

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 20, 2021**

**Released: October 20, 2021**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), in coordination with the Rural Broadband Auctions Task Force (RBATF) and the Office of Economics and Analytics (OEA), addresses two petitions seeking waiver of Rural Digital Opportunity Fund Phase I auction (Auction 904) long-form requirements. First, we partially deny a petition submitted by LTD Broadband LLC<sup>1</sup> for waiver of the June 7, 2021 deadline requiring each Auction 904 long-form applicant to demonstrate, with appropriate documentation, that it has been designated as an eligible telecommunications carrier (ETC) in each of the geographic areas for which it seeks to be authorized for Auction 904 support.<sup>2</sup> Second, we deny a request filed by long-form applicant NW Fiber, LLC for waiver of the January 29, 2021 deadline requiring each Auction 904 long-form applicant to complete and submit its long-form application.<sup>3</sup>

**I. BACKGROUND**

2. In the *Rural Digital Opportunity Fund Order*, the Commission adopted long-form application requirements for applicants to submit extensive information detailing their respective qualifications to receive Auction 904 support.<sup>4</sup> In doing so, the Commission concluded that such an approach would “best serve the Commission’s ability to determine whether the applicants are ultimately eligible for Rural Digital Opportunity Support authorization funding, providing a fair and efficient review process.”<sup>5</sup> As part of the long-form review process, applicants are required to complete and submit a long-form application (Form 683), provide detailed technical information regarding their proposed deployments, obtain a letter of credit (LOC) commitment letter from an eligible bank, and secure ETC designations

<sup>1</sup> See Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 7, 2021) (LTD Petition). As explained below, LTD sought waiver of the deadline for its ETC designations in eight states; below, we address LTD’s waiver with regard to three of these states. We note that we have already denied LTD’s Petition with regard to three states—California, Kansas, and Oklahoma. See *Rural Digital Opportunity Fund*, DA 21-908, Order (rel. July 26, 2021). LTD filed a petition for reconsideration of this decision with respect to California. See Petition for Partial Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket No. 19-126 (filed Aug. 25, 2021). We defer our decision on the merits of LTD’s waiver in the remaining two states for future consideration.

<sup>2</sup> *Rural Digital Opportunity Fund; Connect America Fund*, Report and Order, 35 FCC Rcd 686, 727-28, para. 92 (2020) (*Rural Digital Opportunity Fund Order*).

<sup>3</sup> See Petition for Waiver of Long-Form Filing Deadline of NW Fiber, LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Feb. 16, 2021).

<sup>4</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 725, para. 86.

<sup>5</sup> *Id.*

covering each of the geographic areas for which they sought to be authorized for support.<sup>6</sup> The Bureau, along with the RBATF and OEA, released a public notice on December 7, 2020, that identified Auction 904 winning bidders and established deadlines for long-form applicants to submit these materials.<sup>7</sup> The public notice required long-form applicants to submit Form 683 filings by January 29, 2021, LOC commitment letters and detailed technology and system design descriptions by February 15, 2021, and documentation of ETC designation(s) by June 7, 2021.<sup>8</sup>

3. Based on prior experience with the Rural Broadband Experiments and the CAF Phase II auction (Auction 903), the Commission also recognized that, in some cases, an applicant may face delays in meeting these requirements that necessitate seeking a waiver of the respective deadline.<sup>9</sup> With regard specifically to ETC designations, the Commission explained that an applicant could seek waiver of the ETC deadline if it anticipated that it would not be able to obtain the required designations within 180 days.<sup>10</sup> Additionally, the Commission noted that it would presume that an applicant acted in good faith in pursuing ETC designation if it filed its ETC application with the relevant state authority within 30 days of the release of the public notice identifying Auction 904 winning bidders.<sup>11</sup> As noted above, this public notice was released on December 7, 2020, effectuating a filing deadline of January 6, 2021 for applicants to avail themselves of this “good faith” presumption.<sup>12</sup>

4. *Requests for Waiver.* On June 7, LTD Broadband submitted requests for waiver of the requirement to demonstrate appropriate documentation of ETC designation in eight states.<sup>13</sup> We previously reached the merits on LTD’s request in California, Kansas, and Oklahoma.<sup>14</sup> For purposes of this Order, we focus solely on the portions of LTD’s request related to Iowa, Nebraska, and North Dakota, and we defer consideration of LTD’s request with respect to South Dakota and Texas.

