

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Connect America Fund
WC Docket No. 10-90

ORDER

Adopted: August 27, 2020

Released: August 27, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, as requested by Empire State Development’s Broadband Program Office, we re-award a portion of the Connect America Fund (CAF) Phase II auction support won by Mohawk Networks LLC (Mohawk) in New York. Specifically, we award Slic Network Solutions (Slic) \$2.4 million in CAF Phase II support out of the \$3.6 million that was previously awarded to Mohawk in conjunction with Phase 3 of New York State (New York)’s New NY Broadband Program.

II. BACKGROUND

2. In 2017, the Commission granted New York’s request for waiver to allocate CAF Phase II auction support in conjunction with Phase 3 of the New NY Broadband Program. Specifically, the Commission waived portions of the Part 54 rules to permit CAF Phase II support to be allocated in partnership with New York’s program rather than through the Commission’s nationwide CAF Phase II auction. The Commission explained that it would authorize CAF Phase II support up to the total reserve prices of all CAF Phase II auction-eligible census blocks that are included in the bid, provided that New York commits, at a minimum, the same dollar amount of New York support to the CAF Phase II auction-eligible areas in the bid. The Commission directed the Bureau to review winning bidders to ensure that they meet eligibility requirements outlined in the Waiver Order and that they are technically and financially qualified to meet the terms and conditions of Connect America support.

3. Pursuant to the New York Auction Order, New York accepted bids for CAF Phase II support through Phase 3 of its program, and the Wireline Competition Bureau (Bureau) announced in May 2018 that Mohawk won \$3.6 million in CAF Phase II support to serve 1,286 locations in 206 census

1 See Letter from Christopher B. Ortiz, Assistant Vice President, ESD Broadband Program Office, Empire State Development, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 (filed Nov. 12, 2019) (BPO Letter). The BPO is a division of Empire State Development, which is New York State’s “chief economic development agency.” New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al., at 1 (filed Oct. 12, 2016).

2 See generally Connect America Fund; ETC Annual Reports and Certifications, Order, 32 FCC Rcd 968 (2017) (New York Auction Order or Waiver Order).

3 Id. at 971-72, para. 11.

4 Id. at 972, para. 12.

5 Id.

6 See generally NYS Broadband Program Office, New NY Broadband Program: Phase 3 Request for Proposal Guidelines (2017), https://nysbroadband.ny.gov/sites/default/files/broadband_-_phase_3_rfp_guidelines-final_0.pdf.

blocks in New York.⁷ In accordance with the Bureau's public notice, Mohawk timely submitted a long-form application, sought designation as an eligible telecommunications carrier for all areas of New York where it was awarded CAF Phase II support,⁸ and continued working towards final approval of its application with New York. However, Mohawk subsequently withdrew its application with the Bureau on October 18, 2019.⁹

4. On November 12, 2019, the New York Broadband Program Office filed a letter asking that the Bureau award \$2.4 million of CAF Phase II support to Slic to deploy broadband to 906 of the 1,286 locations that had been awarded to Mohawk.¹⁰ The BPO explains that, according to Mohawk, "it could not complete its Phase 3 project due to unforeseen problems with its initial design and cost overruns."¹¹ The BPO therefore terminated its tentative selection of Mohawk Networks and did not proceed with finalizing Mohawk's funding request.¹² Reviewing other bids for CAF Phase II support in Phase 3 of the New NY Broadband Program, the BPO then identified Slic as the next highest bidder for a portion of the areas Mohawk had won. The BPO notes that Slic had already won \$11.3 million in CAF Phase II support through New York's program to serve 4,610 locations in the state.¹³ In addition to that existing award, the BPO argues that Slic would receive \$2.4 million of the \$3.6 million in CAF Phase II support Mohawk had won, as well as \$3.8 million from New York, to deploy broadband to the additional locations abandoned by Mohawk.¹⁴

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁵ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁶ We conclude that there are special circumstances surrounding the BPO's proposal such that deviation from the Commission's prior decision to include unawarded areas in the Remote Areas Fund would serve the public interest.

6. First, the withdrawal of a New York winning bidder from CAF Phase II support presents a unique situation for which the Commission did not provide a remedy. In the context of the CAF Phase II auction, census blocks won by a carrier that subsequently defaults do not transfer automatically to the

⁷ See *Wireline Competition Bureau Announces FCC Deadlines for New York Broadband Program Winning Bidders*, Public Notice, 33 FCC Rcd 4922, 4923 (WCB 2018) (*New York Long-Form Public Notice*).

⁸ See Petition of Mohawk Networks, LLC for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed June 29, 2018).

⁹ Letter from Allyson Doctor, General Manager, and Marvin Phillips, Chairman, Board of Managers, Mohawk Networks, to Wireline Competition Bureau, FCC, WC Docket No. 10-90 (filed Oct. 18, 2019) (Mohawk Letter). The *Waiver Order* did not specify any particular consequences for a New York CAF Phase II long-form applicant's withdrawal from the application process. See generally *New York Auction Order*.

¹⁰ The 906 locations the BPO proposes to re-award to Slic are in 122 census blocks out of the 206 census blocks originally awarded to Mohawk. New York states that it has awarded the remainder of locations to Hughes Network Systems with only state funding. BPO Letter at 1.

