

February 9, 2021

**VIA ELECTRONIC FILING AND
HAND-DELIVERY**

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, R.I. 02888

Re: Hughes Network Systems, LLC

Dear Ms. Massaro:

On behalf of Hughes Network Systems, LLC, enclosed please find for filing with the Commission the following in connection with the above-referenced matter:

1. Original and nine (9) copies of a Petition by Hughes Network Systems, LLC for Eligible Telecommunications Carrier Designation;
2. Original and three (3) copies of Hughes Network Systems, LLC's Application for Authority / Statement of Business Operations; and
3. Filing fee in the amount of \$300 payable to *The State of Rhode Island*.

Please do not hesitate to contact me should you have any questions or concerns regarding this filing.

Respectfully Submitted,

Hughes Network Systems, LLC

By its Attorneys:

/s/ Alan M. Shoer
Alan M. Shoer, Esq.

Enclosures

cc: Jennifer A. Manner (w/encls.)

**BEFORE THE
STATE OF RHODE ISLAND
RHODE ISLAND PUBLIC UTILITIES COMMISSION**

In the matter of

Petition of Hughes Network Systems, LLC
for Eligible Telecommunications Carrier
Designation In Rhode Island

Docket No. _____

**PETITION BY HUGHES NETWORK SYSTEMS, LLC
FOR ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION**

1. Pursuant to Section 214(e)(2) of the Communications Act, as amended,¹ the relevant provisions of the Federal Communications Commission’s (“FCC’s”) rules,² and the Rhode Island Public Utility Commission’s (“PUC’s” or “Commission’s”) rules,³ Hughes Network Systems, LLC (“Hughes”) hereby submits this petition for designation as a high cost eligible telecommunications carrier (“ETC”) in the State of Rhode Island in all areas and census blocks in which it has been awarded funding in the FCC’s recently concluded Rural Digital Opportunity Fund (“RDOF”) Phase 1 Auction (“Auction 904”).⁴ Hughes request in this Petition is a condition precedent in order for the FCC to grant its final approval.

2. As discussed in more detail below, the Commission has the authority to grant Hughes ETC designation pursuant to federal law and this Commission’s regulations at 810-RICR-20-00-3, and Hughes meets all of the statutory and regulatory requirements for such

¹ 47 U.S.C. § 214(e)(2).

² See, e.g., 47 C.F.R. § 54.101(a), § 54.202.

³ See Certification and Verification Procedures for Telecommunications Carriers Eligible to Receive Payments from the Federal Universal Service Fund, 810-RICR-20-00-3.

⁴ See FCC Public Notice dated December 7, 2020, 35 FCC Red 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders> For the Commission’s reference a copy is also attached as Exhibit A.

designation.⁵ Designating Hughes as an ETC to receive RDOF funding will serve the public interest by allowing Hughes to facilitate the provisioning of Hughes broadband and Voice over Internet Protocol (“VoIP”) service to designated rural and under-served areas and customers in Rhode Island, in accordance with the RDOF program.⁶ To comply with the June 7, 2021 compliance filing deadlines set by the FCC, Hughes respectfully requests that the Commission expeditiously review and approve this petition, so as to allow Hughes sufficient time to certify to the FCC that it has been designated by this Commission as a high cost ETC in Rhode Island by the June 7, 2021 FCC deadline.⁷ Hughes’s request for ETC status is limited to the census block areas where it has been awarded such support in the recently concluded of FCC Auction 904.

I. INTRODUCTION AND SUMMARY

3. Hughes is the leading provider of consumer satellite broadband services in the United States, with customers throughout the country, including in rural and remote areas.⁸ Hughes provides broadband Internet access and VoIP services in 49 states and Puerto Rico. Hughes provides service using three broadband satellites, including EchoStar XIX, the world’s highest throughput satellite, which entered into commercial service on March 16, 2017. Hughes was the first U.S. satellite Internet service to offer FCC-defined broadband speeds across the continental United States. With a speed capacity of over 150 Gbps and over 130 Gbps forward

⁵ Hughes previously was awarded high-cost ETC designation by the FCC for purposes of the State of New York. See 34 FCC Rcd 11085 (14); See <https://www.fcc.gov/document/hughes-designated-etc-caf-eligible-areas-new-york>. A copy of this FCC Order is attached as Exhibit B.

⁶ When the FCC released its RDOF Order on August 2, 2019, it described this effort as “the FCC’s largest investment ever to close digital divide.” See Public Notice and Release of the FCC’s RDOF Order at 34 FCC Rcd 6778, available at <https://www.fcc.gov/document/fcc-proposes-204-billion-rural-digital-opportunity-fund-0>

⁷ Hughes must certify to the FCC no later than June 7, 2021 that it has obtained Rhode Island ETC high-cost designation in all the eligible census blocks in Rhode Island where Hughes was the successful bidder. 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

⁸ Hughes is a wholly-owned subsidiary of EchoStar Corporation (“EchoStar”). EchoStar is an affiliate of DISH Network Corporation.

capacity, EchoStar XIX currently provides broadband-defined speeds of 25/3 Mbps and higher for residential and enterprise users a from coast-to-coast.⁹ Hughes has also started construction on a new broadband satellite, Jupiter 3, which will be launched after January of 2021 and which will provide speeds of approximately 100 Mbps across the Rhode Island (and the United States). Hughes intends to offer RDOF funded services via its next generation Echostar XXIV/Jupiter 3 satellite. Hughes will also offer RDOF funded services via a fixed wireless network with industry standard commercial arrangements with other communications companies where necessary.

4. Strategic investments in greater satellite capacity, rising upload/download speeds, broadening coverage across the continental United States, and advancements in network engineering have made satellite broadband Internet access an excellent, competitive offering for U.S. residential broadband customers. Coupled with unrivaled coverage across the continental United States, less costly infrastructure requirements, and fewer regulatory barriers to deployment than terrestrial broadband, satellite broadband services are an important competitive asset to facilitate the goal of digitally integrating the most inaccessible and underserved parts of the country.

5. Hughes also provides an Internet protocol (“IP”) based voice product over its network. The Hughes voice service is based on a managed voice service provider approach, where the VoIP traffic is carried over a broadband network for connectivity to the public

⁹ See *HughesNet Gen5 High-Speed Satellite Internet Service Now Available via GSA Schedule*, Yahoo! Finance (Mar. 30, 2017) (“HughesNet Satellite Internet Service”), <http://finance.yahoo.com/news/hughesnet-gen5-high-speed-satellite-130000395.html>. See also Andrew Burger, *HughesNet Claims First FCC Broadband Defined 25 Mbps Satellite Broadband Service*, Telecompetitor (Mar. 7, 2017), <http://www.telecompetitor.com/hughesnet-claims-first-fcc-broadband-defined-25-mbps-satellite-broadband-service/> (Jupiter 3, a next-generation satellite slated to launch at the end of the decade, which will provide even greater capacity and higher speeds to its U.S. satellite broadband consumers).

telephone network. Currently, Hughes provides its VoIP service to over 90,000 subscribers in the United States.

II. THE RURAL DIGITAL OPPORTUNITY FUND

6. On January 30, 2020, the FCC adopted the \$20.4 billion dollar RDOF in support of the effort to bring high speed broadband service to rural and underserved area homes and small businesses throughout the United States.¹⁰ The RDOF Order established the framework for the Rural Digital Opportunity Fund, building on the success of the FCC’s so-called CAF Phase II auction, by using reserve auctions in two phases to award funding to selected carriers.¹¹ The Phase I auction concluded on November 25, 2020.¹² According to the FCC, “the Rural Digital Opportunity Fund will ensure that networks stand the test of time by prioritizing higher network speeds and lower latency, so that those benefitting from these networks will be able to use tomorrow’s Internet applications as well as today’s.”¹³

7. With regard to rural and underserved areas in Rhode Island, Hughes was the only company awarded funding in Rhode Island pursuant to the Auction 904 Phase 1 awards. Specifically, Hughes was awarded funding for a 10 year period to provide expanded opportunities to 3,678 designated locations in Rhode Island.¹⁴

¹⁰ 47 CFR § 1.21004; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 696, para. 22 (2020) (“RDOF”).

¹¹ *Id.*

¹² There were 180 winning bidders in the auction, with the 10-year support amount totaling \$9.23 billion and covering 5,220,833 locations in 49 states and one territory. See FCC Public Notice dated December 7, 2020, 35 FCC Rcd 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders>

¹³ See FCC RDOF Summary available at <https://www.fcc.gov/auction/904>

¹⁴ See FCC Public Notice, Attachments A and B, dated December 7, 2020, 35 FCC Rcd 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders>. See also the map data showing designated locations in Rhode Island, available at <https://www.fcc.gov/reports-research/maps/r dof-phase-i-dec-2020/>. The census blocks in Rhode Island applicable to the Auction 904 results is attached to this Petition as Exhibit C.

8. Under the competitive bidding rules adopted in the RDOF Order, Auction 904 winning bidders must file a post-auction application with the FCC for this funding support to include, among other things, a certification that the company has secured the applicable ETC designation covering the relevant census blocks in the relevant jurisdiction. For purposes of the RDOF funding for the areas designated in Rhode Island, the State of Rhode Island is the relevant jurisdiction.¹⁵ This certification must be filed with the FCC no later than 180 days from the December 7, 2020 award, which corresponds to a filing deadline for Hughes of June 7, 2021.¹⁶

9. As noted above, pursuant to Section 214(e)(2), a state commission shall, upon request, designate a common carrier that meets the requirements of an eligible telecommunications carrier (“ETC”) for a service area designated by the state commission. Hughes requests designation in all areas in the Rhode Island where it has been awarded RDOF support through the Auction 904 process.

III. HUGHES MEETS THE STATUTORY AND REGULATORY PREREQUISITES TO BE DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

10. As demonstrated herein, Hughes meets the requirements for designation as an ETC as established under the statute,¹⁷ FCC Rules and the Rules of this Commission.¹⁸

A. Hughes Will Provide a Service as a Common Carrier

11. For purposes of this designation, Hughes will provide service on a common carrier basis. Hughes currently provides broadband Internet access service and an interconnected

¹⁵ See 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

¹⁶ See pages 5, 7, and 13 of the FCC Public Notice dated December 7, 2020, 35 FCC Rcd 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders> citing 47 CFR § 54.804(b)(5).

¹⁷ *Id.* § 214(e)(1).

¹⁸ 47 C.F.R. § 54.201(d) and 810-RICR-20-00-3. Hughes has simultaneously filed with the Commission its Application package for authorization as a telecommunications carrier, in order to comply with the Commission’s rules. See 810-RICR-20-00-3.4(A)(1).

voice over IP (“VoIP”) service. As to customers and locations where Hughes is awarded support, Hughes will provide its voice service on a common carrier basis. As such, Hughes certifies that it is a common carrier under 47 U.S.C. §§ 214(e)(1) and 214(e)(2) for purposes of ETC designation.¹⁹

B. Hughes Offers the Services Supported by the Federal Universal Service Support Mechanisms

12. As described below, Hughes certifies that it provides voice telephony service supported by federal universal service support mechanisms, including the following capabilities:

a. Voice Grade Access To The Public Switched Telephone Network –

Hughes meets this requirement through its provision of IP-based voice communications service that is interconnected to the public switched telephone network. This service includes minutes of use for local service provided at no charge to end users (specifically, plans are generally unlimited usage within the U.S.) and access to emergency services via 911 or E-911, wherever available from local government or public safety organizations. Hughes also commits to provide services to qualifying low-income consumers as provided in the FCC’s Rules.²⁰

b. Broadband Internet Access Services –

Hughes’s broadband Internet offering provides the capability to transmit data to and receive data from all or substantially all Internet end points, including any capabilities that are incidental to and enable the operation of the communications service.²¹

¹⁹ 47 U.S.C. § 214(e)(1), (e)(2).

²⁰ 47 C.F.R. § 54.101(a)(1); 810-RICR-20-00-3.4(A)(2). Hughes does not distinguish between toll and non-toll calls for its voice offering and therefore the FCC’s Rules regarding toll limitations should not be relevant.

²¹ 47 C.F.R. § 54.101(a)(2); 810-RICR-20-00-3.4(A)(2). Hughes’s service is not dial-up service. Id.

13. Hughes further commits to provide these services consistent with the Commission's high-cost universal service support rules applicable to it.²² Hughes also will offer comply with applicable rules regarding support for low income customers (Lifeline) in accordance with the FCC's and Commission's Rules at all locations where it has been awarded support.²³

C. Hughes Provides Service Using Its Own Facilities

14. Hughes is a facilities-based satellite provider with its own fleet of satellites, earth stations, gateways, switching facilities, radio equipment, leased tower space or private towers, and other associated facilities and therefore meets the applicable facilities-based requirements for ETCs.²⁴

D. Hughes Will Provide Service Throughout Its Designated Service Area

15. Hughes commits to provide the supported service throughout its designated service area, consistent with all applicable requirements. Hughes's requested designated ETC service area necessary to correspond with the census block areas where it is awarded RDOF funding support in Rhode Island.²⁵

E. Hughes Will Advertise the Availability of Its Services and Charges Using Media of General Distribution

16. Hughes will advertise the availability of, and charges for, its supported service offerings using media of general distribution, and will undertake outreach initiatives to increase consumer awareness of Hughes's Lifeline service offering, consistent with all applicable

²² 47 C.F.R. § 54.101(c); 810-RICR-20-00-3.4(A)(2).

²³ 47 C.F.R. § 54.101(d); 810-RICR-20-00-3.4(A)(2). See <https://www.fcc.gov/general/lifeline-program-low-income-consumers>

²⁴ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1); 810-RICR-20-00-3.4(A)(4).

²⁵ 47 C.F.R. § 54.101(c); 810-RICR-20-00-3.4(A)(2).

requirements. Hughes currently offers and advertises its satellite broadband and VoIP services, including those offerings that include all of the supported services, using radio, television, billboards, transit, print, Internet, and targeted mailings, among others. Hughes will use the appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements.²⁶

F. Hughes Meets the Additional Requirements for Designation as an ETC

17. Hughes further certifies that it meets all of the requirements for designation as an ETC under Section 214(e)(2) and the FCC’s and this Commission’s Rules.²⁷

Compliance With Applicable Service Requirements. Hughes certifies that it will comply with the service and reporting requirements applicable to the support that it receives,²⁸ including the requirements for the RDOF Program and the Commission’s rules.²⁹ Hughes also certifies that it will comply with the Commission’s annual re-certification process and verification requirements for eligible customers.

Ability to Remain Functional in Emergency Situations. Hughes certifies that it has the ability to remain functional in emergency situations.³⁰ In fact, satellite broadband and voice

²⁶ 47 C.F.R. § 54.201(d)(2); 810-RICR-20-00-3.4(A)(3). Pursuant to 810-RICR-20-00-7, a copy of Hughes advertising materials – designated as “RDOF ETC Marketing Examples” -- is attached to this Petition as Exhibit D.

²⁷ 47 C.F.R. § 54.202 and 810-RICR-20-00-3.

²⁸ 47 C.F.R. § 54.202(a)(1)(i).

²⁹ Pursuant to 810-RICR-20-00-8 a copy of Hughes enrollment form is attached to the Petition as Exhibit E. This is Hughes New York/CAF subscriber agreement -- “Subscriber Agreement for New York Broadband Customers _ Legal”. Hughes will use the same terms for Rhode Island customers. Hughes will also be filing the requisite compliance reports with the FCC in accordance with the RDOF program and the FCC’s Auction 904 requirements. See FCC Public Notice dated December 7, 2020, 35 FCC Rcd 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders>. Pursuant to the FCC’s Auction 904 Procedures Hughes will also be filing a high-level intended technology and system design for each state with a winning bid, and thereby Hughes requests that its technical network details filed with its FCC filing satisfy any Commission requirements for system site plan documents in support of this ETC petition.

³⁰ 47 C.F.R. § 54.202(a)(2) and 810-RICR-20-00-3.4(A)(3).

services are much less affected by natural and man-made disasters than terrestrial facilities and often become the services of choice in emergency situations. Because Hughes's facilities consist largely of geostationary satellites, they are generally unaffected by storms, earthquakes, fires, explosions, and other emergency situations that cause interruption of service to terrestrial facilities. Hughes's facilities, including its satellites and its terrestrial gateways and switching facilities, all have extensive fail-over capabilities and back-up power, including external generators at its terrestrial gateways and switching facilities. Hughes also has sufficient capacity to manage traffic spikes that result from emergency situations. Similarly, for Hughes fixed wireless services to be offered in the state of Rhode Island, the service is not reliant on physical communication lines to a subscriber location, which could be subject to damage or destruction from weather, falling trees, or other local disasters. Wireless transmission equipment on radio towers will generally be served by redundant power and backhaul connections that reduce the likelihood of any single failure from causing a disruption in service to customers served by that tower.