5. With regard to Iowa, LTD explains that it already has a partial ETC designation in the state and thus “filed its ETC amendment on May 7, 2021.”<sup>15</sup> LTD claims that this filing was timely due to the fact that the Iowa Utilities Board (IUB) requires carriers to “provide 30 days’ notice before the Commission’s June 7 deadline of its intent to amend the ETC designation.”<sup>16</sup> However, LTD notes that on June 4, 2021—just three days before the Commission’s ETC documentation deadline—IUB requested additional information from the company and set a deadline to provide that information by early July.<sup>17</sup> In Nebraska, LTD explains that it filed its ETC application with the Nebraska Public Service Commission

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<sup>6</sup> *Id.* at 727-28, para. 92.

<sup>7</sup> *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced, FCC Form 683 Due January 29, 2021*, Public Notice, 35 FCC Rcd 13888 (2020) (*Auction 904 Closing PN*).

<sup>8</sup> *Id.* at 13891-95, para. 16-17. The deadline to submit LOC commitment letters and detailed technology and system design descriptions was later extended to February 16, 2021. *See Auction 904 Educational Materials Available; Detailed Technical Descriptions and Letter of Credit Commitment Letters Accepted Until February 16th*, Public Notice, 36 FCC Rcd 173 (2021).

<sup>9</sup> *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 726, para. 90 (“Filing deadlines will be strictly enforced, and bidders should not presume that they may obtain a waiver absent extraordinary circumstances”).

<sup>10</sup> *See id.* at 723, n.230.

<sup>11</sup> *Id.* at 723, para. 81.

<sup>12</sup> *See supra* para. 2.

<sup>13</sup> *See generally* LTD Petition.

<sup>14</sup> *See supra* n.1.

<sup>15</sup> LTD Petition at 4.

<sup>16</sup> *Id.*

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

(NPSC) on April 28, 2021.<sup>18</sup> LTD notes that NPSC staff advised it on May 5, 2021, that the state has a 30-day approval process for ETC applications; thus LTD believed its application was filed “in sufficient time to meet the June 7 deadline.”<sup>19</sup> However, LTD also explains that the NPSC set an application protest deadline for June 7, 2021—the same day as the Commission’s ETC documentation deadline—and thus it was unable to meet the Commission’s deadline.<sup>20</sup> In North Dakota, LTD claims that staff of the North Dakota Public Service Commission (NDPSC) reached out in January to inform LTD that the state had a 30-day ETC application approval process, similar to Nebraska.<sup>21</sup> LTD Broadband did not file its ETC application in North Dakota until May 7, 2021, expecting it to be approved by the Commission’s June 7 deadline; however, the NDPSC issued a “notice of opportunity for hearing” on June 9, 2021, permitting intervention requests until July 19, 2021.<sup>22</sup>

6. NW Fiber, LLC seeks waiver of the January 29, 2021 deadline for filing FCC Form 683.<sup>23</sup> NW Fiber contends that it was not aware of the long-form deadline because its consortium partner had handled all the bidding in Auction 904 and was responsible “for the consortium’s FCC filings and compliance.”<sup>24</sup> NW Fiber claims that it “waited for further instructions from the Commission” after its consortium partner “notified the agency during the Divide Winning Bids process in January that NW Fiber would be the service provider and high-cost support recipient for the fourteen census block groups won by the consortium.”<sup>25</sup> NW Fiber argues that it worked to meet the Commission’s requirement after February 8, when it learned of the January 29 filing deadline.<sup>26</sup>

## II. DISCUSSION

7. Generally, the Commission’s rules may be waived for good cause shown.<sup>27</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>28</sup>

8. *LTD Broadband Petition.* We deny LTD’s request to waive the deadline to submit documentation of its ETC designations in Iowa, Nebraska, and North Dakota. As an initial matter, we note that LTD did not file its ETC applications in any of these three states within the 30-day “good faith presumption” window. Further, we do not find that LTD has demonstrated good cause justifying waiver of the ETC documentation deadline.

9. The Commission has recognized that a waiver may be warranted in some cases when a state commission takes longer than 180 days to designate a provider as an ETC; however, this observation was predicated on the understanding that an applicant is diligently and expeditiously pursuing its ETC application but the relevant state authority has failed to act by the Commission’s deadline through no fault of the applicant. For example, the Commission has noted that a waiver of the deadline would be

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<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> NW Fiber Petition at 1.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3-4.

<sup>27</sup> 47 CFR § 1.3.

<sup>28</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)).

appropriate if the applicant “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.”<sup>29</sup>

10. LTD explains that it did not file its ETC designation application in Nebraska until April 28 and in Iowa and North Dakota until May 7, approximately five months after the release of the Auction 904 Closing Public Notice.<sup>30</sup> LTD contends that it waited until those dates to file in these states due to its understanding that each state had a 30-day ETC approval process and that it therefore believed it would obtain ETC designation in all three states by the Commission’s June 7 deadline.<sup>31</sup> LTD offers no explanation for why it did not file in these states sooner, or why waiting until the last possible moment to file (even if its assumptions about a 30-day approval process were correct) was a choice warranting waiver.

