

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

In the Matter of )
)
The Rural Digital Opportunity Fund )
Auction (Auction 904) ) AU Docket No. 20-34
)
Rural Digital Opportunity Fund ) WC Docket No. 19-126

ORDER

Adopted: October 13, 2020

Released: October 13, 2020

By the Chiefs, Wireline Competition Bureau and Office of Economics and Analytics:

1. In this Order, the Wireline Competition Bureau and the Office of Economics and Analytics, in conjunction with the Rural Broadband Auctions Task Force, address petitions for waiver of the Commission’s Rural Digital Opportunity Fund Phase I auction (Auction 904) short-form application requirements. First, we address certain petitions requesting that the Commission accept late-filed FCC Form 477s as evidence of an applicant’s requisite operational experience offering a voice and/or broadband service.1 We deny those from applicants that had not submitted even one of the three most recent FCC Form 477 filings by the deadline laid out in the auction instructions and grant several waivers where the applicant showed good cause.2 Second, we grant petitions filed by applicants that have operated only electric distribution or transmission networks and seek waiver of the requirement to provide certain documentation demonstrating their ability to successfully operate those networks.3 Third, we grant one petition and deny a second petition requesting that the Commission waive certain financial requirements to qualify to participate in Auction 904.4 Finally, consistent with precedent and the policies adopted by the Commission for Auction 904, we deny petitions for waiver of the rule banning from participation in the Rural Digital Opportunity Fund those parties that were winning bidders in the Connect America Phase II auction (Auction 903) and subsequently defaulted on all of their winning bids.5

I. BACKGROUND

2. In the Rural Digital Opportunity Fund Order, the Commission adopted short-form application requirements relating to an applicant’s technical and financial qualifications to participate in Auction 904.6 Specifically, the Commission required an applicant that has certified that it has provided voice and/or broadband services for at least two years prior to the short-form application filing deadline, or that it is the wholly-owned subsidiary of such an entity, to also certify that it or its parent company has

1 See Rural Digital Opportunity Fund; Connect America Fund, Report and Order, 35 FCC Rcd 686, 719-20, paras 73-74, (2020) (Rural Digital Opportunity Fund Order).

2 See FCC Form 183: Application to Participate in the Rural Digital Opportunity Fund Phase I Auction, Auction 904 Instructions, at 12, available at https://www.fcc.gov/file/18946/download.

3 Rural Digital Opportunity Fund Order, 35 FCC Rcd at 719, para. 73, n.202.

4 See id. at 720, para. 75.

5 See id. at 720-21, para. 77; Rural Digital Opportunity Fund; The Rural Digital Opportunity Fund Auction (Auction 904); Connect America Fund, Order, 35 FCC Rcd 6589 (2020) (Johnson Order).

6 Rural Digital Opportunity Fund Order at 718-25, paras. 69-85.

filed FCC Form 477 Local Telephone Competition and Broadband Reports (FCC Form 477) as required during that time period.<sup>7</sup> The applicant must identify the FCC Registration Number(s) it (or its parent company) used to file its FCC Form 477 for the relevant filing periods—data as of December 31, 2018; data as of June 30, 2019; and data as of December 31, 2019.<sup>8</sup> As set out in the Instructions for Applying to Participate in Auction 904, FCC Form 477 data that was submitted for these periods as of June 17, 2020, were used to corroborate each applicant’s certification that it has been providing voice and/or broadband service for at least two years.<sup>9</sup>

3. The Commission also adopted an alternative eligibility pathway for applicants that do not have at least two years of experience operating a voice, broadband, and/or electric distribution or transmission network to become qualified to participate in the auction. Such an applicant could instead submit (1) audited financial statements from the three most recent fiscal years and (2) a letter of interest from a qualified bank stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder.<sup>10</sup>

4. Additionally, all Auction 904 participants are required to submit financial statements that have been audited by an independent certified public accountant prior to being authorized to receive support.<sup>11</sup> As the Commission previously has explained, auditors “develop a detailed understanding of the internal controls environment and conduct more in-depth testing of individual transactions posted to the general ledger.”<sup>12</sup> The Commission gave experienced applicants that are not audited in the ordinary course of business the option of submitting one year of *unaudited* financial statements with their short-form applications if they certified they would provide *audited* financial statements within 180 days of being announced as winning bidders.<sup>13</sup> However, the Commission specifically declined to extend this option to applicants with fewer than two years of experience due to their lack of operating history and instead required that such applicants submit audited financial statements with their short-form applications.<sup>14</sup>