Consumer Protection and Service Quality Standards. Hughes certifies that it will satisfy all applicable consumer protection and service quality standards,³¹ including those associated with the RDOF program and the Commission's rules applicable to it as a recipient of support from the RDOF program.

Five Year Plan - Waiver Request. Hughes notes that the Commission's Rules,³² referencing the FCC's Rules at 47 C.F.R. 54.202(a)(1)(ii), requests that the applicant submit a five-year plan that describes proposed improvements or upgrades to the applicant's network.

³¹ 47 C.F.R. § 54.202(a)(3) and 810-RICR-20-00-3.4(A)(3).

³² 810-RICR-20-00-3.4(A)(3)

Hughes requests that the Commission waive this requirement with regard to this Petition. As an FCC Auction 904 award recipient, Hughes will be providing detailed reports to the FCC, evidencing the upgrade to its network and for tracking deployment of the supported services so as to ensure that the high cost funding complies with the FCC’s RDOF detailed compliance reporting requirements.³³ Hughes notes that the FCC waived this requirement in Hughes petition for ETC designation in New York,³⁴ citing its earlier decision, pursuant to its own motion, to waive this five year plan requirement for all winning bidders in the CAF Phase II auction.³⁵ In CAF Phase II the FCC – similar to the RDOF Order - adopted more specific measures to track deployment for the auction winner and determined that these specific measures would be sufficient instead of the five year plan. These specific measures included annual reporting of service to specific locations and certification of compliance with milestones. For similar reasons Hughes requests that the Commission waive the required filing of a separate five year plan given the specific compliance measure that Hughes will be required to file with the FCC as per the RDOF program.

³³ FCC Public Notice dated December 7, 2020, 35 FCC Rcd 13888, available at <https://www.fcc.gov/document/auction-904-winning-bidders> (the winning applicant must submit, among other documents, a “detailed technology and system design description(s) for the approved technology for each applicable state, including a network diagram certified by a professional engineer.” And will be “subject to a variety of obligations, including service requirements, service milestones, reporting, and record retention requirements . . . that support recipients test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients’ service.” *Id.* at pp 6 and 14.

³⁴ See 34 FCC Rcd 11085 (14), available at <https://www.fcc.gov/document/hughes-designated-etc-caf-eligible-areas-new-york> A copy of this FCC Order is attached as Exhibit B.

³⁵ See WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier, WC Docket Nos. 09-197, 10-90 (Jul. 10, 2018). Other Commissions have waived the FCC’s five year plan requirement, in the context of a winning bidder for similar CAF Phase II awards. See, e.g., *In the Matter of the Application of W.A.T.C.H. TV Company For Designation as a High Cost Rural Competitive Telecommunications Carrier*, Ohio PUC Case No. 18-1555-TP-UNC (Order dated January 23, 2019), at pg 8.

IV. GRANT OF THIS PETITION WILL SERVE THE PUBLIC INTEREST

18. Granting Hughes the requested conditional ETC status to implement its winning award in the RDOF program in Rhode Island will serve the public interest.³⁶ Granting this petition will advance some of the same key objectives of RDOF program and help meet the goals to eliminate the digital divide that currently limits the ability of customers to enjoy the same broadband Internet access and communications services that are available to other customers in the state. Hughes's participation will promote the rapid deployment of advanced services to unserved areas because satellite broadband providers can in many instances provide service to rural, remote or underserved areas more quickly than terrestrial providers. This is especially important as more people are working and functioning remotely, as a result of the recent experiences of Rhode Islanders impacted by the Covid-19 pandemic. Grant of this petition also will aid the Commission's objective of ensuring that all Rhode Islanders enjoy the greatest degree of available access to broadband and high quality voice services.

V. CONCLUSION

19. As discussed above, designating Hughes as an ETC in Rhode Island for purposes of receiving RDOF support is consistent with the requirements of Section 214(e)(2) of the Act and is in the public interest. For all of the foregoing reasons, Hughes respectfully requests that the Commission designate it as an ETC in Rhode Island eligible for high cost support through the RDOF Program.

³⁶ 47 C.F.R. § 54.202(b) and 810-RICR-20-00-3.4(A)(3).

Respectfully submitted,

By: /s/ Alan M. Shoer

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/s/ Jennifer A. Manner

Jennifer A. Manner
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Dated: February 9, 2021

**HUGHES NETWORK SYSTEMS, LLC
(the “Applicant”)**

Rhode Island ETC Petition

Exhibit Index

FCC Public Notice..... A
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Exhibit A

FCC Public Notice dated December 7, 2020



PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, DC 20554

News Media Information: 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 20-1422
December 7, 2020

RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904) CLOSES

WINNING BIDDERS ANNOUNCED

FCC FORM 683 DUE JANUARY 29, 2021

AU Docket No. 20-34
WC Docket 19-126
WC Docket No. 10-90

1. By this Public Notice, the Rural Broadband Auctions Task Force, Office of Economics and Analytics (OEA), and Wireline Competition Bureau (WCB) announce that bidding in the Rural Digital Opportunity Fund Phase I auction (Auction 904) concluded on November 25, 2020. There were 180 winning bidders in the auction, with the 10-year support amount totaling \$9.23 billion and covering 5,220,833 locations in 49 states and one territory. Of the 5,295,771 locations in the 61,766 eligible census block groups, approximately 99% of the locations are covered by winning bids. While winning bids are for a range of performance tiers, winning bids for downstream speeds of at least 100 megabits per second (Mbps) cover 99.7% of these locations, with over 85% of locations covered by winning bids for Gigabit speed service.

2. Winning bidders are required to submit a post-auction application for support (FCC Form 683) no later than **January 29, 2021**. Winning bidders that wish to assign some or all of their winning bids to related entities must do so by **December 22, 2020**, using the Divide Winning Bids process described below.

I. WINNING BIDDERS

3. This Public Notice summarizes the results of the auction and provides winning bidders with important information, including FCC Form 683 filing requirements and support disbursement matters. Key information appears in the following attachments:

Attachment A: “Winning Bidders Summary” lists for each bidder: the state, the 10-year assigned support amount, and the number of locations assigned in winning bids.

Attachment B: “State Results Summary” lists for each state with eligible areas in Auction 904: the total 10-year assigned support, the number of locations assigned, and the number of bidders with winning bids.

Attachment C: “FCC Form 683: Application for Rural Digital Opportunity Fund Phase I Support – Instructions.”

4. A copy of this Public Notice will be sent to each qualified bidder via overnight delivery to the contact person at the contact address listed in each qualified bidder’s short-form application (FCC Form 183).

II. AUCTION RESULTS

5. Concurrent with the release of this Public Notice, the Commission is making available the detailed auction results and bidding information described below.

Online Map: An interactive visual representation of the auction results is available on the Auction 904 web page (www.fcc.gov/auction/904). On the interactive map available at this webpage, there are options for displaying all eligible areas and non-winning bids. Clicking on a state or winning bid listed on the right-hand side of the map will zoom the map to that area.

Results Data: An online viewer of results data and downloadable files that include the identities of bidders and all their submitted bids are now available in the FCC Auctions Public Reporting System (auctiondata.fcc.gov), for which there is a link on the Results tab on the Auction 904 web page (www.fcc.gov/auction/904).¹

6. Additionally, the Commission will soon make available certain, previously withheld information submitted in the applications to participate in the auction (FCC Forms 183). This information includes the state(s) and performance tier and latency combination(s) for which each applicant was found to be eligible.² The applications are viewable through the application search feature, which can be accessed through the Application Search tab on the Auction 904 web page.

III. POST-AUCTION PROCEDURES

7. Under the competitive bidding rules adopted in the *Rural Digital Opportunity Fund Order*, Auction 904 winning bidders must file a post-auction application for support, also referred to as FCC Form 683, consistent with all requirements of the long-form application process.³ FCC Form 683 has two discrete parts—the Divide Winning Bids portion and the long-form application portion. Each winning bidder is required to file an FCC Form 683 to become authorized to receive support. Prior to completing the long-form application portion, a winning bidder may divide its winning bids by assigning them to related entities, as described below.⁴ If a winning bidder assigns its winning bids to related

¹ Because bids in Auction 904 implied annual support amounts, the bids and results data in the FCC Auctions Public Reporting System are on an annual basis, in contrast to the 10-year total support amounts reported in Attachments A and B.

² We will continue to withhold from routine public inspection responses to the technical questions in Appendix A of the *Auction 904 Procedures Public Notice* and any supporting information; financial information for which confidential treatment was requested under the section 0.459(a)(4) abbreviated confidential treatment process; and any other information subject to a request for confidential treatment that has been granted or remains pending. See *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6129-30, para. 141 (2020) (*Auction 904 Procedures Public Notice*). Further, to prevent possible public dissemination of information related to bids or bidding strategies in Auction 107—an auction for flexible-use service licenses in the 3.7 GHz Band in which bidding is scheduled to commence on December 8—the data fields in which applicants identified specific spectrum bands that they proposed to use and spectrum access attachments will continue to be withheld from routine public inspection until the prohibition of certain communications in Auction 107 concludes. See 47 CFR 1.2105 (c); *Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107; Bidding in Auction 107 Scheduled to Begin December 8, 2020*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 8404, 8418, para. 44 (2020).

³ 47 CFR § 1.21004; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 696, para. 22 (2020) (*Rural Digital Opportunity Fund Order*).

⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6164-65, paras. 288-93.

entities, those entities will be required to file the long-form application portion of an FCC Form 683 for those winning bids, as described below. A winning bidder will be responsible for completing the long-form application portion of FCC Form 683 for any winning bids that it does not assign to a related entity.

8. **Winning bidders that intend to file a long-form application covering all their winning bids are not required to participate in the Divide Winning Bids process.** Any winning bidder that does not submit the Divide Winning Bids portion of FCC Form 683 prior to 6:00 p.m. ET on December 22, 2020, must file a long-form application that covers *all* its winning bids. In such circumstances, the winning bidder must file the long-form application in its own name, be designated as the eligible telecommunications carrier (ETC) to serve the relevant areas, be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Rural Digital Opportunity Fund Phase I support.⁵

A. Divide Winning Bids Portion of FCC Form 683

9. Any winning bidder that intends to assign some or all its winning bids to related entities must do so by submitting the Divide Winning Bids portion of the FCC Form 683 during the Divide Winning Bids filing window. **The Divide Winning Bids filing window will open at 10:00 a.m. Eastern Time (ET) on Wednesday, December 9, 2020, and close at 6:00 p.m. ET on Tuesday, December 22, 2020.** During this period, a winning bidder will be able to log into the Auction Application System using the FCC Registration Number (FRN) that it used to file its short-form application and complete the Divide Winning Bids portion of FCC Form 683. The instructions in Attachment C explain how a winning bidder can assign its winning bids to related entities.

10. A winning bidder may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (i.e., July 15, 2020).⁶ The Auction Application System will not permit a winning bidder to assign its winning bids to another winning bidder. A related entity is an entity that is controlled by the winning bidder or is a member of (or an entity controlled by a member of) a consortium/joint venture of which the winning bidder is a member.⁷ Thus, if a holding company/parent company is a winning bidder in Auction 904, the winning bidder may designate one or more operating companies that it controls to complete the long-form application to receive Rural Digital Opportunity Fund support for some or all of the winning bids in a state. If a consortium/joint venture is a winning bidder in Auction 904, the entity may designate one or more members (or entities controlled by members of) the consortium/joint venture to complete the long-form application to Rural Digital Opportunity Fund support for some or all of the winning bids in a state.

11. A winning bidder may assign winning bids to more than one entity in a single state, but it cannot assign a single winning bid to more than one entity.⁸ Thus, a winning bidder may not split among multiple entities either: 1) eligible census blocks within a winning bid for an individual census block group, or 2) separate census block groups within a winning package bid.⁹

⁵ Subject to the limited exception described below for multiple operating companies operating in a state.

⁶ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 291.

⁷ *Id.* at 6164, para. 289.

⁸ *Id.* at 6164, para. 290.

⁹ For example, assume a winning bidder has three winning bids—package bid A, package bid B, and single bid (i.e., one census block group) C. The winning bidder could assign package bid A to one related entity, package bid B to another related entity, and single bid C to a third entity. The winning bidder could not assign some census block groups from package bid A to one related entity and then the remaining census block groups from package bid A to another entity. The entire package bid must be assigned to one related entity. Similarly, the winning bidder could not assign some eligible census blocks from single bid C to one entity and then the remaining eligible census blocks from single bid C to another related entity. The entire census block group covered by the single winning bid must be assigned to one related entity.

12. **Each entity that is assigned a winning bid through the Divide Winning Bids process is the entity that must file the long-form application portion of FCC Form 683 in its own name. Except for one limited exception, that long-form applicant must be designated as the eligible telecommunications carrier to serve the relevant area(s), be named in the requisite letter(s) of credit, and fulfill the public interest obligations associated with receiving Rural Digital Opportunity Fund support.**¹⁰

13. For administrative convenience, if a winning bidder is a holding/parent company that has multiple operating companies in a state and intends to assign its winning bids to multiple operating companies in a state, it may choose one of those entities to be the lead operating company.¹¹ In such circumstances, the winning bids should be assigned to that lead operating company, the long-form application should be filed in the name of the lead operating company, the letter of credit should be in the name of the lead operating company, and payments will be made to the study area code associated with the lead operating company. However, the long-form application must identify which operating companies will meet the public interest obligations for which census block groups and documentation must be submitted that demonstrates that each of the operating companies has an ETC designation covering the relevant census block groups. As decided in the *Rural Digital Opportunity Fund Order*, compliance with the service milestones will be determined on a statewide basis across all the relevant operating companies.¹²

14. A winning bidder that assigns some or all its winning bids to a related entity must make several certifications in the Divide Winning Bids portion of FCC Form 683. In particular, it must certify and acknowledge that it:

- has assigned the winning bids to related entities that were named in the short-form application or are newly formed,
- will inform each entity of its filing obligation and cause each entity to submit a timely FCC Form 683 long-form application,
- will be at risk for default if any of the related entities do not submit a timely FCC Form 683 long-form application, and
- will submit a timely FCC Form 683 long-form application for any of the winning bids that it did not assign to another entity.

B. Obligation to Apply for Support – Long-Form Application Portion of FCC Form 683

15. A winning bidder that retains any of its bids, as well as all entities that are assigned winning bids by a winning bidder, must electronically submit the long-form application portion of FCC Form 683 covering those bids prior to the close of the long-form application filing window. **The long-form application filing window will open at 10:00 a.m. ET on Thursday, January 14, 2021, and will close at 6:00 p.m. ET on Friday, January 29, 2021.** Certain additional information may be submitted to the Commission after this filing window closes, as described below. **The Auction Application System will open a filing window at 10:00 a.m. ET on Thursday, January 14, 2021 to permit applicants to submit this additional information by the relevant deadlines.**

1. Deadlines

16. Attachment C of this Public Notice provides instructions for completing the long-form application portion of FCC Form 683. These instructions are consistent with the Commission's

¹⁰ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 291.

¹¹ *Id.* at 6165, para. 292.

¹² *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

requirements fully described in section 54.804(b) & (c) of the Commission's rules and paragraphs 286 to 322 of the *Auction 904 Procedures Public Notice*.¹³ Below is a summary of the information that must be submitted by the applicable application deadlines:¹⁴

- **Information due prior to 6:00 p.m. ET on Friday, January 29, 2021:**
 - **Applicant information**, including legal classification (e.g., corporation, general partnership, etc.), jurisdiction of formation, address, contact information, and responsible individual
 - **Whether the applicant has already been designated as an eligible telecommunications carrier (ETC)** for all the eligible census blocks in a winning bid(s)¹⁵
 - If the applicant has already obtained a high-cost ETC designation that covers all the relevant areas in a state, it should submit the required ETC documentation and certification letter by this deadline so that Commission staff can expeditiously verify the applicant's ETC status in the state
 - If the applicant has obtained a high-cost ETC designation for only some of the relevant areas in a state, Commission staff will not verify the applicant's ETC status in a state until the applicant has submitted the required documentation and certification letter for *all* the relevant areas in the state
 - **Whether the applicant is required to submit audited financial statements** during the long-form application process and whether it seeks confidential treatment of those financial statements¹⁶
 - **Initial project overview(s)** describing at a high-level the applicant's intended technology and system design for each state with a winning bid.¹⁷ An applicant should not include any confidential trade secrets or commercial information in its overview(s), which will be made publicly available.
 - **Project funding description(s)** that explains how necessary construction will be funded in each state¹⁸
 - **Spectrum access description(s)** demonstrating that the applicant has sufficient access to spectrum in each state, if applicable¹⁹

¹³ 47 CFR § 54.804(b), (c); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6163-78, paras. 286-322; *see also Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 725-735, paras. 86-113.