11. As an initial matter, we note that the NPSC disputes LTD’s claim that it filed with the state on April 28, as well as LTD’s characterization of the state’s ETC designation process. Specifically, NPSC observes that LTD actually filed its ETC application with the state on May 3, not April 28 as the company contends.<sup>32</sup> NPSC staff also informed LTD on May 4 that it did not anticipate being able to approve the company’s application prior to the Commission’s June 7 deadline.<sup>33</sup> Moreover, NPSC explains that, while it “is required by regulations to provide a 30-day protest period for ETC applications, review of an ETC application generally is not completed within 30 days.”<sup>34</sup> Regarding LTD’s North Dakota application, NDPSC disagrees with LTD’s representations regarding the ETC designation process in North Dakota and disputes LTD’s claim that it conferred with NDPSC in advance of filing.<sup>35</sup>

12. We find that LTD has failed to provide a compelling rationale or demonstrate special circumstances that would warrant waiving the Commission’s June 7 deadline to provide documentation of its ETC designation in Iowa, Nebraska, and North Dakota. LTD offers no sufficient explanation for why it waited until five months after the release of the Auction 904 Closing Public Notice to make its filings in each state. As the NPSC explains, LTD fundamentally misunderstood the ETC designation process in Nebraska, including the fact that the state “reviews ETC applications thoroughly, through the use of discovery and often hearing.”<sup>36</sup> LTD appears to have similarly misinterpreted the ETC designation requirements in North Dakota<sup>37</sup> and provides the same reasoning for why it also waited until early May to file its ETC designation application in Iowa.<sup>38</sup> As the Commission explained in the *Rural Digital Opportunity Fund Order*, it is an applicant’s “sole responsibility to perform its due diligence research and

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<sup>29</sup> See *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13901, para. 37.

<sup>30</sup> LTD Petition at 4-5.

<sup>31</sup> *Id.*

<sup>32</sup> Letter from Cullen Robbins, Director, Communications and NUSF, Nebraska Public Service Commission, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34, et al., at 2 (filed Aug. 3, 2021) (NPSC Letter).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Fifth Supplement to Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126, at Decl. of Corey Hauer, para. 6 (filed Oct. 4, 2021) (LTD Fifth Supplement) (highlighting a draft filing prepared by NDPSC staff that “disagree[s] with LTD’s suggestion that [the PSC] advised LTD of a 30-day approval process for ETC applications in North Dakota” and that “[n]o staff member or NSPSC [sic] representative recalls speaking to LTD prior to receiving their ETC application on May 7, 2021. [O]ur normal period of time for a notice of opportunity to be issued in advance of its expiration is 45 days, which in and of itself makes LTD’s claim impossible”).

<sup>36</sup> NPSC Letter at 2.

<sup>37</sup> LTD Fifth Supplement at para. 6.

<sup>38</sup> LTD Petition at 4.

analysis before proceeding to participate in the Rural Digital Opportunity Fund auction.”<sup>39</sup> Thus, it was incumbent upon LTD, particularly as an experienced provider and Auction 903 participant, to understand the ETC designation rules in each of the states in which it sought such a designation. By misunderstanding the necessary procedures and waiting until early May to submit its filings—just one month before the Commission’s June 7 deadline—we find that LTD has not presented special circumstances that would justify granting its waiver with regard to its ETC designations in Iowa, Nebraska, and North Dakota.

13. Moreover, nothing prevented the company from filing its applications well in advance of May to ensure that it obtained the required ETC designations before the June 7 deadline. Indeed, several Auction 904 long-form applicants promptly sought ETC designation in Iowa, Nebraska, and North Dakota, received their designations in advance of the June 7 deadline, and have been deemed ready to be authorized to receive Rural Digital Opportunity Fund support.<sup>40</sup> LTD’s delay of five months, and the fact that it offers no compelling reason for this delay, demonstrate a lack of good cause to grant its waiver. As we have previously acknowledged, the purpose of the Commission’s deadline for securing ETC designation is to encourage applicants to act diligently in order to allow the Commission to move as quickly as possible toward disbursing critical universal service support. Every month of delay by LTD in seeking ETC designation amounts to another month of delay in satisfying that important public interest objective. Nor would granting such a waiver on these grounds satisfy the independent requirement that it serve the public interest. Such a self-imposed delay would be inconsistent with the goal of the ETC filing deadline established in this proceeding, which is to expedite the provision of needed broadband service to these rural communities. Consistent with the Commission’s direction in the *Rural Digital Opportunity Fund Order*, therefore, we find that LTD failed to engage in good faith efforts to pursue and obtain the required ETC designation in the states of Iowa, Nebraska, and North Dakota and thus deny its petition with regard to those states.<sup>41</sup>