5. Entities interested in participating in Auction 904 were invited to file short-form applications between 12:00 noon EDT on July 1, 2020 and 6:00 p.m. EDT on July 15, 2020.<sup>15</sup> Five hundred and five

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<sup>7</sup> 47 CFR § 54.804(a)(7)(i)(A); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719-20, paras 73-74. Twice a year, in FCC Form 477: (1) all facilities-based providers of broadband connections to end users and facilities-based providers of terrestrial mobile wireless broadband must file broadband deployment and subscription data; (2) all incumbent or competitive local exchange carriers and providers of interconnected VoIP must file voice subscription data; and (3) all facilities-based mobile voice providers must file voice deployment and subscription data. 47 CFR §§ 1.7001, 1.7002; FCC, FCC Form 477: Local Telephone Competition and Broadband Reporting Instructions at 5-9, <http://transition.fcc.gov/form477/477inst.pdf>.

<sup>8</sup> *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6094, para. 51 (2020) (*Auction 904 Procedures Public Notice*).

<sup>9</sup> *FCC Form 183: Application to Participate in the Rural Digital Opportunity Fund Phase I Auction, Auction 904 Instructions*, at 12, available at <https://www.fcc.gov/file/18946/download>.

<sup>10</sup> 47 CFR § 54.804(a)(7)(ii); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720, para. 75.

<sup>11</sup> *Id.* at 722-23, para. 80; 47 CFR § 54.804(a)(7), (b)(4).

<sup>12</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5983, para. 101 (2016) (*Phase II Auction Order*).

<sup>13</sup> 47 CFR 54.804(a)(7)(i); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722-23, para. 80.

<sup>14</sup> *Id.*

<sup>15</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, para. 12.

applicants filed short-form applications.<sup>16</sup> A public notice announcing the status of the 505 short-form applications received for Auction 904 was released on September 1, 2020.<sup>17</sup> Applicants whose short-form applications were deemed incomplete were permitted to address identified deficiencies in their applications between September 1, 2020 and September 23, 2020.<sup>18</sup>

6. *Petitions for Waiver.* Thirty-eight applicants filed petitions for waiver of the Commission's decision to use data submitted as of June 2020 (collectively, FCC Form 477 petitions) to validate applicants' certification that they had been providing a voice and/or broadband service for at least two years. In some cases, these applicants discovered through the application process that they had not filed FCC Form 477s for one or more of the relevant filing periods as of June 17 date set out in the application instructions and then, in many cases, after June 17 submitted FCC Form 477s for the previously missing relevant filing periods. Accordingly, these applicants request that the Commission accept their late-filed FCC Form 477s as evidence of their operational experience in providing voice and/or broadband services.

7. The City of Farmington (NM) and Newport Utilities seek waivers of the requirement that an applicant "submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution" in order to demonstrate that it has operated an electric transmission or distribution service for at least two years.<sup>19</sup> These applicants explain that, because they have not requested or used funds from the Rural Utilities Service (RUS), National Rural Utilities Cooperative Finance Corporation (CFC), or CoBank, they are not able to submit the specific reports identified by the Commission.<sup>20</sup> Instead, they offer alternative documentation that they claim demonstrates their operating and financial capabilities.

8. Centre WISP Venture Company (Centre WISP) and Redbird Management Illinois LLC (Redbird) seek waiver of certain financial information requirements for Auction 904.<sup>21</sup> Centre WISP explains that it is unable to meet the requirement that applicants with greater than two years of experience that are not audited in the normal course of business must provide year-end 2018 unaudited financial

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<sup>16</sup> *Rural Digital Opportunity Fund Phase I Auction Status of Short-Form Applications to Participate in Auction 904; Corrections due September 23, 2020*, Public Notice, DA 20-960 (WCB/OEA/RBATF Sept. 1, 2020) (*Auction 904 Status Public Notice*).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 47 CFR § 54.804(a)(7)(i)(B); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, n.202. We note that Clarksville Connected Utilities also submitted a petition for waiver of the electric distribution network documentation requirements. Because we deny Clarksville's petition for waiver of the FCC Form 477 requirement below and find it not qualified to participate in Auction 904, we dismiss this additional petition as moot.