¹¹ *Id.*

¹² *Id.*

¹³ The Bureau authorized Slic for CAF Phase II support in New York on July 15, 2019. See *Connect America Fund Phase II Support Authorized for Five New York Winning Bidders*, Public Notice, 34 FCC Rcd 6094, 6100 (WCB 2019) (*New York First Authorization Public Notice*).

¹⁴ BPO Letter at 1.

¹⁵ 47 CFR § 1.3.

¹⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

next winning bidder; the Commission determined those census blocks will instead be eligible for the upcoming Rural Digital Opportunity Fund auction.¹⁷ In contrast, census blocks like the ones at issue here that are allocated CAF Phase II support *through New York's program* are not eligible for Phase I of the Rural Digital Opportunity Fund in the event of a subsequent default.¹⁸ The *New York Auction Order*, however, does accommodate the prospect of a census block that is unawarded by making “[a]ny census blocks that do not receive any winning bids through the New York competitive bidding process” eligible for the Remote Areas Fund auction “if they remain unserved and would otherwise be eligible for the Remote Areas Fund auction.”¹⁹ But the census blocks at issue here were in fact awarded, and New York’s competitive process has already identified another willing bidder—Slic—to serve the majority of these census blocks initially awarded to Mohawk. The *New York Auction Order* also confines CAF Phase II support made available in New York that is not ultimately authorized to the “Connect America Phase II auction budget.”²⁰ The *New York Auction Order* further notes that, “[b]ecause Connect America Phase II support will be allocated in partnership with New York’s program through the Commission’s nationwide Phase II auction, the Commission’s competitive bidding rules are not applicable.”²¹ Confronted with this ambiguity surrounding Mohawk’s census blocks, the Bureau may thus provide clarity where it is lacking, in the interest of efficiently making more broadband available in high-cost areas.

7. Second, the BPO’s proposal to re-award a portion of the census blocks and CAF Phase II support Mohawk won through Phase 3 of the New NY Broadband Program serves the public interest. By identifying a bidder that submitted the next-in-line application, the BPO’s proposal relies upon the existing competitive nature of New York’s process to re-award available funding to another participant who was also subject to competitive bidding procedures. Importantly, given the structure of New York’s Phase 3, absent Mohawk’s application, New York would have awarded the area to Slic. Re-awarding the area to Slic also allows us to leverage New York’s matching funds to deploy to unserved communities the same level of service for less CAF Phase II support. Notably, consistent with the terms of the Commission’s original waiver, New York will provide approximately \$3.8 million of state funding to complement the federal funding for this project.²² Finally, the BPO proposal allows us and New York to move quickly and efficiently towards authorizing CAF Phase II support for broadband deployment in Mohawk’s census blocks.

8. Moreover, as the BPO points out, Slic is a winning bidder in other parts of the state, for which we have already authorized CAF Phase II support for Slic.²³ Slic has thus demonstrated its ability and willingness to navigate the Commission’s processes to participate in the CAF Phase II program. Although Slic would still need to comply with the conditions set forth in the *New York Auction Order* with respect to any additional census blocks for which it is allocated CAF Phase II support, we expect that Slic would approach the process in the same way that has led to its authorization for CAF Phase II support in New York. We therefore conclude that, by accelerating broadband deployment to the census blocks originally won by Mohawk—and preventing those communities from waiting indefinitely for another broadband auction or program—the BPO’s proposal to re-award Slic a portion of Mohawk’s

¹⁷ See *Rural Digital Opportunity Fund; Connect America Fund*, Order, FCC 20-5, at 6, para. 12 (Feb. 7, 2020) (*Rural Digital Opportunity Fund Order*).

¹⁸ See *id.* at 6 n.28.

¹⁹ *New York Auction Order*, 32 FCC Rcd at 982, para. 36.

²⁰ *Id.* at 980, para. 30.

²¹ *Id.* at 972, para. 11.

²² BPO Letter at 1.

²³ See *New York First Authorization Public Notice*, 34 FCC Rcd at 6100. Under the BPO’s proposal, Slic would also be required to deploy fiber-to-the-premises broadband to the relevant locations, rather than the fixed wireless broadband for which Mohawk had been awarded CAF Phase II support. See BPO Letter at 3.

support would serve the public interest.

9. Accordingly, we announce the award of \$2.4 million in CAF Phase II support to Slic in additional census blocks consisting of a portion of the New York census blocks that were previously awarded to Mohawk.²⁴ To be authorized the additional CAF Phase II support in New York, Slic must file a long-form application, consistent with our 2018 public notice announcing New York winning bidders,²⁵ by **Monday, September 28, 2020**.²⁶

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 503, 1302, and sections 1.1 and 1.3 of the Commission's rules, 47 CFR §§ 1.1, 1.3 that the petition for waiver, filed by the Broadband Program Office, Empire State Development, on Nov. 12, 2019, IS GRANTED, to the extent described herein.

11. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a) this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁴ We also formally accept Mohawk's withdrawal of its long-form application. *See generally* Mohawk Letter.

²⁵ *See New York Long-Form Public Notice*, 33 FCC Rcd at 4922.

²⁶ A list of census blocks associated with this award may be found at <https://docs.fcc.gov/public/attachments/DOC-366473A1.xlsx>.