¹⁴ As discussed in Attachment C, certain applicant information may be automatically transferred from a winning bidder's short-form application (FCC Form 183) to its long-form application (FCC Form 683).

¹⁵ By June 7, 2021, the long-form applicant must obtain from all the relevant states or the Commission a high-cost ETC designation(s) that cover its winning bid areas and upload the required documentation and a certification letter to its FCC Form 683. 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

¹⁶ As noted below, the audited financial statements are due by June 7, 2021. 47 CFR § 54.804(b)(4); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80.

¹⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 302.

¹⁸ 47 CFR § 54.804(b)(2)(vi); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6174-75, para. 312; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727, para. 91.

¹⁹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6175, paras. 313-14.

- **Agreement information**, including information regarding any agreements relating to the applicant's participation in Auction 904²⁰
- **Ownership information**, including information regarding entities that have an ownership or other interest in the applicant and associated Commission-regulated businesses²¹
- **Various certifications**, including certifications regarding the applicant's compliance with statutory and regulatory requirements; financial and technical qualifications; available funds; compliance with the relevant public interest obligations and ETC requirements; and spectrum access, if applicable²²

17. We adopt a deadline of 70 days from the release of this Public Notice for long-form applicants to submit letter of credit commitment letters, as well as detailed technology and system design descriptions.²³

- **Information due prior to 6:00 p.m. ET on Monday, February 15, 2021:**

- **Letter of credit commitment letter(s)** for each applicable state from a qualified bank committing to issue an irrevocable stand-by letter of credit to the long-form applicant in the required form that covers the first year of support (at a minimum).²⁴ A long-form applicant with winning bids in multiple states may submit a single commitment letter that covers all of the relevant states as long as it is clear that the letter is applicable to the relevant states.
 - At a minimum, the letter must provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit in Appendix C of the *Rural Digital Opportunity Fund Order*.²⁵
 - The bank eligibility requirements are described in detail in paragraph 107 of the *Rural Digital Opportunity Fund Order* and section 54.804(c) of the Commission's rules.²⁶
- **Detailed technology and system design description(s)** for the approved technology for each applicable state, including a network diagram certified by a professional engineer.
 - Paragraphs 301 to 311 of the Auction 904 Procedures Public Notice provide detailed guidance on how an applicant can successfully meet this requirement.²⁷

²⁰ *Id.* at 6138, para. 173.

²¹ 47 CFR §§ 1.2112(a), 54.804(b)(2)(i); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 295; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 87.

²² *See, e.g.*, 47 CFR § 54.804(b)(2)(ii), (iii), (v), (vii); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165-67, 6174-75, 6175-76, paras. 296-300, 312, 314.

²³ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, 6176, paras. 303, 315 (stating that this information would be due "[w]ithin the specified number of days after the release of the Auction 904 closing public notice").

²⁴ 47 CFR § 54.804(b)(3), (c)(2); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 315; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 106.

²⁵ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 315; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 106.

²⁶ 47 CFR § 54.804(c)(2); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

²⁷ 47 CFR § 54.804(b)(2)(iv); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167-74, paras. 301-11; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 90

Further educational materials regarding this requirement will also be made available on the Auction 904 website, www.fcc.gov/auction/904.

- The professional engineer must certify that he or she has reviewed each state network diagram and that the network is capable of delivering, to at least 95% of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements.²⁸ For purposes of this requirement, while it is not necessary that the professional engineer certifying the network diagram have a Professional Engineer license, the certification should describe the professional engineer's qualifications such that the certifier's network design and performance expertise is apparent.
 - Wireless coverage maps should be submitted in ESRI Shapefile format. The component files (including the .SHP, .SHX, .DBF, and .PRJ files) should be uploaded in a single compressed .ZIP archive. Recommended standards and data fields will be made available on the Auction 904 website, www.fcc.gov/auction/904. Long-form applicants will see an error message when they upload the .ZIP archive to the long-form application, but the error will not prevent long-form applicants from submitting their applications provided that the submission occurs prior to the deadline and Commission staff should still be able to access the file. Commission staff will contact a long-form applicant after the filing deadline if there are any issues with the file. The FCC Form 683 attachment size limit is 10 MB.
- **Information due prior to 6:00 p.m. ET on Monday, June 7, 2021:**
 - **Documentation of high-cost ETC designation(s)** in all areas where the applicant will receive support, as described in paragraphs 316-317 of the *Auction 904 Procedures Public Notice*.²⁹ An applicant should also upload a .csv file of the census blocks that are covered by the ETC designation order.
 - **ETC certification letter(s)** from an officer of the applicant certifying that the long-form applicant's ETC designation(s) covers all the areas where the applicant will receive support.³⁰
 - If not provided with the FCC Form 183 short-form application by the long-form applicant or a related entity,³¹ **financial statements from the prior fiscal year (i.e., 2019) that have been audited by an independent certified public accountant**, including the balance sheets, statements of net income and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes.³² An applicant

²⁸ 47 CFR § 54.804(b)(2)(iv); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 301; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 90. Note that all performance requirements for broadband and voice services have to be met at peak periods. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6517-21, paras. 22-33 (WCB/WTB/OET 2018) (*CAF Performance Measures Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10116-10118, paras. 20-23 (2019) (*CAF Performance Measures Second Reconsideration Order*).

²⁹ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, paras. 316-17; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

³⁰ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

³¹ In this context, a related entity means the long-form applicant's parent/holding company or, if the long-form applicant is a member of a consortium or joint venture, the member of the consortium or joint venture that submitted financial statements with the short-form application.

can also submit fiscal year-end 2020 audited financial statements instead if they are available.

- The applicant must submit the audited financial statements of the entity that submitted its unaudited financial statements in the relevant FCC Form 183 short-form application or its own audited financial statements.³³
- Any applicant that fails to submit the audited financial statements as required by this deadline will be subject to a base forfeiture of \$50,000, which will be subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines.³⁴

18. Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Rural Digital Opportunity Fund public interest obligations if authorized to receive support. Commission staff will notify a long-form applicant if additional information is required. We expect long-form applicants to expeditiously complete their applications and respond in a timely manner to staff requests for additional or missing information.³⁵ If the application and the information with respect to each winning bid in a particular state is complete and the long-form applicant has demonstrated that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids for which the Commission is ready to authorize Rural Digital Opportunity Fund support.³⁶ If a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids that are considered in default.³⁷

- The applicant will have 10 business days from the release of the public notice indicating that the Commission is ready to authorize support to submit:
 - **Irrevocable standby letter of credit** for each state where the long-form applicant will be authorized to receive support. Long-form applicants should carefully review the letter of

(Continued from previous page) _____

³² 47 CFR § 54.804(b)(4); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80.

³³ Accordingly, if the long-form applicant is a member of a consortium, it should submit the audited financial statements of the consortium member that submitted its unaudited financial statements in FCC Form 183. If the long-form applicant is an operating company of a holding company that filed an FCC Form 183 on behalf of the long-form applicant, the long-form applicant should submit the audited financial statements of the holding company. A long-form applicant also has the option of submitting its own audited financial statements instead.

³⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

³⁵ See 47 CFR § 1.21004(b) (“The Commission may dismiss a winning bidder’s application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. A winning bidder whose application is dismissed for failure to prosecute pursuant to this paragraph has defaulted on its bid(s).”); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 696, para. 22 (noting “the Commission will apply as appropriate any modifications to [the general competitive bidding rules] that it may adopt”).

³⁶ 47 CFR § 54.804(b)(6)(v).

³⁷ A long-form applicant that defaults on a winning bid in a state may still be authorized to receive support for its remaining winning bids in that state.

credit requirements in section 54.804(c) of the Commission's rules and in the *Rural Digital Opportunity Fund Auction Order*,³⁸ which are summarized below:

- The initial letter of credit must cover the first year of support for the state, at a minimum.³⁹
- The letter(s) of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix C of the *Rural Digital Opportunity Fund Order*.⁴⁰
- The long-form applicant must be the entity that is named in the letter(s) of credit.⁴¹
- The letter(s) of credit must be issued by a qualified bank. The issuing bank eligibility requirements are described in section 54.804(c)(2) of the Commission's rules and in paragraph 107 of the *Rural Digital Opportunity Fund Order*.⁴²
- Before a support recipient can receive its next year's support and each year's support thereafter, it must modify, renew, or obtain a new letter of credit to ensure that its value is consistent with the Commission's rules. The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain service milestones as described in more detail in section 54.804(c)(1) of the Commission's rules.⁴³
- The letter of credit must remain open until the support recipient has certified that it offers the required service to 100% of the Connect America Cost Model (CAM)-determined location total in the state by the end of year six (or WCB's adjusted CAM location count if there are fewer locations) and the Universal Service Administrative Company (USAC) has verified that the build out obligation has been fulfilled.⁴⁴
- A list of common letter of credit errors is available at <https://www.fcc.gov/file/18256/download>.

³⁸ 47 CFR § 54.804(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-35, 773-77, paras. 96-113, Appx. C.

³⁹ 47 CFR § 54.804(c)(1); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

⁴⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

⁴¹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6164, para. 291.

⁴² 47 CFR § 54.804(c)(2); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, para. 107. WCB also issued guidance announcing that a non-U.S. bank that has a branch office located in New York City and that will accept a letter of credit draw certificate from USAC via overnight courier, in addition to in-person presentations, will be considered qualified to issue letters of credit if the bank also meets the Commission's other non-U.S. bank eligibility requirements. *Wireline Competition Bureau Provides Guidance Regarding the Eligibility of Non-United States Banks Issuing Letters of Credit for Universal Service Competitive Bidding Mechanisms*, WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 2804 (WCB 2020).

⁴³ 47 CFR § 54.804(c)(1)(i)-(vii); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-31, paras. 98-104.

⁴⁴ 47 CFR § 54.804(c)(1); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 731, para. 103. See also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55 (describing the service milestones and WCB's recalculation of location totals). More information about USAC's verification process is available at: <https://www.usac.org/high-cost/resources/fund-verification-reviews/>.

- **Letter of Credit Bankruptcy Opinion Letter(s)** from outside legal counsel regarding the treatment of the letter(s) of credit or its proceeds in a bankruptcy proceeding.⁴⁵ The letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the long-form applicant's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.⁴⁶

19. Once Commission staff has determined that a long-form application is complete and the long-form applicant is financially and technically qualified, and the letter(s) of credit and accompanying opinion letter(s) have been received and approved, WCB will issue a public notice announcing the authorization of support for the winning bid(s) and directing USAC to begin disbursing support.⁴⁷ USAC will issue a new study area code to each long-form applicant for each state in which it is authorized to receive support. Long-form applicants will be notified of the new study area code prior to the authorization for support along with procedures for disbursing support. Monthly support disbursements will begin shortly after the authorization public notice has been released.

20. If an applicant is not authorized to receive support for a winning bid, it will be in default and subject to forfeiture for that winning bid as described below.

2. Forfeiture in the Event of Default

21. As described in the *Rural Digital Opportunity Fund Order*,⁴⁸ winning bidders or long-form applicants that have been assigned winning bids during the Divide Winning Bids stage will be subject to a forfeiture in the event of a default. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Rural Digital Opportunity Fund support, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise.

22. A winning bidder or long-form applicant that defaults will be subject to a base forfeiture per violation of \$3,000.⁴⁹ A violation is defined as any form of default with respect to the census block group. In other words, there shall be separate violations for each census block group assigned in a bid.⁵⁰ So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to 15% of the bidder's total assigned support for the bid for the support term.⁵¹ Notwithstanding this limitation, the total base forfeiture will also be subject to

⁴⁵ 47 CFR § 54.804(c)(3); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177-78, para. 320; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 113.

⁴⁶ 11 U.S.C. § 541; 47 CFR § 54.804(c)(3); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 113.

⁴⁷ 47 CFR § 54.804(b)(6)(vi).

⁴⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 114-17; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, paras. 321-22.

⁴⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 census block groups for \$100,000 over the support term. We (continued...)

adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.⁵²

C. General FCC Form 683 Information

23. For both the Divide Winning Bids and long-form application portions of FCC Form 683, the application may be filed at any time after the relevant filing window opens until the filing window closes. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the relevant filing window closes.

24. **A winning bidder and/or long-form applicant must always click on the CERTIFY & SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 683 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff.** If a winning bidder or long-form applicant needs guidance or encounters technical difficulties in filing FCC Form 683, it may contact FCC Auctions Technical Support using the information in the Contact section, below.

D. Maintaining Accuracy of Information

25. Each long-form applicant must make all changes to its information in the Auction Application System using FCC Form 683. With the release of this Public Notice, long-form applicants are no longer required to maintain the accuracy and completeness of information furnished in their FCC Form 183 applications.

26. A long-form applicant will be permitted to make minor modifications to its application after the deadline for submitting applications.⁵³ Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or not available at the time the application was submitted.⁵⁴ If a long-form applicant makes a major modification to its application, the application will be denied.⁵⁵ In such an event, the long-form applicant will be subject to forfeiture. Major modifications include, but are not limited to, any changes in the ownership of the long-form applicant that constitute an assignment or transfer of control, any changes in the identity of the long-form applicant, or any changes in the required certifications.⁵⁶

E. Public Availability of FCC Form 683 Information

27. Information submitted in FCC Form 683 will generally be publicly available after Commission staff completes its review. Accordingly, a long-form applicant should take care not to include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its application. However, consistent with the Commission's limited information procedures in place for Auction 904, certain information will be withheld from routine public inspection even after support is authorized. **To ensure that the information described below is afforded such**

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would impose a base forfeiture of \$15,000 (15% of \$100,000) because otherwise the base forfeiture would be \$300,000, three times the entire bid amount (\$3,000 x 100 census block groups). In contrast, if Bidder B bids to serve 50 census block groups for \$1,000,000 over the support term, we would impose a base forfeiture of \$150,000 (\$3,000 x 50 census block groups), which is 15% of the total bid.

⁵² See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(8), note to paragraph (b)(8); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵³ 47 CFR § 54.804(b)(6)(iii).

⁵⁴ *Id.*

⁵⁵ *Id.* § 54.804(b)(6)(iv).

⁵⁶ *Id.*

confidential treatment, a long-form applicant must upload the information to FCC Form 683 using the appropriate attachment “type” as described in the instructions in Attachment C.

28. Information related to a long-form applicant’s detailed technology and system design description, its project funding description, and its letter of credit will be treated as confidential and will be withheld from public inspection.⁵⁷ The Commission will treat long-form applicants that submit this information as having made a request to treat this information as confidential trade secrets and/or commercial information. As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.

29. Moreover, a long-form applicant may request confidential treatment of its audited financial statements directly on FCC Form 683, using an abbreviated process under section 0.459(a)(4) of the Commission’s rules. The applicant need not submit a separate section 0.459 confidentiality request with its FCC Form 683.⁵⁸

30. Nevertheless, if a request for public inspection under section 0.461 is made for the long-form applicant’s audited financial statements, detailed technology and system design description, project funding description, or letter of credit, the long-form applicant will be notified and then must justify the continued confidential treatment of the information if it objects to the disclosure.⁵⁹

31. A long-form applicant may include with its FCC Form 683 a request that any other information submitted in its application not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission’s rules.⁶⁰ Requests for confidential treatment of information other than that discussed above will not be routinely granted.

IV. OTHER IMPORTANT INFORMATION

A. Maintaining Prohibition on Certain Communications

32. Section 1.21002 of the Commission’s rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, an applicant “is prohibited from communicating with any other applicant in any manner the substance of its own, or one another’s, or any competing applicant’s bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.”⁶¹ As explained more fully in the *Auction 904 Procedures Public Notice*, this prohibition took effect as of the short-form application filing deadline, i.e., July 15, 2020, at 6:00 p.m. ET, and extends until the deadline for filing the long-form application portion of FCC Form 683, i.e., **January 29, 2021, at 6:00 p.m. ET.**⁶²

⁵⁷ *Id.* § 0.459; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6130, 6168, 6175, paras. 141 n.325, 303 n.516, & 314 n.542. A long-form applicant’s high-level initial project overview will be made publicly available. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 302. For the Connect America Phase II auction, a winning bidder’s letter of credit from a qualified bank was treated as confidential trade secrets and/or commercial information and thus withheld from routine public inspection. See *Connect America Fund Phase II Auction Support for 962 Winning Bids Ready to Be Authorized; Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel’s Opinion Letters by March 13, 2019*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 955, 956 (WCB/OEA 2019). For the same reasons, we will withhold an applicant’s letter of credit commitment letter, letter of credit, and bankruptcy opinion letter.

⁵⁸ 47 CFR § 0.459(a)(4).

⁵⁹ *Id.* § 0.461

⁶⁰ *Id.* § 0.459.

⁶¹ *Id.* § 1.21002(b).

⁶² See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6132, para. 151.

