



PUBLIC NOTICE

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RURAL DIGITAL OPPORTUNITY FUND SUPPORT AUTHORIZED FOR 2,008 WINNING BIDS

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

By this Public Notice, the Wireline Competition Bureau (WCB), in conjunction with the Rural Broadband Auctions Task Force (RBATF) and the Office of Economics and Analytics (OEA), authorize Rural Digital Opportunity Fund (Auction 904) support for the winning bids identified in Attachment A of this Public Notice.

For each of the winning bids identified in Attachment A, we have reviewed the long-form application information, including the letter(s) of credit and Bankruptcy Code opinion letter(s) from the long-form applicant's legal counsel. Based on the representations and certifications in the relevant long-form application, we authorize and obligate support for the winning bids listed in Attachment A.

We will also soon post a state-level summary under the "Results" tab on the Auction 904 webpage at <https://www.fcc.gov/auction/904/round-results>. The summary will provide for each long-form applicant included in this Public Notice: 1) the total support amount over 10 years and total number of locations that the long-form applicant is being authorized for in each state, 2) the total number of locations to which the authorized support recipient must offer the required voice and broadband services for each performance tier and latency in each state, and 3) the eligible census blocks included in the winning bids that are being authorized in each state.

Upon issuance of this Public Notice, the Universal Service Administrative Company (USAC) is authorized and directed to take the steps necessary to disburse from the Universal Service Fund the amounts identified in Attachment A to the long-form applicant associated with each study area specified in Attachment A. Payments will be to the account on file for the 498 ID associated with the study area code (SAC).¹ The support will be disbursed in 120 monthly payments, which will begin at the end of this month.

Below, we provide a summary of the various obligations of authorized Auction 904 support recipients. The list below is not a comprehensive list; thus, each support recipient is still responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules.

Summary of Obligations and Relevant Dates. **All** Auction 904 authorized long-form applicants are subject to the following deadlines:

¹ USAC assigned Mountain View Telephone Company (Mountain View) a different study area code than was announced in the public notice deeming Mountain View ready to authorize. Rural Digital Opportunity Fund Support for 484 Winning Bids Ready to Be Authorized, AU Docket No. 20-34, WC Docket Nos. 19-126; 10-90, Public Notice, DA 21-1255 at Attach. A (WCB Oct. 7, 2021). The revised study area code is reflected in Attachment A.

- **Annual reporting of location information.** Auction 904 support recipients are required to file location information with USAC through the High-Cost Universal Broadband (HUBB) portal.² This information includes geolocation data for each qualifying location to which they are offering the requisite service and the technology the Auction 904 support recipient is using to offer the requisite service to the qualifying locations.³ The requisite service is: at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas.⁴ The locations must be in the eligible census blocks covered by the long-form applicant's winning bids.⁵

The Commission has consistently encouraged carriers subject to defined deployment obligations and HUBB reporting obligations to report location data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.⁶ While reporting on a rolling basis is encouraged, the first deadline for **all** authorized long-form applicants to submit their location data is **March 1, 2022**.⁷ All support recipients must continue to report this information by March 1 in each year thereafter until all build-out requirements are satisfied. For more information about the HUBB portal and reporting location data, visit <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>.

- **Service milestones.** The service milestones for Auction 904 support recipients authorized by this Public Notice will be as follows:⁸

² 47 CFR §§ 54.316(a)(8), 54.806(a); *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 712, para. 56 (2020) (*Rural Digital Opportunity Fund Order*).

³ 47 CFR § 54.316(a)(8).

⁴ 47 CFR § 54.805; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 707, para. 42. See also *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 13667 (WCB/OEA 2020). 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*).

⁵ See also *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*Location Guidance Public Notice*).

⁶ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56 & n.156. A support recipient is deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. *Id.* at 711-12, para. 54

⁷ 47 CFR § 54.316(c)(1).

⁸ 47 CFR § 54.802; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55.

Percentage of Locations in a State	Service Milestone Deadline
40	December 31, 2024
60	December 31, 2025
80	December 31, 2026
100	December 31, 2027

WCB has been directed to publish revised location counts before the end of service milestone year six.⁹ In areas where the revised location total is higher than the number of Connect America Cost Model (CAM)-calculated locations, support recipients will be required to have begun commercially offering service to 100% of the CAM-calculated location count by the end of the sixth calendar year.¹⁰ Such support recipients must then offer service to 100% of the revised location count by the end of the eighth calendar year.¹¹ In areas where there are fewer locations than calculated by the CAM, support recipients must notify WCB no later than March 1 following the fifth year of deployment.¹² Upon confirmation by WCB, such a support recipient will be required to reach 100% of the new number by the end of the sixth calendar year.¹³ All support recipients must also offer service on reasonable request to locations built subsequently to the revised location count announced by WCB but prior to the end of service milestone year eight.¹⁴

By **March 1st** following each relevant service milestone, an Auction 904 support recipient must file a certification in the HUBB portal that it has met its service milestone and is meeting the requisite public interest obligations.¹⁵ Compliance with service milestones will be determined at the state level.¹⁶ The Commission will verify that the support recipient offers the required service to the total number of locations across all the eligible census blocks included in all of the support recipient's authorized bid areas (i.e., census block groups) in a state.¹⁷ If a support recipient is

⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709, para. 45.

