



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 21-1310

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RURAL DIGITAL OPPORTUNITY FUND SUPPORT FOR 1774 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 904 Long-Form Applicants Must Submit Letters of Credit and Bankruptcy Code Opinion Letters by November 3, 2021

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

By this Public Notice, the Rural Broadband Auctions Task Force (RBATF), Wireline Competition Bureau (WCB or Bureau), and the Office of Economics and Analytics (OEA) announce they are ready to authorize Rural Digital Opportunity Fund (Auction 904) support for the Auction 904 winning bids identified in Attachment A of this Public Notice. To be authorized to receive the total 10-year support amounts listed in Attachment A, the long-form applicants identified in that attachment are required to submit acceptable irrevocable stand-by letter(s) of credit and Bankruptcy Code opinion letter(s) from their legal counsel for each state where they have winning bids that are ready to be authorized in accordance with the instructions provided below by the applicable deadline – **prior to 6:00 p.m. ET on November 3, 2021.**

On December 7, 2020, we announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for Rural Digital Opportunity Fund support.¹ Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.² All winning bidders that retained their winning bids and all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.³ On February 18, 2021, we announced that there were 417 long-form applicants.⁴

We have reviewed the long-form applications associated with each of the winning bids identified in Attachment A. These applications were reviewed to determine whether they met all legal, financial, and technical requirements. Based on the representations and certifications in each relevant long-form

¹ *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 et al., Public Notice, 35 FCC Rcd 13888 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

² *Id.* at 13890-91, paras. 9-14.

³ *Id.* at 13892-93, para. 16.

⁴ *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, DA 21-170 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*).

application, we are prepared to authorize support, subject to submission of the required letter(s) of credit and Bankruptcy Code opinion letter(s), for each of the winning bids identified in Attachment A.⁵

The support amounts listed in Attachment A are subject to change. On July 26, 2021, the RBATF, WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns of existing service or questions of potential waste had been raised, and informed applicants that if they no longer wished to pursue support for a winning bid they should identify those census block groups with a brief explanation of their decision to default on their bid(s).⁶ The applicants listed in Attachment A either did not receive the letter, or received the letter and defaulted on areas in response to the letter, conducted re-evaluations of the areas in question, and/or represented that the census blocks identified currently do not have service comparable to that which will be offered pursuant to their obligations under this program. In a future public notice(s) we will announce which long-form applicants indicated that they are defaulting on some or all of their winning bid(s), as well as their adjusted support amounts.⁷ We also plan to address the petitions seeking waiver for the forfeiture associated with these defaults in a future release. Until these adjusted support amounts are announced, we encourage long-form applicants to obtain letters of credit that cover the full amount of support indicated in Attachment A.

Auction 904 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit appropriate documentation supporting such certification on or before June 7, 2021.⁸ On our own motion, we find good cause to waive this deadline for the applicants that were designated as ETCs by the Commission on June 8, 2021 for the reasons described in the first Auction 904 Ready to Authorize Public Notice.⁹

We also find good cause to waive this deadline for certain applicants that obtained state ETC designations.¹⁰ Generally, the Commission's rules may be waived for good cause shown.¹¹ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the

⁵ See 47 CFR § 54.315(b)(6)(v). We remind all applicants that an eligible telecommunications carrier (ETC) satisfies its obligation to "offer" qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund-related requirements. Accordingly, a broadband provider may satisfy its voice obligations by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options to satisfy this obligation. *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, para. 139 (2020) (*Auction 904 Procedures Public Notice*).

⁶ See "Letters to Long-Form Applicants about Identified Census Blocks", <https://www.fcc.gov/auction/904/releases>.

⁷ Accordingly, we note that we have included winning bids in Appendix A that are subject to default. In a future release, we will announce defaults and will further adjust support amounts to reflect where bidders have elected to not pursue support.

⁸ 47 CFR § 54.804(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; see also *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 727-28, para. 92 (2020) (*Rural Digital Opportunity Fund Order*).

⁹ *Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to Be Authorized*, AU Docket No. 20-34 et al., DA 21-909, at 2 & n.9 (WCB/OEA July 26, 2021). See also *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*; WC Docket Nos. 09-197, 10-90, Order, DA 21-663 (WCB June 8, 2021).

¹⁰ Requests from other long-form applicants seeking waiver of the ETC deadline remain pending and will be addressed in future releases.