33. **This prohibition applies to all short-form applicants regardless of whether such applicants became qualified bidders or actually bid.**⁶³ We also emphasize that, for purposes of this prohibition, an “applicant” includes the entity filing the application, each entity capable of controlling the applicant, and each entity that may be controlled by the applicant or by an entity capable of controlling the applicant.⁶⁴

34. With the release of this Public Notice, the Commission has made public auction-related information which previously would have been subject to the prohibition on certain communications.⁶⁵ Parties are reminded, however, that “bids or bidding strategies” encompasses more than information about bids submitted during the bidding portion of the auction. How an applicant participates in an auction is subject to the prohibition and includes, for example, a winning bidder filing a long-form application for support.⁶⁶ As noted in the *Auction 904 Procedures Public Notice*, information within the scope of the prohibition includes “subject matters that could convey cost or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.”⁶⁷ We note that proxy bid instructions, which may reflect such information, remain non-public.

35. Moreover, the prohibition of “communicating in any manner” includes public disclosures, private communications, and indirect or implicit communications, as well as express statements of bids and bidding strategies.⁶⁸ Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

B. High-Cost Eligible Telecommunications Carrier Designations

36. As noted above, by Monday, June 7, 2021, the long-form applicant must have obtained from either the relevant state authority or, where such authority lacks jurisdiction, from the Commission, a high-cost ETC designation(s) that covers its winning bid areas. The long-form applicant must submit for each state the required documentation and a certification letter from an officer.⁶⁹ Long-form

⁶³ An entity that submits an application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the long-form application filing deadline.

⁶⁴ 47 CFR § 1.21002(a).

⁶⁵ In addition, the combination of publicly available short-form application information and bidding information made available today effectively makes public the information that can be derived from such sources, including the potential assignee(s) of each winning bid. Accordingly, we clarify that the prohibition does not apply to information about the selection of assignees for winning bids in the Divide Winning Bids process.

⁶⁶ 47 CFR § 1.21004; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 155 (“communicating, among other things, how an applicant will participate . . . would convey bids or bidding strategies and would thus be prohibited”).

⁶⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 156.

⁶⁸ *Id.*; *see generally Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170 et al., Report and Order et al., 30 FCC Rcd 7493, 7577, para. 199 (2015) (explaining that similar section 1.2105(c) language prohibiting communicating bids or bidding strategies “in any manner” bars “communicating bids or bidding information, either directly or indirectly”); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the “substance” of Cascade’s bids or bidding strategies).

⁶⁹ 47 CFR § 54.804(b)(5); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316.

applicants subject to state jurisdiction must petition the relevant state commissions for ETC designation and should follow state rules and requirements to apply for designation(s).⁷⁰ Long-form applicants not subject to state jurisdiction must petition the Commission for designation(s) as described in the *ETC Public Notice*.⁷¹ Petitioners for FCC designation do not need to include a list of census blocks with their ETC petition but should certify they will serve all blocks for which the long-form applicant has or will seek an award of support in that state.⁷²

37. In the event a long-form applicant determines that it will be unable to obtain the necessary ETC designations within 180 days, it should upload a petition for waiver of the deadline to its FCC Form 683 and in AU Docket No. 20-34. The Commission has found that it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete.⁷³ A waiver of the 180-day deadline would be appropriate if, for example, the applicant (or an associated entity) has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. When considering waivers of the 180-day deadline for obtaining ETC designation, we will presume that an entity acted in good faith if the entity files its ETC application **within 30 days** of the release of this Public Notice.⁷⁴

C. Public Interest Obligations and Annual Reporting Requirements

38. To ensure that Rural Digital Opportunity Fund support meets the Commission's public interest objectives, a long-form applicant that has received notice from the Commission that it is authorized to receive Rural Digital Opportunity Fund support will be subject to a variety of obligations, including service requirements, service milestones, reporting, and record retention requirements.⁷⁵ This includes the requirement that support recipients test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients' service.⁷⁶

⁷⁰ 47 U.S.C. § 214(e)(2).

⁷¹ *Id.* at § 214(e)(6); *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, Public Notice, WC Docket No. 09-197 et al., 33 FCC Rcd 6696 (WCB 2018) (*ETC Public Notice*). As described in this public notice, the Commission places the burden of proof upon the petitioner seeking a Commission ETC designation to demonstrate that the Commission has jurisdiction. *Id.* at 6696-97. We extend to Auction 904 winners the same waivers of section 54.202 of the Commission's rules for the reasons described in the *ETC Public Notice* and the same presumption that designation will serve the public interest. *See id.* at 6699-6700; 47 CFR § 54.202.

⁷² Petitioners may, in addition to seeking a high-cost designation in winning bid areas, seek a Lifeline-only ETC designation in areas not eligible for high-cost support for the limited purpose of becoming eligible to receive only Lifeline support in such areas. When doing so, they must submit with their ETC application a map or other information delineating these Lifeline-only areas, and other information specifically required by the Commission's Lifeline rules. *See, e.g., Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 09-197 & 10-90, Order, 34 FCC Rcd 10533 (WCB 2019); 47 CFR § 54.202(a)(4)-(6).

⁷³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81.

⁷⁴ *Id.*

⁷⁵ *See, e.g.,* 47 CFR §§ 54.313, 54.314, 54.316, 54.320, 54.802, 54.805, 54.806; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082-86, 6127-29, paras. 15-21, 135-39 (providing a high-level summary of the relevant public interest obligations and high-cost ETC obligations).

⁷⁶ 47 CFR § 54.313(a)(6). *See also, CAF Performance Measures Order*, 33 FCC Rcd 6509. Further modifications were made to the performance measures requirements in subsequent reconsideration orders. *See Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081 (WCB/WTB/OET 2019) (*CAF Performance Measures First Reconsideration Order*); *CAF Performance Measures Second Reconsideration Order*, 34 FCC Rcd 10109.

39. An Auction 904 support recipient will be subject to non-compliance measures if it fails or is unable to meet the service milestones or other service requirements, or fails to fulfill any other term or condition of Rural Digital Opportunity Fund support.⁷⁷ As described in the *Rural Digital Opportunity Fund Order* and the *CAF Performance Measures Order*, these measures will scale with the extent of non-compliance, and include additional reporting, withholding of support, support recovery, and drawing on the support recipient's letter of credit if the support recipient cannot pay back the relevant support by the applicable deadline.⁷⁸ A support recipient may also be subject to other sanctions for non-compliance with the terms and conditions of Rural Digital Opportunity Fund support, including, but not limited to, the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.⁷⁹

40. We also remind applicants that all Auction 904 support recipients will be subject to the Commission's National Security Supply Chain proceeding, including the rule that "no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain."⁸⁰ The prohibition on using universal service funds applies "to upgrades and maintenance of existing equipment and services."⁸¹

D. Access to the Bidding System

41. The bidding system will remain accessible to Auction 904 qualified bidders until 3:00 p.m. ET on Thursday, December 10, 2020. Bidders should download any files they wish to save from the bidding system before that time.

E. Return of SecurID® Tokens

42. The SecurID® tokens distributed to qualified bidders are tailored to Auction 904 and will not function in future auctions. The Commission will send each bidder, along with the copy of this Public Notice, a pre-addressed, stamped envelope to return its SecurID® tokens. Each bidder should return its SecurID® token(s) to the Commission for recycling.

F. Contact Information

43. For further information, contact:

Technical Support

Electronic Filing
Auction Application System and CAF II Bidding
System (Hardware/Software Issues)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Press Information

Anne Veigle, (202) 418-0500

⁷⁷ 47 CFR §§ 54.804(c)(4), 54.320, 54.806.

⁷⁸ *Id.* §§ 54.804(c)(4), 54.320, 54.806; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64.

⁷⁹ 47 CFR § 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 716, para. 63.

⁸⁰ 47 CFR § 54.9(a).

⁸¹ *Protecting Against National Security Threats to the Communication Supply Chain through FCC Programs et al.*, WC Docket No. 18-89 et al., Report and Order et al., 34 FCC Rcd 11423, 11453, para. 77 (2019).

General Universal Service Information**Wireline Competition Bureau,
Telecommunications Access Policy Division**

Alex Minard
Heidi Lankau
Lauren Garry
Ian Forbes
(202) 418-7400

General Auction Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 904 Information

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force

Michael Janson, (202) 418-0627
Kirk Burgee, (202) 418-1599
Jonathan McCormack, (202) 418-1065
Audra Hale-Maddox, (202) 418-0794

**Office of Economics and Analytics
Auctions Division**

Mark Montano
Daniel Habif
(202) 418-0660

Small Businesses

Additional information for small and
disadvantaged businesses

**Office of Communications Business
Opportunities**

(202) 418-0990
www.fcc.gov/ocbo

Accessible Formats

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC Internet Sites

www.fcc.gov
www.fcc.gov/auction/904

- FCC -

Exhibit B

FCC Order

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

In the Matter of)
)
Telecommunications Carriers Eligible for) WC Docket No. 09-197
Universal Service Support)
)
Connect America Fund) WC Docket No. 10-90
)

ORDER

Adopted: November 27, 2019

Released: November 27, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates Hughes Network Systems, LLC (Hughes) as an eligible telecommunications carrier (ETC) in eligible high-cost areas within the State of New York. Designation is conditioned upon and limited to Hughes' authorization to receive Connect America Fund support awarded in coordination with New York's New NY Broadband Program (New York Program). In making this designation, the Bureau finds that Hughes meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules. The Bureau will release separate public notices regarding funding authorizations.

1 See Petition for Eligible Telecommunications Carrier Designation of Hughes Network Systems, LLC, WC Docket No. 09-197 (filed Feb. 5, 2018), https://ecfsapi.fcc.gov/file/10205761817999/Hughes%20NY%20FCC%20ETC%20Petition%202-5-2018.pdf (Petition); as amended, Letter from Jennifer A. Manner, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed Mar. 27, 2018), https://ecfsapi.fcc.gov/file/103270488909649/2018%2003%2027%20-%20Hughes%20ETC%20Supp.pdf (NY PUC Supplement); as amended, Letter from Jennifer A. Manner and Jodi Goldberg, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed May 31, 2018), https://ecfsapi.fcc.gov/file/10531532908451/NYS_HNSETC%20Petition%20Supplement_Census%20Blocks_05312018.pdf; erratum (filed June 11, 2018), https://ecfsapi.fcc.gov/file/1061132964827/NYS_HNS_ETC%20Petition%20Supplement_Erratum_Census%20Blocks_06112018.pdf (Census Block Supplement); Letter from Jennifer A. Manner and Jodi Goldberg, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (Sept. 14, 2018), https://ecfsapi.fcc.gov/file/109140235221556/NYS_HNS_ETC%20Petition%20Supplement_Tribal%20Contacts_09142018.pdf (Tribal Supplement).

2 See Wireline Competition Bureau Announces FCC Deadlines for New York Broadband Program Winning Bidders, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 4922, 4923, App. A (2018) (New York Long-Form Public Notice); Phase 3 Awards, https://nysbroadband.ny.gov/new-ny-broadband-program/phase-3-awards (announcing carriers selected to receive support pursuant to the New York Program in areas eligible for Connect America Fund support); see also Connect America Fund, et al., Order, 32 FCC Rcd 968 (2017) (New York Auction Waiver Order).

3 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

(continued....)

II. BACKGROUND

A. CAF Support Awarded in Coordination with the New York Program

2. The Connect America Fund (CAF) Phase II auction (Phase II auction) is one part of a multi-step process to comprehensively reform and modernize the high-cost component of the Universal Service Fund (USF).⁴ In 2017, New York sought a waiver of certain Phase II Auction rules and requirements so that, through its New York Program, it could allocate certain CAF support (that otherwise would have been included in the Phase II auction) to CAF-eligible areas.⁵ The Commission granted this waiver request conditional on participants' compliance, including Hughes, with certain terms and conditions consistent with those imposed on Phase II auction winning bidders.⁶ The Commission also emphasized that, like all high-cost support recipients, New York Program participants selected to receive CAF support would only be eligible to receive CAF support if designated an ETC in their CAF-eligible areas, and required winning bidders to complete an application designed to ensure that winning participant are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving USF support.⁷ As part of this application, the Commission required New York Program participants to submit proof of their ETC designations within 180 days of the announcement of their support awards.⁸ On May 18, 2018, the Commission released a public notice acknowledging New York's allocation of CAF support to certain participants.⁹

B. Requirements for FCC ETC Designation

3. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."¹⁰ Congress gives primary authority for ETC designations to state commissions.¹¹ The FCC has authority only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."¹² The petitioning carrier must demonstrate that the FCC has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."¹³

⁴ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵ See *New York Auction Waiver Order*, 32 FCC Rcd at 970-71, para. 9. Specifically, New York sought to distribute the \$170.4 million in model-based support previously declined by Verizon in New York. See *id.* at 969, 970-71, paras. 3, 9.

⁶ *Id.* at 990, para. 60. See 47 CFR § 54.315.

⁷ *New York Auction Waiver Order*, 32 FCC Rcd at 990, paras. 60-65.

⁸ *Id.* at 990, para. 59.

⁹ *New York Long-Form Public Notice*, 33 FCC Rcd at 4922.

¹⁰ 47 U.S.C. § 254(e).

¹¹ *Id.* § 214(e)(2).

¹² *Id.* § 214(e)(6).

¹³ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*); 47 U.S.C. § 214(e)(6).

(continued....)

The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.¹⁴

4. A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;¹⁵ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;¹⁶ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;¹⁷ and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.¹⁸

5. In addition, a petitioner must demonstrate its ability to meet certain service standards. Specifically, a petitioner seeking an ETC designation for purposes of becoming eligible to receive high-cost support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.¹⁹

6. For a petitioner seeking ETC designation for the purpose of becoming authorized to receive Phase II Auction support, the Bureau waived the requirements that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards, finding that the need for such requirements is obviated by specific service quality standards applicable to Phase II Auction support recipients and specific reporting obligations relating to such standards.²⁰ Because the authorization of CAF support for participants in the New York program is conditioned on meeting terms and conditions consistent with those applicable to Phase II Auction winning bidders,²¹ we interpret this waiver as equally applicable to New York Program participants.

7. In addition, prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.²² When making a public interest determination, the Commission historically has considered the benefits of increased

¹⁴ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹⁵ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

¹⁶ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

¹⁷ An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forborne from imposing such requirements on Phase II Auction support recipients. See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6006-6009 (2016) (*Phase II Auction Order*).

¹⁸ 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

¹⁹ See 47 CFR § 54.202(a).

²⁰ *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2019).

²¹ *New York Auction Waiver Order*, 32 FCC Rcd at 990, para. 60.

²² 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

(continued...)

consumer choice and the unique advantages and disadvantages of the applicant's service offering.²³ In the *Phase II Auction ETC Public Notice*, the Bureau found that recipients of Phase II Auction support demonstrated their ability to offer service efficiently through the competitive bidding process and their ability to meet public interest obligations through their short- and long-form applications and thus, need not submit additional support in their petitions.²⁴

C. Petition for ETC Designation

8. Hughes seeks an ETC designation to become eligible to receive CAF support in coordination with the New York Program for all CAF-eligible census blocks covered by its award.²⁵ On June 14, 2018, the Bureau released a public notice soliciting comments on Hughes' Petition.²⁶ Because Hughes' Petition, in part, covered Tribal lands, Hughes provided the relevant Tribal authorities with notice of its Petition, as required by section 54.202(c) of the Commission's rules.²⁷ The Commission's Office of Native Affairs and Policy (ONAP) also separately notified each of the relevant Tribal authorities of the Petition and informed them of their right to file *ex parte* comments that would be considered as part of the Bureau's determination on this Petition.²⁸ No comments addressing Hughes' Petition were filed.

III. DISCUSSION

9. We find that Hughes satisfies the Commission's requirements for ETC designation and, therefore, designate Hughes as a high-cost ETC in New York, conditioned upon and limited to, the high-cost areas where it is authorized to receive CAF Phase II support and effective only upon such authorization. In these areas, Hughes must meet CAF Phase II requirements, Lifeline requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.²⁹

²³ See, e.g., *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

²⁴ *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2018) (*Phase II Auction ETC Public Notice*).

²⁵ In Attachment A to this Order, the Bureau summarizes this award, and in Attachment B, the Bureau provides the CAF-eligible census blocks included in the award.

²⁶ *Wireline Competition Bureau Seeks Comment on Two Petitions for Designation as Eligible Telecommunications Carriers, Separately Submitted by OEConnect, LLC and Hughes Network Systems, LLC*, 33 FCC Rcd 6014 (2018) (*ETC Public Notice*).

²⁷ 47 CFR § 54.202(c); Hughes Tribal Supplement (providing notice it contacted five Tribes located within CAF-eligible census blocks, i.e., Tonawanda Seneca, Seneca, Cayuga, Onondaga, and Saint Regis Mohawk).

