

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182

**PETITION FOR WAIVER**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Hankins Information Technology (“HIT”) hereby requests a waiver of the deadline for certain winning bidders in the Connect America Fund (“CAF”) Phase II auction (“Auction 903”) to submit a letter of credit and accompanying Bankruptcy Code opinion letter to the Universal Service Administrative Company (“USAC”). This filing deadline was provided in the May 10, 2019 Public Notice released by the Rural Broadband Auctions Task Force, Wireline Competition Bureau, and the Office of Economics and Analytics (collectively, the “Bureaus”) announcing they are ready to authorize Auction 903 support to certain winning bidders, including HIT.<sup>2</sup> Pursuant to the Public Notice, applicants whose winning bids were identified in Attachment A of the Public Notice are required to file required original letter(s) of credit and accompanying Bankruptcy Code opinion letter(s)<sup>3</sup> to USAC by Friday, May, 24, 2019 at 6:00 p.m. ET.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> *Connect America Fund Phase II Auction Support for 2,025 Winning Bids Ready To Be Authorized, Listed Auction 903 Long-Form Applicants Must Submit Letters of Credit and Legal Counsel’s Opinion Letters by Friday, May 24, 2019*; AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 19-403 (rel. May 10, 2019) (“*May 10, 2019 Public Notice*”).

<sup>3</sup> 47 C.F.R. § 54.315(b)(6)(v).

For reasons explained herein, HIT has been unable to timely obtain its letter of credit for delivery by the required deadline due to the death of an immediate family member of HIT's owner and sole proprietor the day before the *May 10, 2019 Public Notice* was released. HIT hereby seeks a waiver of this filing deadline and Section 54.315(b)(6)(v) of the Commission's rules<sup>4</sup> so that (1) the Commission may accept a late-filed letter of credit issued by a qualifying bank and (2) HIT will not be subject to forfeiture for failure to timely submit its letter of credit and Bankruptcy Code opinion letter. Attached hereto as Attachment A is a Declaration of James Hankins, Owner and sole proprietor of HIT, attesting to the facts stated herein.

## **I. BACKGROUND**

HIT is a California-based wireless Internet Service Provider and family company serving accounts in Santa Clara County, California in and near the City of Gilroy, an agricultural area known to be a leading American producer of garlic. HIT participated in Auction 903 and was the winning bidder of a 10-year Phase II competitive support award totaling \$1,911,329.30 covering 1,083 assigned locations in the State of California.<sup>5</sup> HIT successfully sought designation as an eligible telecommunications carrier, and intends to leverage its CAF Phase II support to expand its system to provide facilities-based high-speed broadband Internet access services and VoIP services to customers in rural and remote areas of San Benito, Santa Clara, and Santa Cruz Counties in California. With the release of the May 10, 2019 Public Notice, the Bureaus announced that HIT's winning bids were ready to be authorized subject to the submission of its letter of credit and Bankruptcy Code opinion letter.

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<sup>4</sup> 47 C.F.R. § 54.315(b)(6)(v) (requiring certain identified winning bidders to submit a letter of credit and accompanying opinion letter in a form acceptable to the Commission no later than the number of business days provided by public notice).

<sup>5</sup> See Winning Bids Summary tab, available at <https://docs.fcc.gov/public/attachments/DOC-354843A1.xls>.

## II. DISCUSSION

On Thursday, May 9, 2019, HIT owner and sole proprietor James Hankins learned of the passing of his father. Since that day, Mr. Hankins has spent the better part of two weeks tending to family, funeral, and estate affairs that required immediate attention while also driving between Gilroy, California and Phoenix, Arizona. At the same time, Mr. Hankins has been remotely maintaining HIT's operations and servicing its customers, as well as coordinating with financial institutions and bankruptcy counsel for the respective preparation of a conforming letter of credit and Bankruptcy Code opinion letter. At this time, only Mr. Hankins is able to handle and authorize the Auction 903 letter of credit and Bankruptcy Code opinion letter arrangements on behalf of HIT. Despite Mr. Hankins' best efforts in the constrained time period since the issuance of the Public Notice, HIT has learned that the bank will not be able to deliver a conforming letter of credit to USAC by the May 24, 2019 deadline. Because the Bankruptcy Code opinion letter must reference and accompany a letter of credit, HIT will not be able to submit its opinion letter until after the letter of credit is issued. HIT intends to deliver a conforming letter of credit as required by Section 54.315(b)(6)(v) of the Commission's rules immediately upon its issuance.

The Commission has authority to waive its rules for good cause shown.<sup>6</sup> Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>7</sup> The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance with the rule inconsistent with the public interest.<sup>8</sup> The Commission may take into account, on an individual basis, considerations involving equity, hardship, or more effective implementation of overall

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<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S. Ct. 461 (1972) ("*WAIT Radio*").

<sup>8</sup> *Id.*

policy.<sup>9</sup> As demonstrated below, there is good cause to grant the requested waiver due to the special circumstances giving rise to the request and because a grant would serve the public interest.