<sup>20</sup> The Commission explained that it would accept RUS Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the CFC Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; the CoBank Form 7; or the functional replacement of one of these reports. *See id.*

<sup>21</sup> We note that Brown Dog Networks, LLC and Worldwide Technologies, Inc. also filed petitions requesting waiver of the financial information requirements. Brown Dog provided partial unaudited financial statements and explained that it was unable to provide a letter of interest from its bank for COVID-19 related reasons. During the resubmission period, Brown Dog was informed of the deficiencies regarding its financial showing but failed to provide the additional requested documents. Further, Brown Dog has greater than two years of experience and would not need to provide a letter of interest under the Auction 904 requirements. Thus, we dismiss Brown Dog's petition for lack of specificity regarding the documentation for which it is seeking a waiver. Worldwide provided the requisite financial documentation and therefore did not need to file a petition for waiver. Thus, we dismiss Worldwide's petition as moot.

statements (or year-end 2019 if available) to demonstrate their financial status.<sup>22</sup> Centre WISP clarifies that, due to its acquisition in July 2019, it does not have access to the unaudited financials of the company for 2018 or the first half of 2019. Redbird seeks waiver of the requirement that applicants with fewer than two years of experience providing a voice, broadband, and/or electric transmission or distribution service submit three years of audited financial statements. Redbird explains that it is newly formed as of June 2020 and submitted certain bank statements that it claims indicate its financial fitness to participate in the auction.

9. Finally, Crocker Communications Inc. and MGW Networks, L.L.C. seek waiver of the Commission's determination that CAF Phase II auction (Auction 903) winning bidders that defaulted on all of their winning bids would be barred from participating in the Rural Digital Opportunity Fund.<sup>23</sup> Crocker and MGW allege that, after submitting winning bids for CAF Phase II support in Auction 903, circumstances beyond their control caused them to have to withdraw from their proposed projects, therefore requiring them to default on their winning bids. Both applicants claim that they were unaware that there could be additional penalties, beyond a forfeiture, imposed on them for defaulting on their entire Auction 903 awards. Further, they argue that barring them from participating in Auction 904 would reduce the number of participants in Auction 904 and disadvantage areas where there is little, if any, interest from other carriers to deploy robust broadband service.

## II. DISCUSSION

10. Generally, the Commission's rules may be waived for good cause shown.<sup>24</sup> Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.<sup>25</sup> We note that granting an applicant's petition for waiver does not necessarily mean that it is qualified to participate in Auction 904.<sup>26</sup> Our final decision about whether an applicant is qualified to bid in the auction will be based on each applicant's entire application and is announced in the *Qualified Bidders Public Notice* released today.<sup>27</sup>

11. *FCC Form 477 Petitions.* We deny 15 of the 38 FCC Form 477 petitions we received for waiving the Commission's requirements for Auction 904 because these applicants failed to submit FCC Form 477 filings for *any* of the three required periods by the June 17 submission date established for Auction 904.<sup>28</sup> Applicants have been on notice since the Commission released the *Rural Digital*

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<sup>22</sup> *Auction 904 Auction Procedures Public Notice*, 35 FCC Rcd at 6095, para. 54 and n.109.

<sup>23</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720-21, para. 77.

<sup>24</sup> 47 CFR § 1.3.

<sup>25</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), cert. denied, 93 S.Ct. 461 (1972)).

<sup>26</sup> A determination that an applicant is a qualified bidder is not determinative of an applicant's qualifications to receive Rural Digital Opportunity Fund support. Under the Commission's two-phased auction application process, after the close of the auction, a qualified bidder that wins one or more bids must submit a long-form application and meet various other requirements that are fully explained in the *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6163-6178, paras. 286-320.

<sup>27</sup> See *386 Applicants Qualified to Bid in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34; WC Docket Nos.19-126, 10-90, Public Notice, DA 20-1187 (RBATF/OEA/WCB Oct. 13, 2020).

<sup>28</sup> We deny petitions filed by Atherton Fiber; Clarksville Connected Utilities; GoGig, Inc.; Integrated Path Communications, LLC; Inyo Networks, Inc.; Mansfield Community Fiber; New Visions Communications Inc.; Personal Network Computing Inc.; PCM Industries, LLC; Planet Networks, Inc.; Rio Broadband, LLC; SkyRider Communications LLC; Southern Fiber Worx, LLC; Treasure State Internet & Telegraph; and World Network International Services Inc. (WNIS). We note that WNIS also submitted petitions for waiver of the letter of interest requirement and waiver of certain network disclosures. Because we deny WNIS's petition for waiver of the FCC