²⁸ 47 CFR § 54.202(c) (requiring the Commission to expeditiously send a copy of any public notice establishing a comment period for an ETC petition covering Tribal lands to affected Tribes). ONAP informed the Tribes that the Bureau would not act on Hughes' Petition for a time frame at least equivalent to the 14-day comment period specified in the *ETC Public Notice* to allow the Tribes to prepare and submit responses to the *ETC Public Notice*.

²⁹ 47 CFR § 54.202(a)(1)(i); *id.* § 54.101(d); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016) (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

(continued....)

A. Commission Authority

10. Hughes demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. Hughes submitted correspondence from the New York State Public Service Commission explaining that, based on Hughes' representations that it provides only satellite services, it is declining jurisdiction to designate the carrier as a competitive ETC.³⁰ On this basis and consistent with our past decisions, we find that Hughes has demonstrated FCC authority to decide its Petition.³¹

B. Eligibility Requirements

11. *Designated Service Area.* Hughes describes a designated service area based on all CAF-eligible census blocks covered by its CAF Phase II award (as listed in the Attachment to this Order).³²

12. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that Hughes establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.³³

13. *Compliance with the Service Requirements Applicable to CAF Phase II Support Awarded through the New York Program.* We find that Hughes establishes its ability to comply with service requirements applicable to the support that it receives.³⁴ This determination takes into account that, prior to being authorized to receive support Hughes must certify and demonstrate, as part of its FCC applications, the technical and financial ability to provide voice and broadband services meeting or exceeding CAF Phase II standards,³⁵ certify its commitment to meeting relevant public interest obligations,³⁶ and certify its compliance with all statutory and regulatory requirements for receiving the universal service support.³⁷ Moreover, once authorized, Hughes must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.³⁸

14. We note that, subsequent to Hughes' submission of its Petition, Commission staff adopted the *Performance Metrics Order* specifying how auction support recipients in the high-latency bid category must demonstrate compliance with the requirement to meet a Mean Opinion Score (MOS) of four or higher under specific metrics.³⁹ In appealing this order, Hughes expressed concern that satellite

³⁰ NY PUC Supplement, Attach. A.

³¹ See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6697 ("If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.").

³² Petition at 4 ("Hughes requests designation in all areas in the State of New York where it has been awarded CAF support through the New NY Broadband program"); Census Block Supplement; 47 U.S.C. § 214(e); 47 CFR § 54.201(d).

³³ Petition at 5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

³⁴ Petition at 7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

³⁵ 47 CFR §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

³⁶ *Id.* § 54.315(b)(2)(iii).

³⁷ *Id.* § 54.315(b)(2)(v).

³⁸ *Id.* § 54.313 (requiring annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); see also *New York Auction Waiver Order*, 32 FCC Rcd at 993-94, paras. 68-70 (extending reporting obligations to New York recipients to monitor progress in meeting benchmarks).

³⁹ *Connect America Fund*, WC Docket 10-90, Order, 33 FCC Rcd 6509, 6525-6526, paras. 44-46 (WCB WTB OET 2018) (*Performance Metrics Order*).

(continued....)

broadband providers using geostationary satellites could not meet this requirement under such metrics.⁴⁰ Hughes, however, has since withdrawn this contention and has stated that, given the clarifications and revisions of the MOS testing requirements in the September 12, 2019 *Performance Metrics Reconsideration Order*, it will be able to meet the MOS standard.⁴¹ Given Hughes' withdrawal and clarification of its position, we conclude that Hughes has established its ability to comply with the service requirements applicable to its provision of voice service consistent with its CAF obligations.

15. *Compliance with Service Requirements Applicable to Lifeline Services.* Hughes commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.⁴²

16. *Offering the Supported Services Using a Carrier's Own Facilities.* Hughes certifies that it is a facilities-based provider of broadband and voice services.⁴³

17. *Advertising Supported Services.* Hughes commits to advertising the availability of the supported services and related charges using media of general distribution.⁴⁴ We emphasize that, as part of this commitment, Hughes must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.⁴⁵

18. *Ability to Remain Functional in Emergency Situations.* Hughes states that it can remain functional in emergency situations. Hughes states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.⁴⁶

19. *Anti-Drug Abuse Act Certification.* Hughes submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.⁴⁷

C. Public Interest Analysis

20. We conclude that Hughes' participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, ETC designations in areas where a petitioner is authorized to receive CAF Phase II Auction support serves the public interest. Through participation in the New York Program and application processes, Hughes demonstrates that it can offer voice and broadband services in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas.⁴⁸ Moreover, granting Hughes' Petition will serve the

⁴⁰ See, e.g., Petition of Hughes Network Systems, LLC, for Clarification, or in the Alternative, Reconsideration, WC Docket No. 10-90, at 2-4 (filed Sept. 19, 2018); Reply of Hughes Network Systems, LLC, to Oppositions and Comments on Petitions for Reconsideration, WC Docket No. 10-90, at 4-5 (filed Nov. 19, 2018).

⁴¹ Letter from Jennifer A. Manner, Hughes Network Systems, LLC to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Sept. 25, 2019); Hughes Network Systems, LLC, Withdrawal of Petition for Clarification or, in the Alternative, Reconsideration, WC Docket No. 10-90 (filed Oct. 10, 2019); *Connect America Fund*, Order on Reconsideration, DA 19-911 (WCB WTB OET rel. Sept. 12, 2019).

⁴² Petition at 5.

⁴³ Petition at 6; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁴⁴ *Id.*; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

⁴⁵ 47 CFR § 54.405.

⁴⁶ Petition at 7; 47 CFR § 54.202(a)(2).

⁴⁷ Petition at 9; 47 CFR § 1.2002.

⁴⁸ See *New York Auction Waiver Order*, 33 FCC Rcd at 991, paras. 61-62.

(continued....)

interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in areas eligible for high-cost support.⁴⁹

21. Accordingly, based on the information, representations, and certifications in its Petition, we find that Hughes has met all applicable conditions and prerequisites for ETC designation and conditionally grant its Petition.

D. Regulatory Oversight

22. Under section 254(e) of the Act, Hughes must use universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁵⁰ Under section 214(e) of the Act, Hughes must provide supported services throughout its service area.⁵¹ When authorized to receive high-cost support, Hughes must file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁵² The Commission conditions future support awarded through the high-cost program on the filing of such certification.⁵³

23. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁵⁴ In addition, the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.⁵⁵

24. We find that reliance on Hughes’ commitments to meet these and other regulatory requirements, as well as representations and commitments made in its Petition, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission’s goal of ensuring that Hughes satisfies its obligation under section 214(e) of the Act to provide supported services throughout its respective designated service areas.

25. The Commission may initiate an inquiry on its own motion to examine any ETC’s records and documentation to ensure that the universal service support the ETC receives is being used “only for the provision, maintenance, and upgrading of facilities and services” in the areas in which it is designated as an ETC.⁵⁶ Hughes must provide such records and documentation to the Commission and USAC upon request.⁵⁷ If Hughes fails to fulfill the requirements of the Act, the Commission’s rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to

⁴⁹ See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6700-6701.

⁵⁰ 47 U.S.C. § 254(e).

⁵¹ *Id.* § 214(e).

⁵² 47 CFR § 54.314(b).

⁵³ *Id.*

⁵⁴ See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

⁵⁵ 47 CFR § 54.422(b)(3); see also *id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that will comply with all federal Lifeline certification procedures).

⁵⁶ 47 U.S.C. §§ 220, 403.

⁵⁷ 47 CFR § 54.417.

(continued....)

revoke Hughes's ETC designation.⁵⁸ The Commission also may assess forfeitures for violations of Commission rules and orders.⁵⁹

E. Waiver of Deadline for Submitting Proof of ETC Designation

26. The Commission required participants to certify that they are ETCs in the New York Program and to submit appropriate documentation supporting such certification no later than November 14, 2018.⁶⁰ The Bureau finds, on its own motion, good cause to waive this deadline for Hughes.⁶¹ The Commission has found that waiver of this deadline is appropriate when an ETC designation proceeding is not yet complete by the deadline despite the good faith efforts of the applicant.⁶² Hughes submitted a complete Petition that the Bureau could have acted upon by the deadline following normal procedures. The timing of this Order is unrelated to the filing date of this Petition, and accordingly, waiver of the deadline is appropriate.

IV. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that HUGHES IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE STATE OF NEW YORK FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE NEW YORK BROADBAND PROGRAM. This designation is contingent upon Hughes becoming authorized to receive such support, is limited to those areas where support is authorized, and is effective only upon authorization.

28. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the deadline specified in the Commission's rules, 47 CFR § 54.315(b)(5), IS WAIVED to the extent described above.

29. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the New York Public Utilities Commission, to the relevant Tribal authorities, and to the Universal Service Administrative Company.

⁵⁸ *Id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

⁵⁹ *See* 47 U.S.C. § 503(b).

⁶⁰ *New York Long-Form Public Notice*, 33 FCC Rcd at 4922.

⁶¹ The Commission has delegated to the Bureau the authority to grant waivers of the filing deadline. *See Phase II Auction Order*, 31 FCC Rcd at 603, n.315; *see also* 47 CFR §§ 0.91(p) (functions of the Wireline Competition Bureau), 0.291 (delegation of authority to the Wireline Competition Bureau).

⁶² *See Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, WC Docket No. 09-197 et al., Order, 34 FCC Rcd 2796 (WCB 2019); *Phase II Auction Closing Public Notice*, 33 FCC Rcd at 8268, para. 35 (citing *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53). The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest. *See Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Deadlines can only be waived under "unusual or compelling circumstances." *Id.* at 126 (citation omitted).

30. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

ATTACHMENT A

HUGHES NETWORK SYSTEMS, LLC CENSUS BLOCKS

Petitioner	Census Blocks Covered by Selected Bid	Locations Covered by Selected Bid	Total Estimated CAF Award
Hughes Network Systems, LLC	5,379	22,305	\$7,026,075

ATTACHMENT B

**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC
Is the Designated Eligible Telecommunications Carrier****Project 974283**

360039501001018	360039501002090	360039501003085	360039504003001
360039501001019	360039501002091	360039501003086	360039504003002
360039501001050	360039501002093	360039501003092	360039504003009
360039501001054	360039501002095	360039501003094	360039504003010
360039501001084	360039501002096	360039501003115	360039504003015
360039501001087	360039501002097	360039501003116	360039504003018
360039501001088	360039501002106	360039501003121	360039504003019
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360039501001095	360039501002108	360039503002015	360039504003021
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**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC
Is the Designated Eligible Telecommunications Carrier**

Project 976776

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**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC
Is the Designated Eligible Telecommunications Carrier**

Project 977628

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360430105021008	360430115011106	360650241011106	360775901003085
360430105021054	360430115021100	360650241011144	360775901003087
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360430105021067	360430115021114	360650242003081	360775901003089
360430105021069	360430115021206	360650243031070	360775901003090
360430105021072	360430115021223	360650256001012	360775901003091
360430105021077	360430115021305	360650257001041	360775901003103
360430105022037	360430115021375	360650257001042	360775901003104
360430105022039	360430115021410	360650257001057	360775901003106
360430105022042	360430115021425	360650258001001	360775901003107
360430105022046	360430115021464	360650262001033	360775901003108
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360430109002156	360570723002100	360775901001115	360775901003169
360430109002193	360570724001013	360775901001117	360775901003170
360430109002203	360570724002010	360775901001118	360775901003171
360430109002205	360570726002046	360775901001119	360775901003173
360430109002210	360570726003095	360775901001120	360775901003175
360430109002225	360570727002011	360775901001122	360775904001007
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360430109002233	360570727004066	360775901001125	360957404001020
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360430110021017	360570728002074	360775901003003	360957404001053
360430113011006	360570728002076	360775901003004	360957404001059
360430113011010	360570728002083	360775901003005	360957404001065
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360430113011043	360570728002090	360775901003008	360957404002022
360430113021013	360570728002092	360775901003009	360957404002029
360430113021015	360570728003021	360775901003011	360957404002077
360430113021043	360570728003023	360775901003016	360957404002078
360430113021044	360570728003029	360775901003023	360957404003003
360430113021056	360570728003038	360775901003025	360957404003023
360430113021057	360570728003047	360775901003030	360957404003034
360430113021058	360570728003049	360775901003034	360957404003048
360430113021060	360570728003082	360775901003038	360957404003049
360430113021061	360570728003083	360775901003039	360957404005003
360430113021062	360570728004086	360775901003046	360957404005005
360430113021063	360650239021009	360775901003052	360957404005008
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360430113021068	360650239022001	360775901003062	360430115021044
360430114005056	360650241011017	360775901003064	360070127011019
360430114005061	360650241011023	360775901003071	360179708023007

360775901003117
360775906001001
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360775906001045
360775906001048
360775906001054
360775906001055
360775906001062
360775906001063
360775906001100
360957404003052
360957404003060

Exhibit C

Census Blocks in RI application to Auction 904

904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0513061	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0513061	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0513061	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0515023	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0515024	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0515033	RI	Washington	4.40E+11
904	Hughes Network Systems, LLC	17434911	4.40E+14	RI-009-0515033	RI	Washington	4.40E+11

Exhibit D

Advertising Materials



HughesNet CAF, RDOF, and ETC Marketing Overview

Sample Material

Based upon existing HughesNet *New New York* Broadband and CAFII Programs

Overview

CAF/RDOF Area Program Promotion

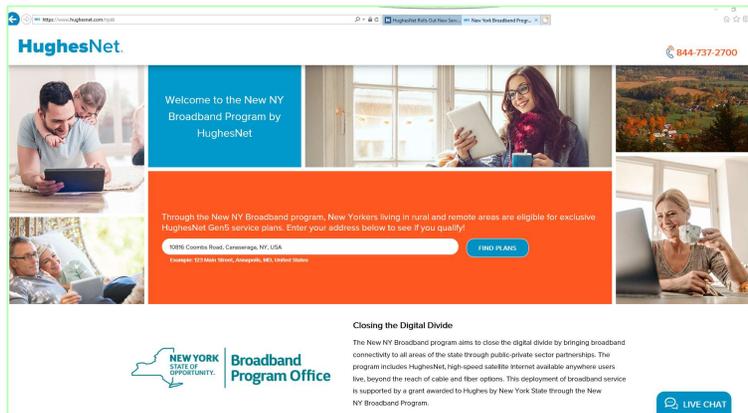
- Direct Mail
 - Targeted offer to qualifying households
 - Varying formats (postcard/letters)
- Web
 - Dedicated microsite
 - Variable pages for CAF/RDOF and non-CAF/RDOF plans based on address

HughesNet® Brand-Awareness Campaigns

- Organic and paid search
- Display advertising
- Television advertising
- Paid social campaigns

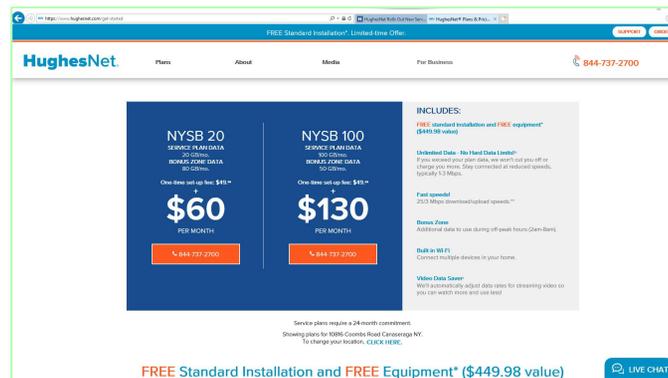
All brand awareness campaigns drive traffic to HughesNet.com for address entry to find applicable service plans. Awarded areas in Rhode Island as part of RDOF Auction 904 will use similar tactics

Website Promotion: NYSB Example



HughesNetNYSB.com

- **Launched:** March 28, 2019
- Direct Mail program drives prospects to this website
- Any prospect visiting HughesNet.com and entering a NYSB-qualified address will be redirected to this site



Sample address: 10816 Coombs Road Canaseraga NY

HughesNet.

Website Promotion: CAF

The screenshot shows the HughesNet website interface. At the top, there's a navigation bar with the HughesNet logo and a phone number 844-737-2700. Below this, a banner area features a blue box with the text "Welcome to the New NY Broadband Program by HughesNet" and a red box with a search form for "Enter your address below to see if you qualify!". The search form contains the example address "1016 Coates Road, Cananota, NY, USA" and a "FIND PLANS" button. Below the search form, there's a section titled "Closing the Digital Divide" with a logo for the "NEW YORK STATE OF OPPORTUNITY Broadband Program Office".