¹¹ 47 CFR § 1.3.

general rule, and (2) such deviation will serve the public interest.¹² 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 long-form applicant.¹³ The Commission has explained that it would presume such good faith efforts when the petitioner submitted its petition to the relevant authority within 30 days of the release of the *Auction 904 Closing Public Notice*, i.e., by January 6, 2021.¹⁴ In the Connect America Phase II auction, we granted petitions for waiver for applicants that filed outside the 30-day window after finding that the applicant “acted diligently in attempting to obtain its ETC designation prior to the deadline,” that a delay did not “rise to the level of lack of good faith that should result in[the applicant’s] default,” and that “late-filing of [the] ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers.”¹⁵ In contrast, we have found a lack of good-faith pursuit of ETC designation where (1) an applicant had provided no explanation or defense of its failure to timely submit its ETC application to its respective state commission, (2) an applicant relied on a specific corporate strategy or business consideration to delay its submission, or (3) an applicant filed its ETC designation petition a few days before the ETC deadline and “failed to provide a compelling rationale” for the delay.¹⁶

Windstream Services, LLC and Windstream Communications, LLC (collectively, Windstream) sought waiver of the June 7 ETC documentation deadline for its long-form applicants in 11 different states.¹⁷ We note that Windstream has not yet received ETC designation in four of these states; as such we defer consideration of its waiver regarding those states at this time.¹⁸ With regard to its ETC designations in Iowa, Kentucky, Mississippi, Missouri, and Ohio, Windstream was able to secure its designation in each of these five states and submit the required documentation to the Commission prior to the June 7 deadline.¹⁹ Thus, we dismiss as moot Windstream’s request for waiver with regard to those five states.

¹² 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)).

¹³ *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, 6002, para. 152 (2016); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81.

¹⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81; *Auction 904 Closing Public Notice*, 36 FCC Rcd 13888.

¹⁵ See, e.g., *Connect America Fund Phase II Auction Support for 2,121 Winning Bids Ready to Be Authorized*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 12384, 12385-86 (WCB/OEA 2019); *Connect America Fund Phase II Auction Support for 611 Winning Bids Ready to be Authorized*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 4648, 4649 (WCB/OEA 2019).

¹⁶ See *Rural Digital Opportunity Fund Auction (Auction 904)*, *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908, at 3-4, paras. 8-16 (WCB/OEA July 26, 2021) (*RDOF ETC Deadline Waiver Order*).

¹⁷ Petition of Windstream Services, LLC and Windstream Communications, LLC for Waiver of ETC Designation Deadline, AU Docket No. 20-34 (filed June 1, 2021) (Windstream Petition).

¹⁸ Windstream has not yet provided documentation of ETC designation in Oklahoma and Pennsylvania. Additionally, Windstream has petitioned the Commission for ETC designation in Florida and New York. See Petition of Windstream Communications, LLC for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed June 7, 2021).

¹⁹ See Iowa Utilities Board, Docket No. ETA-2021-0010, *Order Granting Eligible Telecommunications Carrier Designation and Denying Waiver* (June 4, 2021); Kentucky Public Service Commission, Case No. 2021-00169, *Order* (rel. June 7, 2021); Mississippi Public Service Commission, Docket No. 2021-UA-053, *Order* (June 3, 2021); Missouri Public Service Commission, File No. TA-2021-0354, *Order Granting Designation as an Eligible*

(continued....)

We also address Windstream's petition with respect to its ETC designations in Alabama and Texas.²⁰ Even though Windstream did not file its ETC petitions in Alabama and Texas within the 30-day time-frame for the presumption of good faith to apply, we nonetheless find good cause to grant its petition for waiver regarding the ETC documentation deadline for these two states.

We conclude that Windstream demonstrated special circumstances that warrant deviation from the Commission's June 7, 2021 deadline. Windstream explains that, following release of the *Auction 904 Closing Public Notice*, it conducted a "data-intensive task of analyzing which specific Census blocks are served by the ILEC entities in the Windstream corporate family—which already had ETC designations—and which are served by Windstream Communications or which were hybrid blocks requiring service from multiple entities" in order to determine where it needed to file ETC designation applications.²¹ After it completed this process in late February, Windstream began filing the necessary applications.²² With regard specifically to Alabama, Windstream explains that it filed its application on April 15 and completed the forms required by the Alabama Public Service Commission (PSC), and received no additional questions or requests.²³ However, the Alabama PSC did not publish notice of Windstream's application until June 10, in which it required interested parties to submit comments by July 1.²⁴ No comments were received regarding the ETC application, and the Alabama PSC designated Windstream as an ETC on August 16.²⁵ In Texas, Windstream explains that it initially filed its designation application on April 15, but that, on May 17, the Public Utility Commission of Texas (Texas PUC) requested that Windstream amend and refile its application.²⁶ Windstream did so on June 3, and the Texas PUC designated Windstream as an ETC on June 17.²⁷ In both cases, Windstream filed its ETC applications almost two months prior to the ETC designation deadline, faced delays in the process due to circumstances outside its control, and was able to obtain ETC designations while Commission staff was still actively reviewing its applications.