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*Opportunity Fund Order* in January that FCC Form 477 filings would be used to provide evidence of an applicant's operational experience.<sup>29</sup> Applicants therefore had approximately five months to rectify the total failure to make any of the required FCC Form 477 filings. The Commission adopted this submission date for Auction 904 applications so that the Commission's application review system would be able to verify that the FCC Registration Numbers provided by the applicant were in fact used to file FCC Form 477 data for the relevant filing periods. Thus, failure to provide any of the required FCC Form 477 filings (initially due on March 8, 2019, September 3, 2019, and March 2, 2020) by the June 17 deadline established for Auction 904 rendered these applications incomplete on their face.<sup>30</sup>

12. What is more, we find that none of these applicants show good cause for their failure. Contrary to arguments of some of these applicants, the requirement that companies file FCC Form 477 has been in effect since 2005 and applies to all of those seeking waiver of this requirement.<sup>31</sup> Since 2005, the Commission has taken numerous actions related to the FCC Form 477 filing requirement, including adopting FCC Form 477 filing rules and associated orders, issuing filing instructions and public notices pertaining to filing due dates, releasing enforcement advisories, and taking enforcement action for failure to make FCC Form 477 filings.<sup>32</sup> Thus, there can be no reasonable question concerning the existence or the application of the obligation. We conclude that the inability of these applicants to demonstrate even minimum compliance with the Commission's Form 477 deadline for Auction 904 indicates a lack of fitness to be qualified as bidders in the auction.

13. For the remaining 23 petitions, we review each to determine whether special circumstances warrant deviating from the requirement that FCC Form 477 data for all three of the required periods be timely filed with the Commission. Each of these applicants submitted at least one of the FCC Form 477 filings required to participate in Auction 904 prior to the June 17 submission date and all but one has since filed, and certified to the accuracy of, the required FCC Form 477 data demonstrating that the applicant has been providing a broadband service for at least two years. After reviewing these filings, we find that the FCC Form 477 submissions made by all but two of these applicants prior to the June 17 deadline were sufficient to establish the applicants' experience to participate in Auction 904. In these special circumstances, and given the unique purpose of the filings used to verify the required operational experience, we conclude that waiver of the deadline for these 21 applicants is appropriate.<sup>33</sup>

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Form 477 requirement and find it not qualified to participate in Auction 904, we dismiss these additional two petitions as moot.

<sup>29</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, para. 73. See also *Auction 904 Procedures Public Notice*, para. 51 (explaining that the "relevant FCC Form 477 filing periods include data as of December 31, 2019; June 30, 2019; and December 31, 2018").

<sup>30</sup> See e.g., *Form 477 Data As Of December 31, 2018 Are Due No Later Than March 8, 2019*, WC Docket No. 11-10, Public Notice, 34 FCC Rcd 135 (WCB 2019); *Form 477 Data As Of June 30, 2019 Are Due No Later Than September 3, 2019*, WC Docket No. 11-10, Public Notice, 34 FCC Rcd 7065 (OEA 2019).

<sup>31</sup> *Local Competition Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22345, para. 8 (2004); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, Public Notice, 20 FCC Rcd 10454 (WCB 2005).

<sup>32</sup> See, e.g., *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB - IHD 2015).

<sup>33</sup> We caution waiver applicants, however, that the requirement for demonstration of special circumstances to support a waiver request is "especially appropriate" in the context of filing deadlines. See *Network IP, LLC v. FCC*, 548 F.3d 116, 128 (D.C. Cir. 2008).

14. We also conclude that it will serve the public interest to grant the petitions filed by these 21 applicants.<sup>34</sup> The Commission noted when adopting the short-form application requirements that requiring applicants to provide evidence of FCC Form 477 filings was “an appropriate screening process to ensure serious participation, without being overly burdensome to applicants and recipients.”<sup>35</sup> Because these applicants have demonstrated that they have at least two years of operational experience, granting these waivers in the circumstances presented by each applicant will increase the likelihood of greater participation by verified, experienced applicants in the auction, thereby enhancing competition for our finite Rural Digital Opportunity Fund budget.<sup>36</sup>

15. Finally, we deny petitions filed by Hosted Backbone, LLC and Satview Broadband Ltd. (Satview). Hosted Backbone seeks waiver of the requirement to provide the requisite FCC Form 477 filings, noting that it has only been operational since July 2019. Though Hosted Backbone did have its December 2019 FCC Form 477 on file by the June 17 deadline, it is unable to produce the remaining two filings due to its lack of operational experience. As the Commission explained when adopting the requirements for Auction 904, “requiring that an entity to have operated a network for at least two years will give us sufficient assurance that an entity has the qualifications to maintain a network.”<sup>37</sup> Moreover, the Commission provided an alternative eligibility pathway for entities that could not meet this requirement,<sup>38</sup> however, Hosted Backbone chose not to avail itself of this eligibility pathway and instead seeks waiver of the FCC Form 477 requirement. Thus, we conclude that Hosted Backbone has failed to demonstrate special circumstances that would justify granting its FCC Form 477 waiver.