The main promotional content is displayed in a dark blue box with white and orange text:

- Your address qualifies for a 100 GB plan via the New NY Broadband Program! See below for details.
- NYSB 100**
- SERVICE PLAN/DATA
- 100 GB/mo.
- BONUS ZONE DATA
- 50 GB/mo.
- One-time set-up fee: \$49.99
- \$60**
- PER MONTH
- 844-737-2700

To the right of this box, under the heading "INCLUDES:", the following benefits are listed:

- FREE** standard installation and **FREE** equipment* (\$449.98 value)
- Unlimited Data - No Hard Data Limits!** If you exceed your plan data, we won't cut you off or charge you more. Stay connected at reduced speeds, typically 1-3 Mbps.
- Fast speeds!** 20-3 Mbps download/upload speeds.**
- Bonus Zone** Additional data to use during off-peak hours (2am-5am).
- Built-in Wi-Fi** Connect multiple devices in your home.
- Video Data Saver!** Wi-Fi automatically adjust data rates for streaming video so you can watch more and use less!

At the bottom of the promotional box, it states: "Service plans require a 24-month commitment. Showing plans for 10 Haines Road Horseheads NY. To change your location, [CLICK HERE](#)." Below the promotional box, a separate orange box highlights: "FREE Standard Installation and FREE Equipment* (\$449.98 value)".

HughesNetNY.com

- **Launched:** January 29, 2020
- Direct Mail program drive prospects to this website
- Any prospect visiting HughesNet.com and entering CAF-qualified address will be redirected to this site

Sample address: 10 Haines Road, Horseheads NY

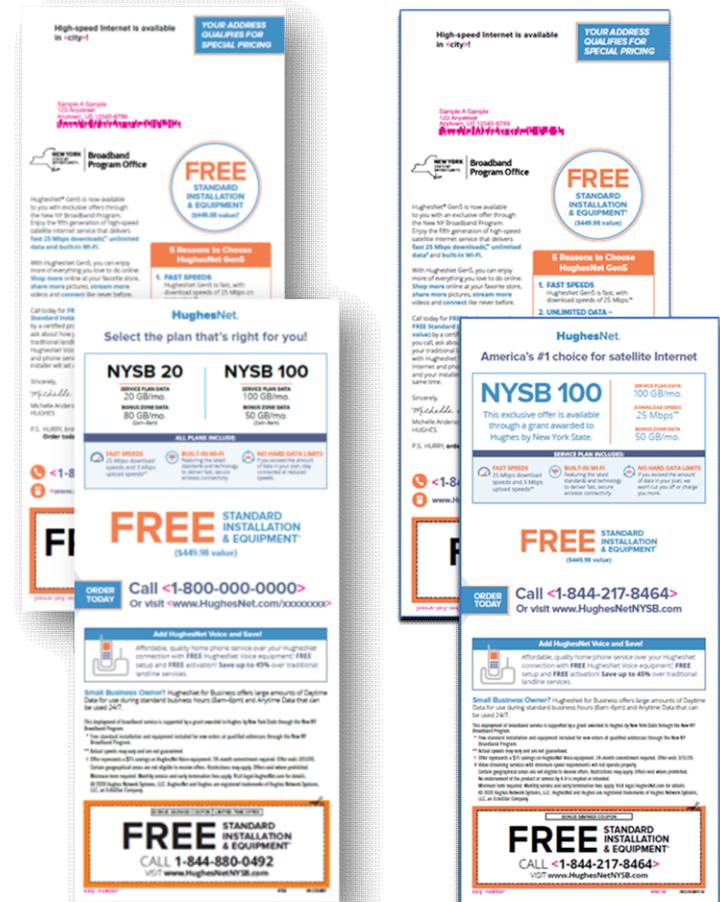
2020 Direct Mail Summary

2020

- Mailed over 275,000 pieces in 2020
- Promoted the service using 4 different creatives
- Content tailored for best plan the address is qualified for
- Driving prospects to call Hughes directly or visit the applicable microsites:
 - www.HughesNetNY.com (CAF campaign url)
 - www.HughesNetNYSB.com (NYB campaign url)

Note: Visitors to HughesNet.com and Internet.HughesNet.com who enter a NYSB-qualified address are redirected to the NYB microsite

Similar techniques will be leveraged for additional RDOF award areas in Rhode Island

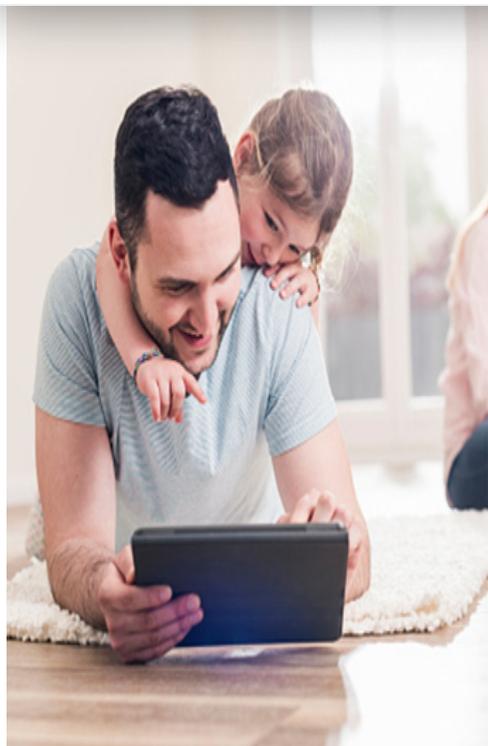


FREE Standard Installation*. Limited-time Offer.

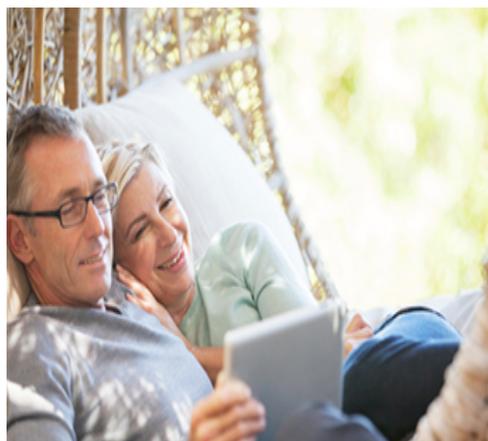
[MY ACCOUNT](#)

HughesNet.

844-779-7940



Welcome to the
New NY
Broadband
Program by
HughesNet
Through the
New NY
Broadband
program, New
Yorkers living
in rural and
remote areas
are eligible for
exclusive
HughesNet
Gen5 service
plans. Enter
your address
below to see if
you qualify!



Enter a L

Example: 123 Main

Closing the Digital Divide

The New NY Broadband program aims to close the digital divide by bringing broadband connectivity to all areas of the state through public-private sector partnerships. The program



FREE Standard Installation*. Limited-time Offer.

[MY ACCOUNT](#)

HughesNet.

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State through the New NY Broadband Program.



America's #1 Choice

Join more than 1.2 million Americans who depend on HughesNet!



Fast Speeds

HughesNet Gen5 is fast, with download speeds of 25 Mbps on every plan.**

All p
you €
plar

DON'T
WAIT!



Call now to order! 844-779-7940



About

Get more information about the service!



FAQs

Need answers? Check o frequently asked quest

FREE Standard Installation*. Limited-time Offer.

[MY ACCOUNT](#)

HughesNet.

844-779-7940

websites you are accessing, network management practices as deemed necessary, and other factors. When you connect to the HughesNet service using Wi-Fi, your experience will vary based on your proximity to the Wi-Fi source and the strength of the signal.

†If you exceed your monthly plan data, you will experience reduced speeds, typically 1-3 Mbps, until the next billing cycle.

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Exhibit E

Applicant's Enrollment Form/Subscriber Agreement

Policies

Residential Customers

[HughesNet Subscriber Agreement](#)
[Early Termination Fees and Other Important Terms](#)
[Fair Access Policy](#)
[HughesNet Acceptable Use Policy](#)
[Network Management Practices](#)
[Express Repair Terms and Conditions](#)
[HughesNet Voice Subscriber Agreement](#)
[HughesNet Voice Reasonable Use Policy](#)
[International Calling Plan Countries](#)
[Subscriber Privacy Policy](#)
[Installation Guidelines](#)
[Relocation Program](#)
[Community Guidelines](#)
[SMS Terms and Conditions](#)
[New York State Broadband Subscriber Agreement and Important Terms](#)
[Former Wyoming CenturyLink Customers](#)
[Reporting Abuse](#)
[Hughes Copyright Policy](#)
[HughesNet Fusion](#)

Business Customers

[HughesNet Subscriber Agreement](#)
[Early Termination Fees and Other Important Terms](#)
[Fair Access Policy](#)
[Network Management Practices](#)
[Express Repair Terms and Conditions](#)
[Field Maintenance Terms and Conditions](#)
[Business Voice Reasonable Use Policy](#)
[Business Voice Subscriber Agreement](#)
[SMS Terms and Conditions](#)
[Subscriber Privacy Policy](#)
[Installation Guidelines](#)
[Acceptable Use Policy](#)



[Hosting Agreement](#)
[Trial User Agreement](#)

Hughes Presenter

[Hosting Agreement](#)

Public Website

[Public Website Privacy Policy](#)

Subscriber Agreement for New York State Broadband Program Customers

This Agreement was last revised on December 1, 2018 and is intended for use solely by customers who have subscribed to HughesNet Service through the New York State Broadband Program.

Thank you for choosing HughesNet®!

PLEASE READ THIS ENTIRE SUBSCRIBER AGREEMENT CAREFULLY, AS IT CONSTITUTES A BINDING CONTRACT BETWEEN YOU AND HUGHES NETWORK SYSTEMS, LLC (“HUGHES”). BY APPLYING FOR OR ESTABLISHING AN ACCOUNT WITH HUGHES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

Subscriber Agreement Organization

This Subscriber Agreement is organized into seven “Parts:”

Part I – Key Provisions;

Part II – The Service, Your Subscription, This Subscriber Agreement, Dispute Resolution, and Binding Arbitration;

Part III – Payment;

Part IV – Permitted Use and Restrictions on Use;



PART I – KEY PROVISIONS

1.1 SPEED CLAIMS AND DISCLAIMERS.

HughesNet service is available in the contiguous U.S., Alaska and Puerto Rico. Stated speeds and uninterrupted use of service are not guaranteed. Actual speeds will likely be lower than the maximum speeds during peak hours. In addition, when connected to the Service using Wi-Fi, the user's experience will vary based on the proximity to the Wi-Fi source and the strength of the signal, and its usage is subject to the Fair Access Policy.

The listed speeds are only available in the footprint of the EchoStar XVII and EchoStar XIX Satellites. The HughesNet Gen5 Service with speeds of up to 25 mbps down and 3 mbps up is available throughout the state of New York

1.2 EQUIPMENT.

You specifically agree that any Equipment provided to you may be new or refurbished as new. Any refurbished Equipment will have the same warranty as new Equipment.

You agree that the satellite modem, power supply, and radio (outdoor transmitter) to be installed by Hughes at your premises will remain the property of Hughes and shall not be deemed fixtures or part of your realty. You shall have no right to pledge, sell, mortgage, otherwise encumber, give away, remove, relocate, alter, or tamper with the Equipment (or any notice of our ownership thereon) at any time. Any reinstallation, return, or change in the location of the Equipment shall be performed by us at our service rates in effect at the time of such service. You are responsible for preventing the loss or destruction of all Equipment provided pursuant to this Agreement.

1.3 SERVICE COMMITMENT AND EARLY TERMINATION FEES.

All Service Plans require a commitment of twenty-four (24) months. If you have subscribed to any Service Plan and you terminate service prior to the expiration of the commitment, you will owe, and your credit or debit card will be charged, the Early Termination Fees described below. In addition, you will be required to return the applicable Equipment to Hughes whenever you terminate your service.

Early Termination:

If you cancel your order before installation, you will be refunded the amount that was collected at time of order.

If you cancel after activation but before the end of your 24-month term commitment, you will be charged a Service Termination Fee of up to \$400. The exact amount of the Service Termination Fee will be \$400 for the first ninety (90) days after activation of the HughesNet Service. Thereafter, the amount will decrease by \$15 per month for each month of active Service.



If you cancel after activation but before the end of your 24-month term commitment, you will owe, and your credit or debit card will be charged, a Service Termination Fee of up to \$240. The exact amount of Service Termination Fee will be \$10 times the number of months remaining in your commitment period. By way of example, assuming that your commitment period is 24 months and you elect to terminate your Voice Service Plan after 6 months, the amount of Service Termination Fee will be \$10/month x (24-6) months, or \$180.

Early Termination due to breach by Subscriber

If your account is terminated by Hughes for non-payment or any other reason, any applicable Early Termination Fee and the Unreturned Equipment Fee will be charged immediately upon cancellation. If you return your HughesNet modem, power supply, and radio in good condition within 45 days from the time of termination, your account will be credited \$300 (\$100 for the modem and power supply and \$200 for the radio transmitter).

Optional Equipment De-installation Service

As an alternative to de-installing and returning applicable Equipment to Hughes yourself (whether before or after the expiration of any Service commitment period), you may request that Hughes de-install the modem, power supply, and radio directly for a fee. The amount of this de-installation charge will be the fee then in effect for this service. In the event you elect to purchase this optional service, you will still be responsible for packing and mailing the equipment back to Hughes using the pre-paid label inside the material return box provided to you by Hughes.

1.3 METHOD OF PAYMENT.

Except where additional methods of payment are specifically required or permitted under applicable law or regulation, or where Hughes explicitly and in advance permits another method of payment, you agree that you will provide a major credit or charge card (i.e., MasterCard, Visa, American Express, or Discover) that Hughes may charge for all Service fees or other amounts payable under this Agreement (including Early Termination Fees and Unreturned Equipment Fees). You hereby authorize automatic credit or charge card billing by Hughes for all such charges. You further agree that the charges described above will be billed to the credit or charge card that you have provided when you applied for the Service.

PART II – THE SERVICE, YOUR SUBSCRIBERSHIP, THIS SUBSCRIBER AGREEMENT, DISPUTE RESOLUTION, AND BINDING ARBITRATION

2 THE SERVICE.

Hughes provides a two-way, satellite-based Internet access solution that carries information between the Internet and your personal computer, tablet, or other mobile device (the “Service”).

2.1 COMPOSITION OF THE TERMS OF SERVICE.

This Subscriber Agreement, the HughesNet Fair Access Policy, the HughesNet Acceptable Use



the use of those services. You will have an opportunity to review the additional terms before you sign up or use those services.

3 MODIFICATIONS; RIGHTS OF CANCELLATION OR SUSPENSION

3.1 MODIFICATION OF THIS SUBSCRIBER AGREEMENT; NOTICES.

Hughes may revise this Subscriber Agreement (the “Agreement”) at any time by providing notice to you over the HughesNet Service. In the event you do not agree to such revisions, you may terminate your subscription (as provided herein) and stop using the Service before the later of the effective date of such modifications or thirty (30) days after such notice is delivered, in which event you will not be bound by such modifications. Otherwise, except as provided in Section 5.5 below, your continued use of the Service after such time constitutes your full acceptance of such modifications. Unless we provide notice to you of any revision to this Subscriber Agreement, and you accept or have been deemed to have accepted any such revision, this version of the Subscriber Agreement will govern the terms of your HughesNet subscription until the Service is canceled or terminated.

3.2 MODIFICATION OF THE SERVICE.

Hughes may discontinue, add to, or revise any or all aspects of the Service in Hughes’ sole discretion, with or without notice, including without limitation access to support services, publications, and any other products or services ancillary to the Service. For purposes of illustration and not limitation, Hughes may: (1) establish and enforce limitations concerning use of the Service, e.g., the maximum number and/or size of email messages that may be sent from or received by an account on the Service, and the maximum amount of capacity that may be used by a single user or a single account; (2) take any action that Hughes deems appropriate to prevent and/or delete bulk email; (3) delete old email messages from any account; (4) quarantine or delete messages or content suspected of containing viruses or other malware; (5) refuse to process email or instant messages that fit criteria defined by us; or (6) modify any user setting. In the event that Hughes makes any changes to the Service or its availability, Hughes may, but is not required to, notify you.

3.3 PRICING REVISIONS; NOTICES.

Hughes may revise pricing for any Service Plans at any time when such pricing is allowed under the rules and regulations of the New York State Broadband Program by providing notice of any price change to you over the HughesNet Service as well as written notice to your address. Hughes will endeavor to provide at least 30 days’ notice of any such change to you. In the event you do not agree to such price revisions, you may terminate your subscription (as provided herein) and stop using the Service before the later of the effective date of the price change or thirty (30) days after such notice is delivered, in which event you will not be bound by such changes. Otherwise, except as provided in Section 5.5 below, your continued use of the Service after such time constitutes your full acceptance of such pricing revisions.

3.4 TERMINATION BY SUBSCRIBER.



Subject to your payment of the termination charges herein described, You may also terminate your account and this Agreement at any other time and for any reason on written notice to Hughes. You must terminate this Agreement in accordance with the terms and conditions specified herein; failure to do so may delay or prevent us from knowing that termination was intended. Failure to terminate in accordance with this Agreement may result in your continued liability for all fees and charges associated with your Service account until such time as the Agreement has been properly terminated or Hughes has acknowledged such termination in writing. In the event you cancel your subscription to the Service prior to the expiration of the minimum commitment period specified for your applicable service plan, you may be subject to a service termination fee as specified in Section 1.3 above.