14. *NW Fiber Waiver Petition.* We also deny NW Fiber’s petition seeking waiver of the Commission’s January 29 deadline for long-form applicants to submit their FCC Forms 683. NW Fiber argues that waiver of the deadline is warranted because it was not “very familiar with the details of Commission regulation and procedures” and was not aware of the January 29 deadline.<sup>42</sup> Since it learned of the missed deadline on February 8, NW Fiber claims that it “contacted the Commission, obtained the relevant Auction 904 documents and post-auction instructions, retained federal communications counsel, and worked long hours to compile the information needed to complete” its long-form application.<sup>43</sup>

15. We find that NW Fiber has not established special circumstances to warrant a waiver of the January 29 deadline.<sup>44</sup> It is well established that a lack of familiarity with or ignorance of the Commission’s rules and procedures does not constitute special circumstances that justify granting a

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<sup>39</sup> See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 717-18, para. 68.

<sup>40</sup> *Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to be Authorized*, AU Docket No. 20-34, et al., Public Notice, DA 21-909, at Attach. A (rel. July 26, 2021) (*First Auction 904 RTA PN*) (deeming BTC, Inc. in Iowa; Cox Nebraska Telecom LLC and Pinpoint Communications, Inc. in Nebraska; and BEK Communications Cooperative and Daktel Communications, LLC in North Dakota as ready to be authorized to receive Rural Digital Opportunity Fund support).

<sup>41</sup> *Rural Digital Opportunity Fund Order* at 727, n.260 (“In considering such waiver requests, we direct the Bureau to determine whether an entity engaged in good faith efforts to obtain an ETC designation”).

<sup>42</sup> NW Fiber Petition at 2.

<sup>43</sup> *Id.* at 2-3.

<sup>44</sup> See e.g., *Request for Waiver of Deadline for Filing Short-Form Application to Participate in Auction 904 (FCC Form 183)*, Order, 35 FCC Rcd 9273 (2020).

waiver.<sup>45</sup> As noted, it is an applicant's "sole responsibility to perform its due diligence research and analysis before proceeding to participate in the Rural Digital Opportunity Fund auction."<sup>46</sup> This responsibility includes understanding the requirements of the program in which it seeks to participate. Indeed, NW Fiber acknowledges that it "received via email the December 7, 2020 Public Notice announcing the close of Auction 904 and winning bidders but did not realize that it consisted primarily of the listing and description of Long Form filing requirements and other post-auction procedures."<sup>47</sup> Ignorance of the Commission's rules and processes does not excuse non-compliance with those procedures. Moreover, this was not just an oversight causing a brief delay in filing. Rather, NW Fiber seems to have willfully or recklessly ignored the long-form application requirements and due date, having acknowledged receipt of instructional communications from the Commission and apparently not reading them.

16. We also determine that granting NW Fiber's waiver would be inconsistent with the public interest. In its petition, NW Fiber contends that it has "learned a valuable lesson about the need to carefully review all potentially applicable Commission regulations and public notices" and that "[t]his can and will be corrected and avoided in the future."<sup>48</sup> However, since the filing of its petition, NW Fiber has continued to miss required deadlines and failed to complete the requirements of the program established by the Commission. Specifically, NW Fiber has been unable to secure a letter of credit commitment letter; failed to provide audited financial statements; and did not provide the necessary documentation to demonstrate that it obtained an ETC designation covering all of the areas in which it proposes to deploy. In none of these cases did NW Fiber seek waiver of these requirements. Instead, NW Fiber has argued that there is not a "valid need" for the letter of credit and audited financial requirements and "that only large businesses can readily meet" these requirements.<sup>49</sup> We disagree with NW Fiber's characterization of the Auction 904 requirements, as many small carriers have successfully met these requirements and been deemed ready to be authorized to receive Rural Digital Opportunity Fund support.<sup>50</sup> Moreover, the Commission first sought comment on these requirements in August 2019, well in advance of Auction 904.<sup>51</sup> If NW Fiber had concerns about the Auction 904 framework and the ability of smaller providers to meet these requirements, it had ample advance notice to participate in the proceeding establishing these rules or to refrain from participating in the auction altogether.