16. Staff review of Satview’s December 2019 FCC Form 477 filing—the only one of the three required filings it made prior to the June 17 deadline—indicated serious deficiencies and inconsistencies. For example, Satview reported serving only one census block in its December 2019 filing, even though other submissions to the Commission indicated that it served close to 200 census blocks, and Satview never explained the discrepancy. Additionally, Satview’s reported subscription trend line was inconsistent with that of an established company. Moreover, Satview only initiated its FCC Form 477 filings in the run-up to Auction 904, never having logged into the FCC Form 477 application system until June 2020, further exacerbating our concerns. We conclude, therefore, that the deficiencies in Satview’s December 2019 FCC Form 477 filing and other information provided to the staff by Satview make it impossible to verify during the resubmission period that Satview has at least two years of sufficient operating experience. Moreover, Satview’s waiver request did not provide any justification that would enable us to find good cause for granting its waiver.

17. *Electric Distribution Network Operator Petitions.* We next grant petitions filed by the City of Farmington and Newport Utilities for waiver of the requirement that applicants that have operated only

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<sup>34</sup> We grant petitions filed by BerryCom LLC; Country Wireless, LLC; Flat Wireless, LLC; FSI, LLC; Futurum Communications Corp.; Fybercom; Kalona Cooperative Telephone Company; LTD Broadband LLC; Midstates Data Transport; Montana Internet Corporation; Net Ops Communications, LLC; Netafy Inc.; Northwoods Communication Technologies, LLC; Rowe Wireless Networks, LLC; San Bruno CityNet Services; SandyNet Rural Broadband; SkyNet Broadband, Inc.; ThinkBig Networks, LLC; Western Iowa Wireless; Worldwide Technologies, Inc.; and Zinnia Networks Inc.

<sup>35</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, para. 72.

<sup>36</sup> Our decision to permit these applicants to participate in the auction if they are otherwise deemed qualified does not in any way serve as a waiver of the Commission’s FCC Form 477 filing deadlines and does not preclude the Commission from initiating enforcement actions against parties that violate its FCC Form 477 filing requirements. Moreover, we remind applicants that they will be subject to additional reporting deadlines if they are authorized to receive Auction 904 support and non-compliance measures, including withholding of support, will be imposed if such filing deadlines are not met. *See, e.g.*, 47 CFR § 54.806.

<sup>37</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, n.201.

<sup>38</sup> *Id.* at 720, para. 75.

an electric transmission or distribution network submit qualified operating or financial reports. In the *Rural Digital Opportunity Fund Order*, the Commission listed several specific reports that it would deem acceptable for these types of applicants to demonstrate the appropriate operational and financial capabilities. The Commission also made clear that it also would accept “the functional replacement of one of these reports.”<sup>39</sup>

18. Both the City of Farmington and Newport Utilities offer alternative documentation to demonstrate their operational history and financial qualifications, including a transmission operator capabilities review from the North American Electric Reliability Corporation and three years of audited financial statements. After reviewing these alternative documents, we conclude that they sufficiently demonstrate that these applicants have the necessary operational and financial capabilities to participate in Auction 904. Because these applicants have not requested or used funds from the RUS, CFC, or CoBank and thus are not able to submit the specific reports highlighted by the Commission, special circumstances exist to grant waivers of the requirement that applicants that have operated only an electric distribution or transmission network submit certain qualified operating or financial reports.