If you wish to terminate your service, contact our Billing Department at 1-866-347-3292. Except as may be otherwise provided in this Agreement, cancellation of your Subscription is your sole right and remedy with respect to any dispute with Hughes. This includes, but is not limited to, any dispute related to, or arising out of: (1) any term of this Agreement or Hughes' enforcement or application of this Agreement; (2) any policy or practice of Hughes, including the Fair Access Policy and the HughesNet Subscriber Privacy Policy, or Hughes' enforcement or application of these policies; (3) the content available on the Service or the Internet or any change in content provided by Hughes; (4) your ability or inability to access and/or use the Service; or (5) the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges, or billing methods. Any such cancellation shall be without prejudice to your obligation to pay any applicable early termination fees.

3.5 TERMINATION OR SUSPENSION BY HUGHES.

Hughes reserves the right to terminate or suspend your account and this Agreement at any time, with or without notice, in whole or in part, for any reason or no reason.

3.6 CONTINUATION OF OBLIGATIONS.

Notwithstanding any cancellation or termination of this Agreement or your account, or any suspension or termination of access to or use of the Service, you will remain responsible for any obligations accrued up to the date of such action, including payment of any charges that may be due as a result of or in connection with such action(s).

4 WHO MAY USE THE SERVICE? – RESPONSIBILITY AND SUPERVISION.

4.1 AGE AND ACCOUNT SETUP.

You represent that you are at least 18 years of age and have the right and ability to enter into this Agreement. You agree that you are responsible for installing, establishing, and setting up, and for verifying and maintaining, the account, options, settings, and other parameters under which the Service is used, including (without limitation) all related passwords and user identification information. These account functions may be performed only by a person at least 18 years of age, without exception.



4.3 INSTALLATION OF SUBSCRIBER EQUIPMENT.

You acknowledge and agree that Hughes or its designated service provider may be required to access your premises and/or computer system in order to install and maintain the components necessary for you to access the Service (the "Subscriber Equipment"). This may include opening your computer to install, repair, or replace equipment or to install software on your computer at your location. By accepting this Agreement and scheduling a service or installation visit, you hereby authorize Hughes or its service provider to access your computer for the purpose of installing, repairing, or replacing Subscriber Equipment for the purpose of facilitating your access to the Service. NEITHER HUGHES NOR ITS SERVICE PROVIDER SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSSES RESULTING FROM INSTALLATION, REPAIR, OR OTHER SERVICES, INCLUDING WITHOUT LIMITATION DAMAGE TO YOUR PREMISES OR COMPUTER, OR LOSS OF SOFTWARE, DATA, OR OTHER INFORMATION FROM YOUR COMPUTER. Hughes may check the version of the HughesNet software on your computer and, without any additional notice to you, may download and install on your computer updates to the HughesNet software. In addition, Hughes may check the health and status of your computer to ensure that your configuration is optimized for use with the Service.

4.4 SUBSCRIBER RESPONSIBILITY.

You shall be responsible for all access to and use of the Service through your account or password(s) and for any fees incurred for goods or services purchased thereon, or any other expenses incurred as a result of any use of your account. You promise to pay the amounts billed for any such goods or services, along with any related fees, taxes, and charges. Use of your account is limited to family members residing at your permanent residence. You acknowledge that you are aware that areas accessible on or through the Service may contain material that is unsuitable for minors (persons under 18 years of age). You agree to supervise usage of the Service by minors who use the Service through your account. You hereby ratify and confirm any obligations a minor using your account enters into or assumes and any promises or permissions such minor makes or gives. You agree to: (1) provide us with true, accurate, current, and complete information about yourself; and (2) promptly update this information to keep it true, accurate, current and complete.

5 DISPUTE RESOLUTION AND BINDING ARBITRATION.

5.1 GENERAL.

EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY AND ALL DISPUTES, CONTROVERSIES, OR CLAIMS BETWEEN YOU AND HUGHES, BASED ON, ARISING OUT OF, INVOLVING, OR RELATING IN ANY WAY TO THIS SUBSCRIBER AGREEMENT, THE HUGHESNET SERVICE, ANY OTHER ASPECT OF OUR RELATIONSHIP, OR ANY RELATED PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION CLAIMS BASED ON CONSUMER PROTECTION LAWS, UNFAIR COMPETITION LAWS, OTHER STATUTES, CONTRACT, TORT, MISREPRESENTATION, FRAUD, OR ANY OTHER LEGAL THEORY, SHALL BE SETTLED BY BINDING ARBITRATION AS SET FORTH HEREIN. ANY QUESTIONS AS TO THE ENFORCEABILITY OF THIS ARBITRATION



Arbitration means that any dispute will be decided by an independent arbitrator, and will not be decided in court by a judge or jury. The applicable procedures may be different from procedures followed in court. In an arbitration, there is no right to a jury trial, discovery may be limited, and the grounds for seeking appeal or judicial review of the arbitrator's award are limited. An arbitrator must honor the terms and conditions of this Agreement to the same extent that any court would. Except as otherwise expressly provided herein, the same claims, legal theories, damages, and other relief that would be otherwise available in court, including any right you may have to recover attorney's fees and/or litigation costs, shall also be available in an arbitration commenced pursuant to this clause. This agreement to arbitrate shall survive termination of this Subscriber Agreement and will apply to any claims brought or disputes arising before or after termination of this Subscriber Agreement.

This Dispute Resolution and Binding Arbitration provision (all subparts of this Section 5) shall, to the extent permitted by law, apply to all pending and future claims, disputes, arbitrations, and litigation, including those involving former subscribers whose agreements terminated prior to the adoption of this provision. Any former subscriber whose agreement terminated prior to the adoption of this provision shall be entitled to proceed under the terms of this Dispute Resolution and Binding Arbitration provision with respect to any disputes, controversies, or claims within the scope of this Section 5.1.

5.2 DISPUTE RESOLUTION AND ARBITRATION PROCEDURES.

Notice of Dispute. Prior to filing any claim against the other, you and Hughes agree that you will first send the other a written Notice of Dispute. Any Notice of Dispute to Hughes should be sent to: HughesNet Customer Service, 11717 Exploration Lane, Germantown, MD 20876 (the "Notice Address"). Any Notice of Dispute to you will be sent to your billing address. The Notice should describe the nature of the problem or dispute and set forth the specific relief sought, including the amount of any monetary damages sought. If the party receiving the Notice of Dispute agrees within 30 days to provide the specific relief requested in the Notice of Dispute, no formal claim may be filed with respect to the subject of the Notice of Dispute. If we are unable to reach an agreement to resolve the dispute within 30 days after the Notice of Dispute is delivered, either you or Hughes may commence an arbitration.

Arbitration Proceedings. Any arbitration between you and Hughes shall be administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Supplementary Procedures for Consumer-Related Disputes, as supplemented and modified by the terms of this Agreement. In the event of any conflict between this Dispute Resolution and Binding Arbitration clause and the applicable AAA rules, this clause shall govern. The AAA Commercial Arbitration Rules and its Supplementary Procedures for Consumer-Related Disputes may be obtained online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

If the arbitrator enters an award in your favor, you shall be entitled to an award of any reasonable attorney's fees or other reasonable costs and expenses you incur in the arbitration; provided that,



governing your claim.

Unless you and Hughes agree otherwise, any arbitration hearing will take place at a location convenient to you which is in or nearest to the county where you reside when the arbitration is commenced. If your claim is for \$10,000 or less, you may choose to have the arbitration conducted in person or by phone, or you may choose to have the arbitration decided solely on the basis of documents submitted to the arbitrator without a hearing. If your claim exceeds \$10,000, the right to a hearing will be determined by the applicable AAA Rules.

Arbitration Costs and Fees. Payment of a filing fee is required to commence an arbitration. If you commence an arbitration against Hughes pursuant to this Binding Arbitration clause, and the claim seeks \$10,000 or less, Hughes will, at your written request, pay the filing fee directly to the AAA or, if you have already paid it, promptly reimburse you for the amount of the filing fee. In addition, for any arbitration initiated in accordance with this Binding Arbitration provision which does not exceed \$10,000, Hughes will also pay all other arbitration fees and expenses imposed by the AAA, including administration and arbitrator fees. However, if the arbitrator finds your claim is frivolous or brought for an improper purpose, then Hughes may seek reimbursement of any AAA fees and expenses it has paid in your behalf. For any arbitration involving claim(s) for more than \$10,000, payment of fees and costs shall be governed by the applicable AAA rules.

5.3 PROHIBITION ON CLASS ARBITRATION.

YOU AND HUGHES AGREE THAT NO DISPUTE OR CLAIM MAY BE BROUGHT OR MAINTAINED AS PART OF A CLASS ARBITRATION OR OTHER REPRESENTATIVE ARBITRATION, REGARDLESS OF WHETHER THE APPLICABLE ARBITRATION RULES WOULD OTHERWISE PERMIT CLASS OR REPRESENTATIVE PROCEEDINGS. ACCORDINGLY, YOU AND HUGHES MAY ONLY PURSUE A CLAIM AGAINST THE OTHER IN AN INDIVIDUAL CAPACITY, AND MAY NOT PURSUE A CLAIM AGAINST THE OTHER ON BEHALF OF ANY OTHER PERSON, AND NO OTHER PERSON MAY PURSUE A CLAIM ON BEHALF OF YOU OR HUGHES AGAINST THE OTHER. AN ARBITRATOR MAY ENTER AN AWARD ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.

5.4 LIMITATIONS ON ARBITRATION PROVISION.

Notwithstanding Sections 5.1 and 5.2 above, but subject to Section 5.3 above, you or Hughes may bring an individual action against the other in small claims court, and arbitration shall not be required as to any dispute relating to the validity or enforcement of either party's patents, copyrights, or other intellectual property.

5.5 RIGHT TO OPT OUT; FUTURE CHANGES.

IF YOU DO NOT WISH TO BE BOUND BY THIS DISPUTE RESOLUTION AND BINDING ARBITRATION CLAUSE, YOU MAY OPT OUT OF THIS CLAUSE. TO DO SO, YOU MUST NOTIFY HUGHES IN WRITING TO THE ABOVE NOTICE ADDRESS WITHIN 30 DAYS AFTER YOU FIRST RECEIVE NOTICE OF THIS CLAUSE. YOUR WRITTEN NOTICE MUST INCLUDE YOUR NAME,



DELIVERY OF SERVICES TO YOU BY HUGHES.

In addition, if Hughes makes any future change to this Dispute Resolution and Binding Arbitration provision, you may reject any such change by sending Hughes written notice within 30 days of receiving notice of the change. In that case, any dispute arising between you and Hughes will be governed by the Dispute Resolution and Binding Arbitration provision, or any equivalent provision, in effect as of the date you received notice of the change.

5.6 EXCEPTION TO SEVERABILITY.

Notwithstanding Section 21.1 below, if for any reason the prohibition on class proceedings set forth in Section 5.3 above is not enforced as written with respect to any dispute, then Section 5.1 above also will not apply to that dispute.

PART III – PAYMENT

6 FEES.

6.1 FEES, TAXES AND OTHER CHARGES.

You agree to pay, in advance, and in accordance with the provisions of the billing option you selected, any registration, activation, and/or monthly fees, minimum charges, and other amounts charged to or incurred by you, or by users of your account, at the rates in effect for the billing period in which those amounts are charged or incurred. You agree to pay all applicable taxes and Universal Service assessments related to your use of the Service or the use of the Service by users of your account. Information on charges and surcharges (if any) that are to be paid to us and are incurred by you or by users of your account will be made available to you on the Website, and you agree that this is sufficient notice for all purposes as to charges incurred and paid or to be paid to us. In addition, you also agree to pay a surcharge on your service to cover Hughes' liability for the payment of personal property taxes which may be owing by Hughes in respect of the equipment provided pursuant to this Agreement. Hughes reserves the right to increase fees, surcharges, or monthly subscription fees, or to institute new fees at any time upon thirty (30) days' prior notice. You understand and acknowledge that you may not receive a bill in the mail for your Service. Additional terms relating to pricing, billing and payment are set forth and available on the Website.

6.2 PAYMENT.

YOU MUST PROVIDE CURRENT, COMPLETE, AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION IN ORDER TO KEEP YOUR ACCOUNT CURRENT, COMPLETE, AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE). CHANGES TO SUCH INFORMATION CAN BE MADE AT www.myHughesNet.com. IF YOU FAIL TO PROVIDE US WITH ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT HUGHES MAY CONTINUE CHARGING YOU FOR ANY SERVICE PROVIDED UNDER YOUR ACCOUNT, AND THAT YOU WILL BE RESPONSIBLE FOR ANY LATE FEES ASSOCIATED WITH HUGHES' INABILITY TO OBTAIN



debit card to activate your subscription, you authorize Hughes to initiate debit entries to your checking or savings account, as the case may be, for payment of the monthly charge for the Service. Hughes, pursuant to this authorization, will debit the monthly service charge for the Service from your account each month. In addition, Hughes will deduct from your account any and all early termination charges arising from termination of your Service prior to its required minimum term. Hughes will not be responsible for any overdraft or other third-party fees or penalties resulting from Hughes debiting from your account any amount authorized by this Agreement or any other agreement between you and Hughes. Hughes will charge a return fee for each debit that is declined by your bank. The return fee will vary from state to state and will be the maximum amount allowed in each state. You acknowledge that the recurring debit authorized hereunder will purchase the Service and that Hughes will continue to debit monies from your account until you revoke this authorization by going online to www.myHughesNet.com to change payment method or by mailing a written request to:

HughesNet Customer Service
11717 Exploration Lane
Germantown, MD 20876

Credit card payment is not required for residents of states where payment by credit cards may not be made mandatory. In the event that, for whatever reason, services charges are paid by you pursuant to a paper invoice to be prepared by Hughes, Hughes will charge you an additional administrative fee of \$5.00 per month. Further, in the event that checks submitted by you are returned for insufficient funds, or if your account is suspended for non-payment, and you wish to restore Services, in addition to other charges which may be applicable, you may be liable for an additional administrative charge of up to \$25.00. If you think a charge is incorrect or you need more information, you should contact our billing department. You must contact us within sixty (60) days after receiving the statement on which the error or problem appeared. Hughes will make available to you a statement for each billing cycle showing payments, credit purchases, and other charges. Payment of the outstanding balance is due in full each month, and may be billed in advance or pre-charged as set forth above. If your payment is not received by us before the next statement is issued, you may be charged interest on the delinquent balance at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, prorated on a daily basis. Hughes may, but is not required to, accept partial payments from you. If partial payments are made, they will be applied to statements starting with the oldest outstanding statement. If you send us checks or money orders marked "payment in full" or otherwise labeled with restrictive endorsements, Hughes can, but is not required to, accept them, without losing any of Hughes' rights to collect all amounts owed by you under this Agreement. In the case of late payment or non-payment, you understand and agree that Hughes may report such late payment or non-payment to the appropriate credit reporting agencies. If Hughes chooses to use any collection agency or attorney to collect money that you owe us or to assert any other right which we may have against you, you agree to pay the reasonable costs of collection or other action including, but not limited to, the costs of a collection agency, reasonable attorneys' fees, and court costs, as provided by applicable law.

6.3 COMMENCEMENT AND DURATION OF SUBSCRIBERSHIP FEES.



You agree that any Data Tokens you may have purchased, or which may be provided to you free of charge, have no intrinsic value if you are no longer a HughesNet Subscriber. Thus, any value associated with any such tokens will lapse at the time of termination of your Service.

PART IV – PERMITTED USE AND RESTRICTIONS ON USE

7 SOFTWARE LICENSE.

To facilitate your use of the Service, Hughes may provide you with software and written materials including documentation (the “Software”). Subject to the terms of this Agreement, Hughes grants you a limited personal, non-exclusive, non-sublicenseable and nontransferable license to use and display the Software on any machine(s) on which you are the primary user or which you authorize for use. Unauthorized copying of any portion of the Software, including software that has been modified, updated, or merged or included with the Software, as well as the documentation provided, is expressly forbidden. You may not sublicense, assign or transfer this license or the Software except as expressly permitted by Hughes. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations under this license is void. You agree that you shall not, nor shall you permit others, to copy, duplicate, reverse engineer, decompile, or create derivative works from the Software, in whole or in part, including any written materials provided in conjunction with the Software. Hughes will occasionally provide automatic software and technology upgrades to improve the Service, such as virus and spam screening technologies, although these upgrades may not be consistent across all platforms and devices. You agree to accept and to take no action to interfere with such automatic upgrades, scanning, and related services.