Moreover, based on the totality of the circumstances, we find that waiver of the deadline here would serve the public interest. Windstream has shown that it made a good-faith effort to obtain its ETC designations, and the circumstances surrounding its petition are not similar to those where the Bureau has previously found a lack of good faith.²⁸ We find the public interest is served by moving forward with authorizing support for applicants that acted in good faith through the application process and obtained their ETC designations soon after the deadline, rather than delaying the provision of voice and broadband service to these areas by defaulting long-form applicants that are otherwise ready to authorize.

Telecommunications Carrier (June 2, 2021); Ohio Public Utilities Commission, Case No 21-454-TP-UNC, *Finding and Order* (June 2, 2021).

²⁰ Windstream Petition at 3. These ETC designations cover the areas awarded in Alabama to Windstream Alabama, LLC, and the areas in Texas awarded to Valor Telecommunications of Texas, LLC.

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 5.

²⁴ See Alabama Public Service Commission, Order Approving Eligible Telecommunications Carrier Designation for Windstream Communications, LLC, Docket No. 25408 (rel. Aug. 16, 2021), available at <https://www.pscpublicaccess.alabama.gov/pscpublicaccess/ViewFile.aspx?Id=8ba2a476-be62-4a4c-a41d-072c83f2ab88>.

²⁵ *Id.*

²⁶ Windstream Petition at 3.

²⁷ See Public Utility Commission of Texas, Notice of Approval, Docket No. 52030 (rel. June 17, 2021), available at https://interchange.puc.texas.gov/Documents/52030_11_1134527.PDF.

²⁸ See, e.g., *RDOF ETC Deadline Waiver Denial Order*, at 3-4, paras. 8-16.

Commission staff is reviewing information that is submitted with long-form applications on a rolling basis. Accordingly, a long-form applicant that is not included in this Public Notice may be included in a future public notice once Commission staff finalizes review of the long-form application.

Pursuant to section 54.804(b)(6)(v) of the Commission's rules, the long-form applicants identified in Attachment A that may be authorized to receive Rural Digital Opportunity Fund auction support must submit irrevocable stand-by letters of credit, 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*,²⁹ by a bank that is acceptable to the Commission by **6:00 p.m. ET on November 3, 2021**.³⁰ **Prior to submitting their letters of credit, we encourage long-form applicants to view and share with their issuing banks the letter of credit resources available on USAC's website: <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/>.**

A separate letter of credit must be submitted for each state where the long-form applicant has winning bids that are ready to be authorized, in an amount equal to at least the first year of support in the state.³¹ The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain milestones, as described in more detail in section 54.804(c)(1) of the Commission's rules.³²

In addition, a long-form applicant is required to provide with the letter of credit an opinion letter from outside legal counsel clearly stating, 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.³³

By future public notice, we will authorize support for specific winning bids for which all requirements, including submission of the letter of credit and opinion letter, have been met.

Details concerning the next steps are set forth below.

Instructions for Submission of Letter of Credit and Opinion Letter

Long-form applicants identified in Attachment A of this Public Notice must submit letters of credit and Bankruptcy Code opinion letters for each state where they have winning bids identified in Attachment A. The minimum amount of the first letter of credit for each state is determined by adding up the first year of support listed in Attachment A for each winning bid in the state. Each letter of credit and opinion letter submitted to the Universal Service Administrative Company (USAC) must reference the relevant study area code as listed in Attachment A.

A long-form applicant should:

- Submit the hard copy of the letter of credit and opinion letter to USAC by **6:00 p.m. ET on November 3, 2021**,³⁴ at the following address: Universal Service Administrative

²⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

³⁰ The Commission's rules list specific requirements for a bank to be acceptable to the Commission to issue the letter of credit. Those requirements vary for United States banks and non-U.S. banks. See 47 CFR § 54.804(c)(2); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

³¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, paras. 107-08.