**A. Special Circumstances Warrant Deviation from HIT's Deadline.**

Because of the special circumstances whereby HIT's owner and sole proprietor was required to tend to family and estate affairs following his father's death during the very same window in which HIT was required to obtain and submit its letter of credit and Bankruptcy Code opinion letter, a waiver of the deadline is warranted. The Commission recently found a waiver to be warranted for another Auction 903 applicant that did not file its letter of credit commitment letter by the November 5, 2018 deadline due to a mistaken belief regarding the requirement, and instead filed it in early January 2019.<sup>10</sup> In that case, the Commission found that, "in the context of other auctions, Commission bureaus have granted waivers of post-auction long-form application filing deadlines 'when minor, inadvertent, post-auction delinquencies did not disrupt the auction process, nor undermine the Commission's policy of facilitating rapid implementation of service to the public.'"<sup>11</sup>

In this case, the missed deadline is not even caused by some misunderstanding of the requirement, but rather by the unique circumstance and hardship caused by the death of Mr. Hankins' father at virtually the same time as the issuance of the *May 10, 2019 Public Notice* establishing the filing deadline. Moreover, the requested waiver will not disrupt the auction

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<sup>9</sup> See, e.g., *BellSouth Telecommunications, Inc., Petition to Establish New Rate Elements for Direct Access Directory Assistance Service*, Memorandum Opinion and Order, DA 95-1676, 11 FCC Rcd 1229 (CCB 1995) (citing *WAIT Radio*, 418 F.2d at 1158).

<sup>10</sup> *Connect America Fund; Connect America Fund Phase II Auction*, WC Docket No. 10-90, AU Docket No. 17-182, Order, DA 19-428 (rel. May 15, 2019) ("*CAF-II Waiver Order*").

<sup>11</sup> *Id.* (citing *Request of Tallie Colville for Waiver of Auction 91 Form 301 Filing Deadline for Construction Permit for New FM Station, Diamond Lake, Oregon*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14216 (AD-MB 2011)).

process nor delay service implementation to the public as the Commission has not yet processed all Auction 903 applications. HIT intends to submit its letter of credit and Bankruptcy Code opinion letter with reasonable expediency following the letter of credit's issuance. The requested waiver is consistent with Commission precedent.<sup>12</sup>

**B. Grant of the Requested Waiver Serves the Public Interest.**

The public interest would be served by a grant of the requested waiver because it would further the Commission's CAF Phase II objective of closing the digital divide for all Americans, including those residing in and traveling through the rural and remote areas of San Benito, Santa Clara, and Santa Cruz Counties, California.<sup>13</sup> Denial of the waiver and requiring strict compliance would deprive homes and businesses in HIT's winning bid areas of the broadband and voice services that HIT plans to deliver.

Grant of the waiver not only helps deliver promised broadband, but it also provides the Commission with the ability to reclaim disbursed support if HIT were to default on its performance obligations. The purpose of the letter of credit is to protect ratepayers' contributions to the universal service fund by (1) permitting the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements and (2) minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the

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<sup>12</sup> See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by A Special Place; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 5827, 5828, para. 1 (WCB 2014) (granting a waiver because applicant filed within 30 days of the close of the filing window despite an unexpected serious illness or death of the person responsible for submitting the form or a close family member of that person).

<sup>13</sup> See *CAF-II Waiver Order* at 2. See also *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428 (2018).

Commission's universal service goals.<sup>14</sup> Because HIT intends to deliver the letter of credit and Bankruptcy Code opinion letter expeditiously, grant of the requested waiver will not frustrate the core purpose of the rules. Furthermore, strict application of the filing deadline would be punitive, counter-productive and contrary to the public interest. Conversely, grant of the waiver would provide for a more effective implementation of the Commission's universal service policies under these special circumstances.

### **III. CONCLUSION**

HIT has shown good cause for a waiver of the Commission's rules, including special circumstances warranting a waiver and that the public interest will be best served by the requested waiver. A grant in these circumstances will ensure that HIT can expand its network to homes and businesses in rural and remote areas covered by HIT's winning bids while also allowing the Commission to protect universal service funds. Denial of the waiver, however, would result in these rural and remote California locations being deprived of critical broadband and voice services.

Respectfully submitted,

**HANKINS INFORMATION TECHNOLOGY**

/s/ Robert A. Silverman

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<sup>14</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, ¶120 (2016) (“*Phase II Auction Order*”).

**ATTACHMENT A**

Declaration of James Hankins

*[See attached]*

**Declaration of James Hankins**

I, James Hankins, hereby declare under penalty of perjury as follows:

1. I am the Owner and Sole Proprietor of Hankins Information Technology.
2. This Declaration is submitted in support of instant Petition for Waiver.
3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that I have reviewed the foregoing Petition, I am familiar with the facts and information stated therein, and that the facts and information stated therein are true and correct to the best of my knowledge.

A handwritten signature in dark ink, appearing to read 'James Hankins', is written over a horizontal line.

James Hankins, Owner  
Hankins Information Technology

Dated: May 24, 2019