17. Finally, we do not believe that authorizing NW Fiber to receive a portion of our finite universal service support would be the best use of that funding. Given the company's continued failure to meet the Auction 904 long-form requirements and deadlines, we have significant concerns about its ability to fulfill the ongoing deployment and reporting requirements that all Auction 904 support

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<sup>45</sup> See *Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, 29 FCC Rcd 13998, 14010, para. 26 (2014) (*2014 Anda Commission Order*) ("simple ignorance of the TCPA or the Commission's attendant regulations is not grounds for waiver"); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

<sup>46</sup> See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 717-18, para. 68.

<sup>47</sup> NW Fiber Petition at 7.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> NW Fiber, LLC, Letter Regarding Financial Statements (filed June 6, 2021).

<sup>50</sup> See generally *First Auction 904 RTA PN*; [cite *Second RTA PN*].

<sup>51</sup> See *Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019).

recipients must satisfy.<sup>52</sup> We also note that there are alternative funding programs for broadband deployment that are readily available—numerous federal and state programs have been established or are being established to promote and fund broadband deployment—and many providers have expressed interest in serving the areas that were eligible for Auction 904.<sup>53</sup> Thus, we find that requiring Auction 904 waiver requests to meet a “high hurdle” is warranted,<sup>54</sup> particularly given that denying such requests could potentially make areas available for other federal and state broadband programs.

18. For all these reasons, we find that both LTD and NW Fiber fail to present special circumstances that would warrant a waiver of the Auction 904 long-form requirements, and we find that grant of such waivers would not serve the public interest. Consequently, we deny their waiver requests as described herein and will release a public notice in the near future finding LTD in default on its bids in Iowa, Nebraska, and North Dakota and NW Fiber in default on its bids in Washington.<sup>55</sup> Consistent with the Commission’s direction in the *Rural Digital Opportunity Fund Order*, applicants who default will be subject to the applicable forfeiture under the Commission’s rules, and defaults will be referred to the Enforcement Bureau.<sup>56</sup>

### III. ORDERING CLAUSES

19. 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.

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<sup>52</sup> NW Fiber informed Commission staff on October 8 that it had “shut down operations” effective June 30, 2021. However, we note that the company communicated with Commission staff on August 4—well after the June 30 date that the company claims to have shut down operations. This inconsistency further supports our concerns regarding the ability of the company to successfully meet the Commission’s requirements.

<sup>53</sup> See, e.g., Washington State Community Economic Revitalization Board, CERB Project Awards (Sept. 16, 2021) (announcing broadband deployment funding awards), available at <https://www.commerce.wa.gov/building-infrastructure/community-economic-revitalization-board/>; National Telecommunications and Information Administration, *Notice of Funding Opportunity: Tribal Broadband Connectivity Program*, NTIA-TBC-TBCPO-2021-2006948 (June 3, 2021), available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=333974>; Oklahoma HB 2946 (enacted May 24, 2021) (providing up to \$42 million in tax rebates for broadband deployment), available at <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb2946&Session=2100>; National Telecommunications and Information Administration, *Notice of Funding Opportunity: Broadband Infrastructure Program*, NTIABROADBAND-INFRASTRUCTURE-PROGRAM-21 (May 19, 2021), available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=333684>; Florida Broadband Deployment Act of 2021, CS/CS/HB 1239, (enacted May 7, 2021) (establishing the Broadband Opportunity Program to award grants for broadband deployment), available at <https://www.flsenate.gov/Session/Bill/2021/1239/?Tab=BillText>; Kansas HB 2201 (enacted May 3, 2021) (providing up to \$85 million in grants over ten years for broadband deployment) available at [http://www.kslegislature.org/li/b2021\\_22/measures/hb2201/](http://www.kslegislature.org/li/b2021_22/measures/hb2201/).

<sup>54</sup> See *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972); accord, *Melcher v. FCC*, 134 F.3d 1143, 1163-64 (D.C. Cir. 1998).

<sup>55</sup> A list of the census blocks subject to this order can be found at <https://www.fcc.gov/auction/904/releases>. See 47 CFR § 1.21004(a) (“A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid”).

<sup>56</sup> *Rural Digital Opportunity Fund Order* at 735-36, paras. 114-117 (“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”).

20. IT IS FURTHER ORDERED that the petition for waiver of the deadline for providing documentation of ETC designation for Auction 904 filed by LTD Broadband, LLC, IS DENIED IN PART as described herein.

21. IT IS FURTHER ORDERED that the petition for waiver of the deadline for submitting a long-form application, FCC Form 683, for Auction 904 filed by NW Fiber, LLC, IS DENIED as described herein.

22. 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