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

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

³⁴ On our own motion, we find good cause to waive this deadline for price cap carriers that are included in Attachment A for the states where they have elected to receive a seventh year of Connect America Cost Model-

Company (USAC), High Cost Program, Rural Digital Opportunity Fund LOC, Attn: Stephen Snowman, 700 12th Street, NW, Suite 900, Washington, DC 20005;

- **Submit an electronic copy of its original letter of credit and opinion letter to hcinfo@usac.org and OGC-LOC@usac.org by the deadline to ensure that they are timely filed.** Note: 1) the electronic copies should be scanned versions of the hard copies mailed to USAC, which should be signed and include Annex A, B, & C, as shown in the model letter of credit,³⁵ 2) electronic copies are used for the purpose of determining the timeliness of submissions, 3) thus, USAC will only review the mailed, hard copies of the letters of credit and opinion letters, not the electronic copies;
- Expect to receive feedback from USAC on letters of credit within approximately 10 days of USAC's receipt of the hard copies;
- Avoid sending additional documents until the applicant has received feedback from USAC. If an applicant notices an error in its letter of credit or bankruptcy opinion letter prior to receiving feedback from USAC, do not send USAC a revised copy of the relevant document. Instead, applicants should wait to receive feedback from USAC and then make their corrections to the version of the document they send back to USAC that also incorporates any USAC feedback.

A copy of the letter of credit and opinion letter must also be submitted in the FCC Auction System by the applicable deadline—**prior to 6:00 p.m. ET on November 3, 2021**. An applicant must provide this required information in two attachments. The letter of credit attachment should be uploaded using the “Letter of Credit” attachment type, and the opinion letter attachment should be uploaded using the “Letter of Credit Opinion Letter” attachment type. Each attachment must be uploaded within the applicant's long-form application to each relevant winning bid identified in Attachment A of this Public Notice. Such attachments will be treated as confidential trade secrets and/or commercial information and withheld from routine public inspection.³⁶ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.³⁷

based support. See *Wireline Competition Bureau Authorizes all Eligible Price Cap Carriers to Receive a Seventh Year of Connect America Fund Phase II Model-Based Support*, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12933, 12935-38 Attach. A (WCB 2020) (providing a list of the states where price cap carriers have been authorized to receive a seventh year of model-based support). These price cap carriers may instead submit the relevant documents prior to **6:00 pm ET on Wednesday, December 15, 2021**. We conclude that special circumstances warrant deviation from the 10-business day deadline for these price cap carriers because they “will continue to receive support at [their] model-based levels through 2021, with Rural Digital Opportunity Fund support levels commencing in January 2022” if they are authorized prior to 2022. *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 742, para. 130. We conclude it serves the public interest to permit these price cap carriers to submit their letter(s) of credit and bankruptcy opinion letters at a later date so that they do not have to incur costs related to maintaining a letter of credit while waiting for their support to commence next year.

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

³⁶ *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13899, para. 28. If a request for public inspection under section 0.461 is made for the long-form applicant's letter of credit or opinion letter, the long-form applicant will have an opportunity to object to disclosure and justify the continued confidential treatment of the information. 47 CFR §§ 0.459, 0.461.

³⁷ 47 CFR § 0.459.

Any long-form applicant identified in Attachment A that fails to file the required documents³⁸ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on November 3, 2021** – will be in default on such bid(s) and subject to forfeiture.³⁹

Further Information Contact:**Technical Support**

Electronic Filing
Auction Application System

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**Office of Media Relations**

Anne Veigle, (202) 418-0506

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

Ian Forbes
Lauren Garry
Heidi Lankau
Stephen Wang
(202) 418-7400
Auction904@fcc.gov

Universal Service Administrative Company

Stephen Snowman
(202) 414-2725

Auction 904 Information

General Auction Information, Process, and
Procedures

**Office of Economics and Analytics,
Auctions Division**

(717) 338-2868

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force

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

**Office of Economics and Analytics,
Auctions Division**

(202) 418-0660

³⁸ 47 CFR § 54.804(b)(6)(v).

³⁹ *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 (2020).

Small Businesses

Additional information for small and disadvantaged businesses

Office of Communications Business

Opportunities

(202) 418-0990

<http://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

fcc504@fcc.gov

FCC Internet Sites

<http://www.fcc.gov>

<https://www.fcc.gov/auction/904>

This Public Notice contains the following Attachments:

Attachment A: Ready to Authorize Long-Form Applicants and Winning Bids

-FCC-