II support. The winning bidder would not be allowed, however, to apportion a package of eligible census block groups in a winning bid among multiple operating companies.

Alternately, parties that have common control or are part of joint bidding arrangement can bid independently, just not for the same states. To ensure this state overlap provision is abided by, the FCC proposes requiring each applicant to certify that it knows it cannot place bids in the same state as (i) another commonly-controlled entity; (ii) another party to a joint bidding arrangement related to the Auction that it is a party to; or (iii) any entity that controls a party to such an arrangement. Additionally, the FCC propose to require short-form applicants to briefly describe any agreements relating to participation of the applicant in Auction 903 bidding. In the long-form, winning bidders will be required to submit updated information on any such agreements as well as possibly disclosing the specific terms, conditions, and parties involved.

Performance Tier and Latency Combinations

The FCC previously created an auction framework that included four technology-neutral broadband performance tiers with increasing speeds and usage allowances along with commitments to either low or high latency (“public interest obligations”). In the Notice, the FCC outlines its proposals for the information and process to be used in assessing an applicant’s ability to meet the public interest obligations it selected on the short-form application.

- **Operational Information.** For each chosen performance tier and latency combination, an applicant must show how it will provide service and that it is reasonably capable of meeting the public interest obligations for each state it selects. Included in an Appendix of the Notice are a list of questions that each applicant would need to provide brief, narrative responses to as a part of its application.
- **Required Information for Applicants Proposing to Use Spectrum.** An applicant proposing to use spectrum to provide service will need to (i) identify the spectrum bands it will use for last mile, backhaul, and any other part of the network; (ii) describe the amount of uplink and downlink capacity (in MHz) that it has access to in these bands for last mile; (iii) explain the authorization it has to operate in the spectrum band; and (iv) provide call signs and/or application file number associated with its spectrum authorizations. In addition, for the long-form application, the FCC proposes to require each applicant to provide any updates to the relevant spectrum authorizations and certify that the applicant will have access to the spectrum band it proposes to use for at least ten years from the funding authorization date. The Notice

includes a list of spectrum bands the FCC has identified as those likely to be used for last mile connectivity. Comment is sought on the sufficiency of the uplink or downlink bandwidth in these bands. A provider that intends to offer satellite service must also identify any space station licenses that will be used in the areas where it intends to bid.

- **Use of Information Provided to FCC in Other Contexts.** The FCC proposes to allow staff to consider any information that a provider has submitted to the FCC in other contexts when assessing whether a provider is reasonably capable of meeting its public interest obligations. To aid with this process, applicants will be required to provide any relevant identifiers in its short-form application including FCC registration number, associated study area codes, and Form 499 filer ID number.
- **Precluding Eligibility of Certain Technologies from Certain Performance Bids.** The FCC proposes to exclude applications that propose to use certain technologies from bidding on certain performance tier and latency combinations. For example, satellite providers would be prohibited from selecting low latency in combination with any of the performance tiers.

Financial Qualifications

The FCC also proposes that, in addition to providing audited financial statements, applicants should identify and explain specific information from their most recent financial statements on the short-form application. Earlier rules determined that applicants that are not subject to audits in the ordinary course of business but have provided voice, broadband, or electric transmission services would be permitted to wait until after it is announced as a winner bidder to provide audited financial statements. The FCC seeks comment on whether such providers should be required to submit unaudited information during the pre-auction application process.

Additionally, the FCC intends to use a five point scale, responses to one financial question and status of four financial metrics, to assess financial information. Specifically, the FCC will ask whether an applicant received an unmodified, non-qualified opinion from an auditor of its prior year-end audited financial statement. The four metrics to be considered are (1) latest operating margins, where a margin greater than zero receives one point; (2) time interest earned ratio (TIER), where TIER/interest greater than or equal to 1.25 receives one point; (3) current ratio (i.e., current assets divided by current liabilities), where a ratio greater than or equal to 2 would receive one point; and (4) total equity divided by total capital, where a result greater than or equal to 0.5 would receive one point.

Applicants would also need to certify in the short-form application that they performed due diligence regarding participation in the Auction including evaluating all technical and marketplace factors that may have an impact on the level of support being bid on.

RESERVE PRICES

The FCC previously determined that the reserve price, representing the maximum amount of support the FCC is willing to provide for service to a particular area, will be set using the Connect America cost model (CAM) and bids that exceed the reserve price will not be accepted. In the Notice, the FCC proposes to set the reserve price to be the total of the support amounts calculated for each eligible census block in a census block group, subject to the support cap on extremely high-cost areas. For census blocks with costs that exceed the high-cost threshold, the FCC proposes imposing a funding cap of \$146.10 per location per month. The reserve price in those extremely high-cost areas would then be equal to \$146.10 multiplied by the number of locations that census block.

BIDDING PROCEDURE

The FCC proposes to use a descending clock auction that will consist of sequential bidding rounds for the Auction. The system would announce a base clock percentage at each round that would be used to delimit the acceptable prices in each round of the Auction. The base clock would begin at a high level, indicating a support amount equal to the full reserve price, and then it would descend in subsequent rounds as bidders indicate the bid percentage (equal to a certain support amount) they are willing to accept to provide service in that area.

The base clock percentage will continue to descend with subsequent rounds until the aggregate amount of support represented by bids in a round is no greater than the support amount budgeted for that round. Once this happens, the system will assign support to bidders in areas where there are no competing bids. If there are still competing bids, the system will continue with subsequent rounds and the clock percentage will continue to descend until there is no competition.

The Notice also seeks comment on the amount of information that should be made available to the public and to bidders during the Auction process. The FCC proposes to withhold from the public information related to the short-form application before the Auction. After the Auction results are announced, the FCC would make available short-form application information and bidding data, except confidential financial information, operational information, and proxy bidding instructions. The FCC will make information available to bidders during the Auction about the status of their bids and the areas in the states in which they are qualified to bid.