On June 9, 2020, the FCC adopted final procedures for conducting the Rural Digital Opportunity Fund Phase I auction (“Auction 904”), which will make available up to $16 billion in federal funds to support the deployment of high-speed broadband and voice services in rural America – the single largest step thus far towards bridging the digital divide. The FCC requested comment on its proposed procedures in March 2020, which it noted were modeled on the procedures adopted for the successful Connect America Fund Phase II (“CAF II”). The FCC primarily adopted its proposals, except as noted below. In particular, the FCC:

- Modified the operational questions that it will use to determine an applicant’s eligibility to bid for its selected performance tier and latency combinations by seeking additional information regarding the applicant’s plans to offer voice service and by collecting targeted information from parties proposing to use
DSL, fixed wireless, and satellite technologies based on the combinations they choose;

- Added the 3.7-4.2 GHz band (or C-band) and the 6 GHz band to the list of spectrum bands that the FCC anticipates could be used by a winning bidder to satisfy its performance obligations;

- Determined that it will afford applicants that propose to use fixed wireless or DSL technologies the opportunity to demonstrate that they are “reasonably capable” of providing Gigabit service, instead of expressly prohibiting them from selecting Gigabit service on their applications;

- Concluded that while it will prohibit an applicant that intends to use satellite technology from selecting the Gigabit performance tier, it will likewise afford an applicant that intends to use certain satellite technologies the opportunity to demonstrate that it is “reasonably capable” of providing low latency service; and

- Adopted procedures that will provide more information to bidders than proposed, including making available to bidders the tier and latency (“T+L”) weight associated with the bid in an area that received a single bid in the previous round and disclosing the lowest T+L weight of any bid received in the previous round in an area with two or more bids.

Applications to participate in the auction are due by **6:00 pm EDT on July 15, 2020**, and bidding will commence on **October 29, 2020** – a one-week delay from the FCC’s original proposal.

**Minimum Geographic Area**

The FCC adopted its proposal to use census block groups containing one or more eligible census blocks as the minimum biddable area, as it did in the CAF II auction. An **initial list** of eligible census blocks for Auction 904 was released on March 17, 2020, which included just under 65,000 census block groups containing eligible census blocks based on FCC Form 477 data as of June 30, 2019. The FCC conducted a limited challenge process to allow parties to identify census blocks that should be excluded from the list and, based on that challenge process, will release a final list of eligible census blocks prior to the application filing deadline. The FCC will also exclude any areas that will be substantially overlapped by an awardee of funds under the U.S. Department of Agriculture’s ReConnect Program.

**Application Requirements**

**Applicants and State Selections.** The FCC adopted its proposal to require an applicant to select in its short-form application each state in which it intends to bid for support. It also adopted its proposed prohibition on the submission of more than one application by any commonly controlled entities. To ensure that entities with more than one operating company are not deterred from participating, the FCC adopted a Divide Winning Bids process similar to that employed in the CAF II auction and discussed below. Similarly, the FCC adopted its proposal to ban parties submitting separate applications from entering into any joint bidding arrangements, regardless
Operational History and Submission of Financial Statements. Consistent with the CAF II auction and its decision to establish two pathways for an applicant to demonstrate its operational experience and financial qualifications, the FCC will require an applicant to indicate whether it has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline. If so, an applicant will be required to make certain certifications regarding the filing of FCC Form 477 data and/or provide certain electric distribution or transmission services documents. It will also be required to submit audited financial statements from the prior fiscal year if it is audited in the normal course of business or certify that it will submit audited financial statements during the long-form application process if it is not audited in the normal course of business. If an applicant does not have at least two years of operational experience, it must submit financial statements that are audited by an independent certified public accountant from the three most recent fiscal years.

Financial Qualifications. The FCC adopted its proposal to require applicants that submit audited financial statements to also submit a “clean” (i.e., unmodified) opinion letter, instead of requiring applicants to identify certain metrics from their financial statements and scoring applications based on those metrics as it did in the CAF II auction. Those applicants that do not provide a clean opinion letter—and applicants that submit unaudited financial statements—would be subject to a review of the full set of financial statements submitted with their applications.