19. *Financial Statement Petitions.* We also conclude that Centre WISP has demonstrated special circumstances that warrant deviating from the requirement that applicants with greater than two years of experience who are not audited in the ordinary course of business must submit fiscal year-end 2018 or 2019 (if available) unaudited financial statements. Centre WISP has a five-year history of providing broadband service and has submitted FCC Form 477 filings demonstrating its deployment data since June 2015. However, Centre WISP’s original owner sold the business to a third-party in 2017 and then reacquired it in July 2019 after the third-party experienced financial difficulties. Due to these transfers of control, Centre WISP does not currently have access to the year-end 2018 unaudited financial statements for the company or any financials for the first half of 2019. Instead, it provided unaudited financials for its operations from July 2019 through June 2020 and has committed to submitting audited financial statements if it becomes a winning bidder in Auction 904. After an extensive review of the more recent financial statements provided by Centre WISP, and considering its demonstrated history of successfully deploying broadband service and adherence to the Commission’s FCC Form 477 rules, we determine that deviating from strict adherence to our Auction 904 requirements is appropriate in these special circumstances regarding Centre WISP’s recent transactions. We also determine that grant of this waiver is in the public interest as it will increase participation in the auction by an experienced and otherwise qualified provider and potentially allow our limited universal service dollars to stretch even further. However, if Centre WISP is a winning bidder in Auction 904, we require it to provide the appropriate audited financial statements, per its certification and Commission rules; otherwise, it will be considered in default and subject to forfeiture.<sup>40</sup>

20. Conversely, we determine that Redbird has not demonstrated special circumstances justifying grant of its petition, and we decline to waive the requirement that an applicant with fewer than two years of experience submit three years of audited financial statements with its application. As the Commission explained, this requirement provides “a level of insight into the financial health of a potential Rural Digital Opportunity Fund auction bidder over a longer period of time [that] is a necessary prequalification to bid.”<sup>41</sup> The purpose of requiring such a showing from applicants was to “provide additional assurances to the Commission that the entities that intend to bid in the auction have experience operating

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<sup>39</sup> *Id.* at 719, n.202.

<sup>40</sup> 47 CFR § 54.804(b)(4); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114 (“A recipient 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 outlined above, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support”).

<sup>41</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720, para. 75.

networks.”<sup>42</sup> Redbird was founded only a few months ago and failed to provide any factual circumstances that warrant deviating from this requirement. Moreover, we determine that the alternative documentation provided by Redbird—a line of credit held by one of its shareholders and a letter from a financial institution—is insufficient to demonstrate that the company is financially qualified to participate in Auction 904.

21. *Auction 903 Defaulter Petitions.* Finally, consistent with precedent and the policies adopted by the Commission for Auction 904, we decline to grant petitions filed by Crocker Communications and MGW Networks for waiver of the rule that prohibits entities that defaulted on all of their Auction 903 obligations from participating in Auction 904. Both applicants have failed to establish special circumstances that would warrant waiver of the Commission’s eligibility rules.<sup>43</sup>

22. The Commission’s rules generally governing competitive bidding for universal service support clearly state that “a winning bidder that defaults, in addition to being liable for a default payment, shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding . . . .”<sup>44</sup> Consistent with this, in the *Rural Digital Opportunity Fund Order*, the Commission adopted a rule prohibiting Auction 903 participants that defaulted on their entire award from participating in the Rural Digital Opportunity Fund.<sup>45</sup> The Commission adopted its Auction 904 eligibility requirements so that the disbursement of funds would not be hindered by applicants with a known *complete* auction default history that “could have otherwise been productively used to increase broadband access to unserved or underserved areas.”<sup>46</sup> These eligibility rules for Auction 904 enforce the standard imported from Auction 903 that “failure to adhere to the established auction procedures [i]s disruptive to the integrity and efficiency of the auctions process.”<sup>47</sup> The Commission “expects all bidders to act in good faith and [takes] voluntary defaults very seriously.”<sup>48</sup>

23. Moreover, the waivers here do not serve the purposes of the rule or the public interest in ensuring against the disruptive potential of defaulting bidders. Indeed, the Commission knew that Crocker and MGW had fully defaulted on all of their bids when it adopted Auction 904 eligibility rules in January 2020.<sup>49</sup> The Commission concluded that barring such participants would reduce the risk of delaying the advancement of broadband offerings to locations that lack broadband service.<sup>50</sup> Crocker and

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<sup>42</sup> *Id.* at 719, para. 73.

<sup>43</sup> See generally *Johnson Order*, 35 FCC Rcd 6589.

<sup>44</sup> See 47 CFR § 1.21004(c); see generally *Rural Digital Opportunity Fund Order*, 35 FCC Rcd 686; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*Phase II Auction Order*).

<sup>45</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720-21, para. 77.

