



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 21-1402

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RURAL DIGITAL OPPORTUNITY FUND SUPPORT FOR 2,081 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 904 Long-Form Applicants Must Submit Letters of Credit and Bankruptcy Code Opinion Letters by November 30, 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.

On our own motion, we grant a brief, limited waiver of the Commission's rules due to the upcoming federal observance of Veterans Day and Thanksgiving Day¹ and the observance of Native American Heritage Day on November 26 by some states.² We find good cause to waive section 54.804(b)(6)(v) due to the special circumstance of likely and potential bank and business closures during these and adjacent days.³ A limited waiver will serve the public interest by allowing the ready to authorize applicants in this Public Notice sufficient time to obtain and submit the required documents. 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 30, 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.⁴ Winning bidders had the opportunity to assign some or all of their winning

¹ See Office of Personal Management, 2021 Holiday Schedule, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2021>.

² See, e.g., Maryland Department of Budget and Management, State Holidays for the Year 2021, <https://dbm.maryland.gov/employees/Pages/StateHolidays2021.aspx>.

³ See 47 CFR § 54.804(b)(6)(v); *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, 6177, para. 319 (2020) (*Auction 904 Procedures Public Notice*) (“No later than 10 business days after the release of the public notice, a long-form applicant must obtain one irrevocable standby letter of credit at the value specified in section 54.804(c)(1) from a bank acceptable to the Commission as set forth in section 54.804(c)(2) for each state where the long-form applicant is seeking to be authorized.”).

⁴ *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*).

bids to related entities by December 22, 2020.⁵ 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, 2021.⁶ On February 18, 2021, we announced that there were 417 long-form applicants.⁷

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 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.⁸

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).⁹ 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, 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, and/or had only a de minimis number of blocks identified in the letter. 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.¹⁰ We also plan to address the petitions seeking waiver of 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, 2021.¹¹ On our own motion, we find good cause to waive this

⁵ *Id.* at 13890-91, paras. 9-14.

⁶ *Id.* at 13892-93, para. 16.

⁷ *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*).

⁸ See 47 CFR § 54.804(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. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6129, para. 139.

⁹ See “Letters to Long-Form Applicants about Identified Census Blocks”, <https://www.fcc.gov/auction/904/releases>.

¹⁰ 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.

¹¹ 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*).

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.¹²

We also find good cause to waive this deadline for certain applicants that obtained state ETC designations.¹³ Generally, the Commission's rules may be waived for good cause shown.¹⁴ 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.¹⁵ 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.¹⁶ 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, 2021.¹⁷ 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."¹⁸ 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.¹⁹

Midcontinent Communications. MidContinent Communications (MidCo) petitions for waiver as to the deadline for submitting its ETC designations in North Dakota, South Dakota, and Minnesota.²⁰ We find good cause to grant its petition for waiver regarding the ETC documentation deadline for two of these states. Specifically, we conclude that MidCo demonstrated special circumstances that warrant deviation from the Commission's June 7, 2021 deadline for MidCo's ETC documentation submissions in North Dakota and South Dakota. MidCo explains that, following release of the *Auction 904 Closing*

¹² *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).

¹³ Requests from other long-form applicants seeking waiver of the ETC deadline remain pending and will be addressed in future releases.

¹⁴ 47 CFR § 1.3.

¹⁵ 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)).

¹⁶ *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.

¹⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81; *Auction 904 Closing Public Notice*, 36 FCC Rcd 13888.

¹⁸ 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).

¹⁹ 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*).

²⁰ MidContinent Communications ETC Designation Certification Letter/Waiver Request at 1 (filed June 11, 2021).

Public Notice, it determined that it already had ETC status for all the census blocks it had won in Auction 904 in North Dakota and South Dakota.²¹ It therefore applied for ETC status in Minnesota and pursued that designation process,²² apparently planning to upload the documentation for all of its ETC status designations together. However, “MidCo intended to submit the certification[s] and documentation on time but it was not timely uploaded due to administrative oversight.”²³ Within a few days of the deadline, on June 11, 2021, MidCo began uploading its certification and documentation materials to the FCC’s application system, completing filing materials for North Dakota on June 14 and for South Dakota on June 15. MidCo argues that it is in the public interest to grant its waiver request as it will allow MidCo to bring broadband service to currently underserved areas.²⁴ In both cases, MidCo had the necessary ETC designation status to successfully complete its Auction 904 application before the deadline and was able to provide the documentation of its ETC designations within a week of the deadline while Commission staff was still actively reviewing its applications.

While we do not take lightly failure to comply with deadlines due to inadvertence, based on the totality of the circumstances, we find that waiver of the deadline here would serve the public interest. MidCo has shown that it made a good-faith effort to obtain its ETC designations and file its documentation, and the circumstances surrounding its petition are not similar to those where the Bureau has previously found a lack of good faith.²⁵ 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 completed documenting 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.

With regard to its ETC designation in Minnesota, MidCo was able to secure its designation from the Minnesota Public Utilities Commission on May 28, 2021, and submit the Order to the Commission on June 1, 2021, prior to the June 7 deadline.²⁶ Thus, we dismiss as moot MidCo’s request for waiver with regard to Minnesota.

TurboNet Technologies. TurboNet Technologies was able to secure its designation from the Missouri Public Service Commission on June 2, 2021, and submit the required ETC designation to the Commission prior to the deadline.²⁷ Thus, we dismiss as moot TurboNet Technologies’ request for waiver.²⁸

²¹ *See id.*

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ *See, e.g., RDOF ETC Deadline Waiver Denial Order*, at 3-4, paras. 8-16.

²⁶ *See* Minnesota Public Utilities Commission, Docket No. P-6186/SA-21-124, *In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners et al.*, (May 28, 2021).

²⁷ Missouri Public Service Commission, File No. DA-2021-0394, *Order Granting Designation as an Eligible Telecommunications Carrier* (June 2, 2021).

²⁸ Petition of TurboNet Technologies, Inc. for a Waiver of Section 54.315(b)(5) of the Commission’s Rules, WC Docket No. 09-197, OEA Docket No. 20-34, at 2 (filed May 17, 2021).

New Hampshire Electric Cooperative. As indicated previously, we find good cause to waive the ETC deadline for applicants that were designated by the Commission on June 8, 2021.²⁹ Thus, we dismiss as moot its request for waiver of the ETC deadline.³⁰

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*,³¹ by a bank that is acceptable to the Commission by **6:00 p.m. ET on November 30, 2021.**³² **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.³³ 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.³⁴

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.³⁵

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

²⁹ See *Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to be Authorized*; WC Docket Nos. 19-126, 10-90, AU Docket No. 20-34, Public Notice, DA 21-909, p. 2 n.9 (WCB/OEA July 26, 2021).

³⁰ *New Hampshire Electric Cooperative, Inc., Petition for Waiver*, WC Docket Nos. 09-197, 10-90, 19-126, AU Docket No. 20-34 (filed June 3, 2021).

³¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

³² 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.

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

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

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

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 30, 2021**, at the following address: Universal Service Administrative 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,³⁶ 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 30, 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.³⁷ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.³⁸

Any long-form applicant identified in Attachment A that fails to file the required documents³⁹ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on November 30, 2021** – will be in default on such bid(s) and subject to forfeiture.⁴⁰

³⁶ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

³⁷ *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.

³⁸ 47 CFR § 0.459.

³⁹ 47 CFR § 54.804(b)(6)(v).

⁴⁰ *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).

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**

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

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 Attachment:

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

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