Eligibility to Bid for Performance Tier and Latency Combinations. The FCC adopted its proposal to collect primarily the same information it collected from applicants for the CAF II auction to establish their eligibility to bid for their selected performance tier and latency combinations. It also adopted its proposed amendments to the operational questions listed in Appendix A of the Public Notice. The FCC further modified the operational questions by seeking additional information regarding an applicant’s plans to offer voice service. It also modified the questions to collect targeted information from parties proposing to use DSL and fixed wireless technologies to provide Gigabit service and satellite providers proposing to offer Above Baseline and low latency services. In addition, the FCC adopted its proposals on (i) the assumptions that an applicant will need to make regarding network usage and subscription rates when determining whether it can meet the public interest obligations; (ii) the spectrum bands—both licensed and unlicensed—that the FCC anticipates could be used by a winning bidder to satisfy its performance obligations, which are listed in Appendix B of the Public Notice, including (as proposed) spectrum in the 3.5 GHz band and millimeter wave bands as well as (based on suggestions by commenters) spectrum in the C-band and 6 GHz band; and (iii) the collection of identifiers associated with information submitted to the FCC in other contexts. The FCC largely adopted its proposal to prohibit certain applicants from selecting certain performance tier and latency combinations based on the technologies they intend to use. While, similar to the CAF II auction, the FCC will prohibit an applicant that intends to use satellite technology from selecting the Gigabit performance tier, the FCC will, unlike the CAF II auction, afford an applicant that intends to use low earth orbit satellite technologies the opportunity to demonstrate that it is “reasonably capable” of offering low latency service. It will
also allow an applicant that intends to use fixed wireless or DSL technologies the opportunity to demonstrate that it is “reasonably capable” of offering Gigabit service. The FCC otherwise adopted its proposal to employ the same review process for evaluating performance tier and latency combinations as it used for the CAF II auction.

Other Requirements. The FCC generally adopted application disclosure requirements consistent with those adopted for the CAF II auction and the FCC’s standard spectrum auctions, including requirements regarding the disclosure of certain agreements and ownership information. It also adopted due diligence and Eligible Telecommunications Carrier (”ETC”) certification requirements. Finally, the FCC provided further information on its limited disclosure requirements, prohibited communications rule, red light rule, rule regarding Universal Service Fund debarment, and application modification requirements for the auction.

Bidding Procedures

The FCC will use a descending clock auction to assign RDOF support using the same bidding procedures as it did in the CAF II auction. The FCC will also, as proposed, prioritize bids with lower performance tier and latency weights once the budget has cleared. An updated technical guide with additional details on bidding procedures and examples has also been released and is available here.

Bid Collection. The FCC adopted its proposal to use a clock percentage, which will be decremented for each round of bidding, to delimit the range of acceptable bid percentages across bidders. The clock percentage in each round will imply a total amount of annual support for each area available for bidding. The FCC will use an “implied support formula” similar to the formula in the CAF II auction to determine the implied support at any price point percentage. The FCC, however, also adopted its proposal to set a maximum amount of implied support for which a bidder may bid in a round at 100 percent of the RDOF budget, which differs from the procedures adopted for the CAF II auction. Bidders will be permitted to bid for a package of areas as well as submit proxy bidding instructions. However, the FCC adopted its proposal to require all areas within a package bid to be bid at the same performance tier and latency weight.

Bid Processing. Once a bidding round closes, the bidding system will consider the submitted bids to determine whether an additional round is needed to clear the budget. Once the budget clears, bidding will continue for areas that have not been assigned to resolve the competition. Bid processing will generally proceed similar to the CAF II auction. However, the FCC adopted its proposal that if bid processing procedures in the clearing round cannot assign the full budget to bids submitted in the clearing round, then the bidding system would proceed to consider bids submitted at the clock percentage of the previous round.

Closing Conditions. The auction will end once the overall budget has cleared if all areas that were bid at the round’s clock percentage were assigned during the bid processing of that round.

Availability of Bidding Information. The FCC adopted its proposal to limit the disclosure of bidding information to the general public during the auction as it did in
the CAF II auction. It, however, adopted procedures that will provide more information to bidders than proposed, including making available to bidders the T+L weight associated with the bid in an area that received a single bid in the previous round and disclosing the lowest T+L weight of any bid received in the previous round in an area with two or more bids.

**Post-Auction Procedures**

*Long-Form Application Requirements.* Consistent with the CAF II auction and its traditional spectrum auctions, the FCC will require each winning bidder to submit more in-depth information in its long-form application. The FCC generally adopts long-form application procedures similar the CAF II auction, including allowing winning bidders to assign some or all of its winning bids to related entities or individual members of a consortium. In addition, long-form applicants will be required to (i) submit an initial overview and a detailed technology and system design, with a network diagram certified by a professional engineer; (ii) certify that they will have available funds for all project costs that exceed RDOF support and describe how construction will be funded in each state; (iii) demonstrate that they currently have sufficient access to spectrum; (iv) submit, by a certain date, a letter from a bank acceptable to the FCC committing to issue an irrevocable standby letter of credit; (v) provide, within 180 days after the release of the Public Notice closing the auction, appropriate documentation of their high-cost ETC designation in all the areas for which they will receive support; (vi) provide audited financial statements (if applicable); and (vii) obtain and provide an irrevocable standby letter of credit along with an opinion letter from outside legal counsel after their long-form application has been reviewed and considered complete. Details regarding the submission and processing of long-form applications will be provided in a Public Notice after the close of the bidding.

*Default Payment Requirements.* The FCC noted that any winning bidder or long-form applicant will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. And a long-form applicant that has been authorized to receive support will be subject to non-compliance measures if it fails or is unable to meet its minimum coverage requirements or other public interest obligations, or if it fails to fulfill any other term or condition of RDOF support.

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