<sup>46</sup> *Notice of Apparent Liability for Forfeiture*, 34 FCC Rcd 10037, 10037, para. 1 (EB 2019) (*Crocker NAL*); *Notice of Apparent Liability for Forfeiture*, 34 FCC Rcd 9981, 9981, para. 1 (EB 2019) (*MGW NAL*).

<sup>47</sup> *Phase II Auction Order*, 31 FCC Rcd at 6001, para. 145.

<sup>48</sup> See e.g., *Connect America Fund Phase II Auction Support for 822 Winning Bids Ready to be Authorized; Bid Defaults Determined*, AU Docket No. 18-172, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2076, 2076-77 (WCB 2019).

<sup>49</sup> See *id.* at 2124-25, Attach. B (announcing Auction 903 defaulters that notified the Commission they would no longer be pursuing some or all of their winning bids, including full defaults by Fidelity Communications Company; Hanson Communications, Inc.; Johnson Telephone Company; MGW Networks, LLC; SyncWave, LLC; Total Highspeed, LLC; Townes Wireless, Inc.; and WPS); *Connect America Fund Phase II Auction Support for 1,122 Winning Bids Ready to be Authorized*, AU Docket No. 18-172, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 6223, 6285, Attach. B (WCB 2019) (announcing Crocker Communications, Inc. was in default for all winning bids).

<sup>50</sup> See *Crocker NAL*, 34 FCC Rcd at 10040-41, para. 12; *MGW NAL*, 34 FCC Rcd 9984-85, para. 12.



MGW have failed to demonstrate that a waiver of this requirement would nevertheless be consistent with the purpose of this requirement or with the public interest.

### III. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.131, 0.271, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.271, 0.291, 1.3, that this Order IS ADOPTED.

25. IT IS FURTHER ORDERED that the petitions for waiver of the FCC Form 477 requirements for Auction 904 filed by BerryCom LLC; Country Wireless, LLC; Flat Wireless, LLC; FSI, LLC; Futurum Communications Corp.; Fybercom; Kalona Cooperative Telephone Company; LTD Broadband LLC; Midstates Data Transport; Montana Internet Corporation; Net Ops Communications, LLC; Netafy Inc.; Northwoods Communication Technologies, LLC; Rowe Wireless Networks LLC; San Bruno CityNet Services; SandyNet Rural Broadband; SkyNet Broadband, Inc.; ThinkBig Networks, LLC; Western Iowa Wireless; Worldwide Technologies, Inc.; and Zinnia Networks Inc. ARE GRANTED as described herein.

26. IT IS FURTHER ORDERED that the petitions for waiver of the FCC Form 477 requirements for Auction 904 filed by Atherton Fiber; Clarksville Connected Utilities; GoGig, Inc.; Hosted Backbone, LLC; Integrated Path Communications, LLC; Inyo Networks, Inc.; Mansfield Community Fiber; New Visions Communications Inc.; Personal Network Computing Inc.; PCM Industries, LLC; Planet Networks, Inc.; Rio Broadband, LLC; Satview Broadband Ltd; SkyRider Communications LLC; Southern Fiber Worx, LLC; Treasure State Internet & Telegraph; and World Network International Services Inc. ARE DENIED as described herein.

27. IT IS FURTHER ORDERED that the petitions for waiver of the electric company documentation requirements for Auction 904 filed by the City of Farmington and Newport Utilities ARE GRANTED as described herein.

28. IT IS FURTHER ORDERED that the petition for waiver of the electric company documentation requirements for Auction 904 filed by Clarksville Connected Utilities, IS DISMISSED as described herein.

29. IT IS FURTHER ORDERED that the petition for waiver of the financial information requirements for Auction 904 filed by Centre WISP Venture Company, LLC, IS GRANTED as described herein.

30. IT IS FURTHER ORDERED that the petition for waiver of the financial information requirements for Auction 904 filed by Redbird Management Illinois LLC, IS DENIED as described herein.

31. IT IS FURTHER ORDERED that the petition for waiver of the financial information requirements for Auction 904 filed by Brown Dog Networks, LLC, IS DISMISSED as described herein.

32. IT IS FURTHER ORDERED that the petition for waiver of the financial information requirements for Auction 904 filed by Worldwide Technologies, Inc., IS DISMISSED as described herein.

33. IT IS FURTHER ORDERED that the petitions for waiver of the financial information requirements and network documentation requirements for Auction 904 filed by World Network International Services Inc., ARE DISMISSED as described herein.