8 SPECIFIC RESTRICTIONS ON USE OF THE SERVICE.

8.1 PROHIBITED CONDUCT.

You agree to comply with the terms of the Hughes Acceptable Use Policy, available at aup.HughesNet.com. Violations of the Acceptable Use Policy may result in suspension or termination of Service.

8.2 FAIR ACCESS POLICY.

To ensure fair Internet access for all HughesNet subscribers, Hughes maintains a Fair Access Policy. This policy establishes an equitable balance in Internet access for all HughesNet subscribers. Hughes assigns a download threshold to each service plan that limits the amount of data that may be continuously downloaded. The Fair Access Policy can be viewed at legal.hughesnet.com Any subscribers who exceed this limit will experience a temporary reduction of speed.

8.3 COMPLIANCE WITH LAWS.

You agree to comply with all applicable laws, rules, and regulations in connection with the



purposes your subscription to the Service, any portion thereof, or any capabilities or applications enabled by the Service (e.g., HughesNet Voice).

8.5 ASSUMPTION OF RISK.

Hughes may, but shall not have any obligation to, screen content transmitted through and stored on the Service for objectionable material and material that violates any law or regulation, the terms of this Agreement, or the Acceptable Use Policy (collectively, "Objectionable Content"). Hughes may, but shall not have any obligation to, remove from the Service, or refuse to store or transmit, any Objectionable Content. You agree to bear all risks associated with any and all content you use, transmit, or receive on or through the Service, and agree that you will not rely on any such content.

PART V – GRANT OF IMPORTANT RIGHTS BY YOU TO US, AND IMPORTANT DISCLAIMERS, ACKNOWLEDGMENTS, AND OBLIGATIONS

9 COPYRIGHT AND LICENSES.

Hughes reserves all copyrights and other rights in and to any content available through the Service which is identified as, claimed by us as, or known by you to be, proprietary to Hughes or its licensors (collectively, "Proprietary Content"). The Proprietary Content is protected under U.S. and international copyright laws, including as a collective work. All copying, modification, distribution, publication, or other use by you, or by any user of your account, of any such content or other works is prohibited, except as expressly permitted by Hughes.

10 NO ENDORSEMENT.

Hughes does not endorse or in any way vouch for the accuracy, completeness, truthfulness, or reliability of any service, opinion, advice, communication, information, or other content on or made available through the Service. Such content does not necessarily constitute or reflect the views or approval of Hughes or any of its subsidiaries or affiliates.

11 INTERNET.

YOU ACKNOWLEDGE THAT INTERNET SITES, AND USE OF THE INTERNET, MIGHT CONSIST OF, INCLUDE AND/OR PROVIDE ACCESS TO IMAGES, SOUND, MESSAGES, TEXT, SERVICES, OR OTHER CONTENT AND MATERIAL THAT MAY BE UNSUITABLE FOR MINORS AND THAT MAY BE OBJECTIONABLE TO MANY ADULTS. YOU ACKNOWLEDGE THAT HUGHES IS NOT RESPONSIBLE FOR ANY SUCH CONTENT OR MATERIAL AND THAT ACCESS TO SUCH CONTENT AND MATERIAL THROUGH THE SERVICE IS AT YOUR SOLE RISK.

12 LIMITED WARRANTY ON EQUIPMENT.

Hughes warrants to the original buyer that under normal use and wear the equipment used to access the Service (the "Equipment"), which includes the Indoor Unit (satellite modem), Power Supply, and Outdoor Unit (Antenna & Radio Assembly), will be free from defects in material and



of the following:

- We will repair or replace the defective Equipment within thirty (30) days of the date the defective Equipment was returned to Hughes' designated address at your expense, to cause it to comply with the terms of this Limited Warranty. Reconditioned replacement components, parts, units or materials may be used if the Equipment is repaired or replaced.
- If service to the Outdoor Unit (satellite antenna and transmitter) is required, Hughes will, at its expense, repair or replace it pursuant to the limited warranty for the first six months after installation. From six months to the end of your limited warranty period, Hughes will cover the cost of the replacement equipment, but the cost of the onsite service technician visit, if necessary, will be paid by you. You may request a price estimate prior to the work, based on the type of the replacement. If your satellite antenna needs to be re-pointed after the first 6 months of service, a standard onsite visit fee will be charged to you. Reconditioned replacement components, parts, units, or materials may be used if the Equipment is repaired or replaced.
- We may upgrade the Equipment to a later-generation product that performs the same function and complies with the terms of this Limited Warranty.

THESE ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR DEFECTS DURING THE WARRANTY PERIOD IN ANY EQUIPMENT COVERED BY THE LIMITED WARRANTY. To request Limited Warranty service you must contact Hughes Customer Service, toll-free, at 1-866-347-3292 within the Limited Warranty period.

This Limited Warranty will be void in its entirety if the Equipment is serviced by anyone other than Hughes or a Hughes-Authorized Service Center. Hughes neither assumes nor authorizes any Authorized Service Center or any other person or entity to assume any other obligation or liability beyond that which is provided for in this Limited Warranty.

This Limited Warranty does not cover damage or affected operation of the above-referenced Equipment resulting from:

- Non-professional installation; re-pointing of the Antenna; removal, repair, or disassembly of Equipment by anyone other than a Hughes-Authorized Service Technician.
- Failure to follow instructions.
- Fire, flood, wind, lightning, earthquake, or other acts of God.
- Spills of food or liquids.
- Problems with electrical power.
- Misuse, abuse, accident, vandalism, alteration, or neglect.
- Use in combination with other external devices not manufactured or provided by Hughes.

This Limited Warranty does not cover items in the following categories:

- Software provided by any party other than Hughes.
- External devices not manufactured or provided by Hughes.
- Any payments for labor or service to representatives or service centers not authorized by Hughes.



REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE EQUIPMENT IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE EQUIPMENT IS ASSUMED BY YOU.

No oral or written information or advice given by Hughes, its dealers, distributors, agents, or employees, shall create a warranty or in any way increase the scope of this warranty, and you may not rely on any such information or advice. This warranty gives you specific legal rights. You may have other rights, which vary from state to state.

All liability and obligations of Hughes under this Limited Warranty shall terminate upon expiration of the applicable warranty period provided herein. This Limited Warranty sets forth the entire responsibility of Hughes with respect to the Equipment. Hughes shall have no further liability to you or to any third party arising from the sale of the products whether based on warranty, contract, negligence, or other theories of liability. HUGHES SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY NATURE ARISING OUT OF HUGHES' BREACH OF THIS LIMITED WARRANTY, WHETHER SUCH DAMAGES AROSE IN CONTRACT OR TORT, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. In no event shall Hughes liability exceed the amount paid by you for the Equipment.

Hughes may, at its option, elect to ship replacement equipment in advance of receiving a failed item from you. If you do not return such failed modem to the address specified by Hughes within 20 days of Hughes shipping your replacement modem, you agree to pay, and Hughes will automatically charge your account an Unreturned Equipment Fee equal to \$100.00 (for modem and power supply). This fee will be collected in addition to your monthly service charge via your standard payment method (your credit/debit card on file or via invoice).

13 DISCLAIMER OF WARRANTIES ON THE SERVICE AND EXCLUSION OF LIABILITY.

13.1 WARRANTY DISCLAIMER.

HUGHES DOES NOT OFFER ANY WARRANTY IN CONNECTION WITH THE SERVICE OR THE SUBSCRIBER EQUIPMENT. THE SERVICE IS MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HUGHES EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED, OR OPERATE AT ANY MINIMUM SPEED. YOU AGREE THAT YOUR USE OF THE SERVICE AND THE SUBSCRIBER EQUIPMENT, AND SUCH USE BY ANYONE USING YOUR ACCOUNT, IS AT YOUR SOLE RISK. NO ORAL ADVICE OR WRITTEN INFORMATION PROVIDED BY HUGHES, ITS EMPLOYEES, DEALERS, OR THE LIKE SHALL CREATE A WARRANTY.

13.2 LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER HUGHES NOR ANY OF ITS INFORMATION OR CONTENT PROVIDERS, SERVICE PROVIDERS, LICENSORS, EMPLOYEES, OR



AGENTS, EMPLOYEES, OR THIRD-PARTY CONTENT PROVIDERS, IF ANY, SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO HUGHES BY YOU FOR SERVICES FURNISHED UNDER THIS AGREEMENT FOR THE PERIOD OF TIME COMMENCING UPON THE OCCURRENCE OF SUCH ERROR, DEFECT, OR FAILURE, AND CEASING UPON THE DISCOVERY AND RECTIFICATION OF SUCH, IN WHOLE OR IN PART; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL SUCH PERIOD OF TIME EXCEED THE TWELVE- (12-) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHICH SUCH ERROR, DEFECT, OR FAILURE IS FIRST DISCOVERED IN WHOLE OR IN PART.

Without limiting the foregoing, Hughes shall not be responsible for: (a) any failure to transmit or store, or for any deletion of, any communication, message, email, or content transmitted through, sent to, or received by the Service or Hughes' servers; or (b) any modification, suspension, interruption, or discontinuance of the Service.

13.3 FULL APPLICABILITY.

THE FOREGOING EXCLUSIONS OR LIMITATIONS OF LIABILITY APPLY REGARDLESS OF ANY ALLEGATION OR FINDING THAT A REMEDY FAILED OF ITS ESSENTIAL PURPOSE, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION NEGLIGENCE) AND EVEN IF HUGHES OR OTHERS ARE ADVISED OR AWARE OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR LIABILITY.

14 INDEMNITY.

You agree to indemnify and hold harmless Hughes against all claims, liability, damages, costs, and expenses, including but not limited to reasonable attorneys' fees, arising out of or related to this Agreement, any and all uses of your account, and your use of the Service. This includes, without limitation, responsibility for all such consequences resulting from actions by you or any user of your account in violation of this Agreement, the Acceptable Use Policy, or any law or regulation.

15 LIABILITY FOR UNAUTHORIZED USE.

You agree to notify us immediately after you sell, give away, or otherwise transfer your Equipment to anyone else. You are considered the registered recipient of the Service until Hughes receives such notice, and you will be liable for any charges or fees incurred by the use of your Equipment by anyone else up to the time that Hughes receives your notice, unless otherwise provided by State law. You may not assign or transfer your service without Hughes' written consent. If you do, Hughes may inactivate your service. If your Equipment is stolen or otherwise removed from your premises without your authorization, you must notify the HughesNet Customer Care Center immediately, or else you may be liable for payment for unauthorized use of your Equipment system. You will not be liable for unauthorized use after Hughes has received your notification.

16 PROPRIETARY RIGHTS.

All copyright or other proprietary rights notices contained in or associated with the content



Universal Resource Locator ("URL"), IP address, or domain name used by you in conjunction with the Service.

PART VI – GENERAL

17 LIMITS ON TRANSFERS; NO RIGHT OF SURVIVORSHIP.

Unless otherwise agreed in writing, your right to use the Service, or to designate other users of your account, is not transferable and is subject to any limits established by Hughes. Your right to use your user ID, email address, and other unique identifiers assigned to you by Hughes shall terminate upon the termination of this Agreement. This Agreement will terminate immediately upon your death.

18 CHOICE OF LAW.

This Agreement is made in the State of Maryland. This Agreement and all of the parties' respective rights and duties in connection herewith, including, without limitation, claims for violation of state consumer protection laws, unfair competition laws, and any claims in tort shall be governed by and construed in accordance with the laws of the State of Maryland, in the United States, excluding its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement, and it is acknowledged that this is a services contract and not a contract for the sale of goods. You agree that this Agreement is set forth in the English language for the mutual convenience and benefit of the parties. A printed version of this Subscription Agreement and of any notice given in electronic form shall be admissible in judicial and administrative proceedings relating to or based upon this Subscription Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

19 ELECTRONIC DELIVERY POLICY AND YOUR CONSENT.

By applying for or using the Service, you consent to receive all agreements, disclosures, policies, notices, and other information (collectively, Notices) provided by Hughes or its affiliates via paper, aural, and/or electronic delivery at Hughes' sole and absolute discretion. For purposes of example and not limitation, Hughes may deliver or display Notices to you by email, pop-up window, or posting a message on the Service or the Hughes Website. You agree that certain supplemental or enhanced services made available to subscribers may also have their own procedures for providing Notices.

20 CONSTRUCTION AND DELEGATION.

Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. Hughes may authorize or allow its contractors and other third parties to provide services necessary or related to making the Service available and to perform obligations and exercise Hughes' rights under this Agreement, and Hughes may collect payment on their behalf, if applicable. The provisions of any Sections of this Agreement, which by their nature should continue, shall survive any termination of this Agreement.



Where notification by Hughes is contemplated by or related to this Agreement, notice may be made by any reasonable means, including without limitation email or publication over the Service. If any term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, it shall be construed in such a way as to eliminate the offending aspects while still giving as much effect as possible to the intentions of such term. Where an entire provision is invalid, illegal, or unenforceable and cannot be so repaired, then the term shall be considered to be stricken from this Agreement as if it had not been included. In any such case, the balance of this Agreement shall remain in effect in accordance with its remaining terms notwithstanding such invalid, illegal, or unenforceable term.

21.2 No Waiver.

Hughes may enforce or decline to enforce any or all of the terms of this Agreement in its sole discretion without waiving its rights to enforce such provisions in the future. In no event shall Hughes be required to explain, comment on, suffer liability for, or forfeit any right based on its enforcement, non-enforcement, or consistency of enforcement of these terms.

21.3 Captions.

Captions used in this document are for convenience only and shall not be considered a part of this Agreement or be used to construe its terms or meaning.

21.4 Statute of Limitations.

You agree that, regardless of any statute to the contrary, any claim or cause of action arising from or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

22 ASSIGNMENT OF ACCOUNT.

Hughes may sell, assign, or transfer your account to a third party without notice to you.

23 ENTIRE AGREEMENT.

This Agreement, as published over the Service and available on the Website, as well as the additional online documents specifically referred to herein as being a part of this Agreement (e.g., the Acceptable Use Policy), constitute the entire and only agreement with respect to the subject matter hereof between you and Hughes. This Agreement supersedes all representations, proposals, inducements, assurances, promises, agreements, and other communications with respect to the subject matter hereof except as expressly set forth in this document. By applying for or using the Service, you agree to the terms and conditions of this Agreement. This Agreement can be amended only in the manner expressly provided for herein.

Certain Important Terms for New York State Broadband Program Customers



subscribed to a HughesNet Gen5 Service Plan.

General Terms

HughesNet® service is available to site with an unobstructed view of the southern sky, and its usage is subject to the Fair Access Policy. Actual speeds vary based on the amount of traffic on the Internet, content on a particular Website, or by the overall performance and configuration of your computer. Stated speeds and uninterrupted use of service are not guaranteed. Actual speeds will likely be lower than speed indicated during peak hours.

Professional installation is required. Monthly service fees apply. Sales, use, and personal property taxes are related surcharges and are not included.

Equipment

You specifically agree that any Equipment provided to you may be new or refurbished as new. Any refurbished Equipment will have the same warranty as new Equipment.

The modem, power supply, and radio (outdoor transmitter) remain the property of Hughes and shall not be deemed fixtures or part of your realty. You shall have no right to pledge, sell, mortgage, or otherwise encumber, give away, remove, relocate, alter, or tamper with the Equipment (or any notice of our ownership thereon) at any time. Any reinstallation, return, or change in the location of the Equipment shall be performed by us at our service rates in effect at the time of such service. You are responsible for preventing the loss or destruction of leased Equipment and we recommend that your Equipment be covered by your homeowner's, renter's, or other insurance policy.

Service Commitment

HughesNet Service Plans require a minimum service commitment of 24 months. If you terminate service prior to the expiration of the commitment, you will owe, and your credit or debit card will be charged, the Early Termination Fees and/or Unreturned Equipment Fees as described below.

Early Termination: (New York Broadband Program Customers)

If you cancel your order before installation, you will be refunded the amount that was collected at time of order.

If you cancel after activation but before the end of your 24-month term commitment, you will be charged a Service Termination Fee of up to \$400. The exact amount of the Service Termination Fee will be \$400 for the first ninety (90) days after activation of the HughesNet Service. Thereafter, the amount will decrease by \$15 per month for each month of active Service.

Payment by Credit or Debit Card

YOU AGREE AND ACCEPT THAT HUGHES NETWORK SYSTEMS, LLC (HUGHES) IS AUTHORIZED



EARLY TERMINATION FEES AND/OR UNRETURNED EQUIPMENT FEES.

Home Networking

Home networking equipment is not included with your HughesNet system. For network setup, support, and configuration, contact your network hardware manufacturer and/or operating system software developer. (Hughes is not responsible for home network configuration or management).

Please note that all computers on a home network will be sharing a single connection. Simultaneous use of high-bandwidth applications by multiple users may result in degradation of download and surfing speeds, and are subject to the Fair Access Policy.

Revised 12/6/18

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