34. IT IS FURTHER ORDERED that the petitions for waiver of the CAF Phase II defaulter requirements filed by Crocker Communications Inc. and MGW Networks, L.L.C., ARE DENIED as described herein.

35. 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 A. Monteith  
Chief  
Wireline Competition Bureau

Giulia McHenry  
Chief  
Office of Economics and Analytics

**Appendix A**  
**Petitions for Waiver of Auction 904 Short-Form Requirements**

<b>Applicant</b>	<b>FRN</b>	<b>Waiver Request Type</b>	<b>Disposition</b>
Atherton Fiber	0029707056	Form 477 filing requirement	Deny
BerryCom LLC	0026169045	Form 477 filing requirement	Grant
Brown Dog Networks, LLC	0009254095	Financial information requirements	Dismiss
Centre WISP Venture Company, LLC	0025132648	Financial information requirements	Grant
City of Farmington	0001609163	Electric distribution network documentation requirements	Grant
Clarksville Connected Utilities	0004551529	Form 477 filing requirement	Deny
Clarksville Connected Utilities	0004551529	Electric distribution network documentation requirements	Dismiss
Country Wireless, LLC	0017904020	Form 477 filing requirement	Grant
Crocker Communications Inc.	0016420713	CAF II defaulter	Deny
Flat Wireless, LLC	0017178567	Form 477 filing requirement	Grant
FSI, LLC	0010766228	Form 477 filing requirement	Grant
Futurum Communications Corp.	0010043339	Form 477 filing requirement	Grant
Fybercom	0023650807	Form 477 filing requirement	Grant
GoGig, Inc.	0026042788	Form 477 filing requirement	Deny
Hosted Backbone, LLC	0026899609	Form 477 filing requirement	Deny
Integrated Path Communications, LLC	0017727637	Form 477 filing requirement	Deny
Inyo Networks, Inc.	0019556604	Form 477 filing requirement	Deny
Kalona Telephone Cooperative Company	0002591154	Form 477 filing requirement	Grant
LTD Broadband LLC	0020926788	Form 477 filing requirement	Grant
Mansfield Community Fiber	0026586990	Form 477 filing requirement	Deny
MGW Networks, L.L.C.	0019225366	CAF II defaulter	Deny
Midstates Data Transport	0026476333	Form 477 filing requirement	Grant
Montana Internet Corporation	0011562717	Form 477 filing requirement	Grant
Net Ops Communications, LLC	0025394529	Form 477 filing requirement	Grant
New Visions Communications Inc.	0027144112	Form 477 filing requirement	Deny
Netafy Inc	0028531754	Form 477 filing requirement	Grant
Newport Utilities	0027152438	Electric distribution network documentation requirements	Grant
Northwoods Communication Technologies, LLC	0023523582	Form 477 filing requirement	Grant
Personal Network Computing Inc.	0018500694	Form 477 filing requirement	Deny
PCM Industries, LLC	0027758192	Form 477 filing requirement	Deny
Planet Networks, Inc.	0016128977	Form 477 filing requirement	Deny
Redbird Management Illinois LLC	0029746187	Financial information requirements	Deny
Rio Broadband, LLC	0029544624	Form 477 filing requirement	Deny
Rowe Wireless Networks, LLC	0019944198	Form 477 filing requirement	Grant
San Bruno CityNet Services	0009009069	Form 477 filing requirement	Grant
SandyNet Rural Broadband	0004119376	Form 477 filing requirement	Grant
Satview Broadband Ltd	0015817075	Form 477 filing requirement	Deny
SkyNet Broadband, Inc.	0024026304	Form 477 filing requirement	Grant
SkyRider Communications LLC	0021883640	Form 477 filing requirement	Deny
Southern Fiber Worx, LLC	0025412743	Form 477 filing requirement	Deny

ThinkBig Networks, LLC	0025915802	Form 477 filing requirement	Grant
Treasure State Internet & Telegraph	0023311889	Form 477 filing requirement	Deny
Western Iowa Wireless	0021977418	Form 477 filing requirement	Grant
World Network International Services Inc.	0027382803	Form 477 filing requirement	Deny
World Network International Services Inc.	0027382803	Financial information requirements	Dismiss
World Network International Services Inc.	0027382803	Network documentation requirements	Dismiss
Worldwide Technologies, Inc.	0018998831	Form 477 filing requirement	Grant
Worldwide Technologies, Inc.	0018998831	Financial information requirements	Dismiss
Zinnia Networks Inc	0018507392	Form 477 filing requirement	Grant