¹⁰ *Id.* at 710, para. 49. Carriers for which the new location count exceeds the CAM locations within their area in each state by more than 35% will have the opportunity to seek additional support or relief from the Commission. *Id.*

¹¹ *Id.* Any such support recipient with increased deployment obligations may also seek to have its new location count adjusted to exclude additional locations, beyond the number identified by the CAM, that it determines before the end of year eight are ineligible (e.g., are not habitable), unreasonable to deploy to (e.g., if it would require a carrier to install new backhaul facilities or other major network upgrades solely to provide broadband to that location), or part of a development newly built after year six for which the cost and/or time to deploy before the end of the support term would be unreasonable. *Id.* at 710-11, para. 50.

¹² *Id.* at 711, para. 51. Carriers for which the new location count is less than 65% of the CAM locations within their area in each state shall have their support amount reduced on a pro rata basis by the number of reduced locations. *Id.* For example, if a carrier was authorized to receive \$3 million per year for 1,000 model locations in a state, but the WCB confirms that there are only 600 actual locations (fewer than 650 locations, or 65%), WCB would reduce that carrier's support to \$2,769,231 (or \$3,000,000 * (600/650)).

¹³ *Id.*

¹⁴ *Id.* at 711, para. 52. Support recipients are not obligated to offer service to newly built locations that do not request service, or to those with exclusive arrangements with other providers. *Id.* See also *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7070, paras. 59-72 (2014) (issuing declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders).

¹⁵ 47 CFR §§ 54.316(b)(5), 54.806(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56.

¹⁶ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

authorized to receive support in a state for different performance tier and latency combinations, it will be required to demonstrate that it is offering service meeting the relevant performance requirements to the required number of locations for each performance tier and latency combination within that state.¹⁸

If an ETC is unable to meet a service milestone, it must notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government as appropriate, no later than ten business days after the applicable deadline.¹⁹ If the ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it may also seek waiver of the service milestones.²⁰ The Commission has repeatedly warned support recipients, however, that it does not expect to routinely grant such waiver requests, emphasizing the difficulty of demonstrating good cause under circumstances where carriers fail to plan for contingencies that would prevent compliance with defined deployment obligations.²¹

- **Annual section 54.313 report.** Long-form applicants authorized in this Public Notice will be required to file their first annual section 54.313 report by **July 1, 2022** and each subsequent year until the year after their support terms have ended.²² Annual reports are filed with USAC. Support recipients must complete the FCC Form 481 on USAC's website.²³ They must also test and certify compliance with relevant performance requirements in section 54.805 of the Commission's rules on an annual basis.²⁴ WCB, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology have adopted a uniform framework to measure and report on the performance of ETCs' service.²⁵

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¹⁷ Winning bidders must use Rural Digital Opportunity Fund support to deploy service to locations in only the eligible census blocks, not to the other, ineligible census blocks within a census block group won in the auction.

¹⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

¹⁹ 47 CFR §§ 54.320(d), 54.806(c).

²⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15700, para. 154 (2014) (*December 2014 Connect America Order*).

²¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1394, para. 35 (2018) (explaining that "it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term"); *id.* at 1394, para. 33 & n.88 (explaining that "the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver") (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15660, para. 40 & n.93).

²² 47 CFR §§ 54.313, 54.806(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713, para. 57. Long-form applicants being authorized by this Public Notice that have also been designated as Lifeline only ETCs in census blocks that are not eligible for Auction 904 support must comply with all relevant reporting requirements for the Lifeline program in sections 54.416 and 54.422 of the Lifeline rules, including completing and submitting FCC Form 481 on USAC's website, if applicable. 47 CFR §§ 54.416, 54.422.

²³ See Universal Service Administrative Company, File FCC Form 481, <https://www.usac.org/high-cost/annual-requirements/file-fcc-form-481/>.

²⁴ 47 CFR §§ 54.313(a)(6), 54.805.

²⁵ *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*CAF Performance Measures Order*); 47 CFR § 54.313(a)(6). Further modifications were made to the performance measures requirements in subsequent reconsideration orders. See *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081 (WCB/WTB/OET 2019); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019).

- **Annual section 54.314 certification.** The first annual section 54.314 certification is due for the long-form applicants that are being authorized by this Public Notice by **October 1, 2022.**²⁶ Pursuant to section 54.314 of the Commission’s rules, if a support recipient was designated by a state, that state must certify on the support recipient’s behalf “that all federal high-cost support provided . . . within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”²⁷

If a support recipient was designated an ETC by the Federal Communications Commission, it must self-certify by filing a sworn affidavit executed by a corporate officer attesting to the relevant facts.²⁸ Certifications must be filed with both the Commission and USAC. ETCs may submit their certifications to USAC via its online filing system or by sending the appropriate certification sample letter (provided on USAC’s website) via email or U.S. mail.²⁹ Certifications must also be submitted to the Commission’s Office of the Secretary on or before **October 1st**. The submission should clearly reference WC Docket No. 14–58, ETC Annual Reports and Certifications.

We conclude there is good cause to waive on our own motion the general high-cost support program requirement that the relevant states (or the ETCs, if applicable) file a section 54.314 certification by October 1, 2021 with respect to the use of Auction 904 support for the applicants authorized in this Public Notice.³⁰ When the Commission adopted the certification requirement, it made clear that it expected the states and federally designated ETCs to undertake a rigorous examination of the factual information provided in the annual reports required pursuant to section 54.313 prior to issuance of the annual certification.³¹ In this instance, the Auction 904 applicants being authorized today did not receive Auction 904 support in 2020 and did not file an annual report with respect to those supported areas on July 1, 2021. Therefore, the state commissions and federally designated ETCs did not have the annual reporting information before them to provide an evidentiary basis for certifying that support will be used for its intended purposes in 2022 as required by the prospective section 54.314 certification due by October 1, 2021. State commissions (or the ETCs, if applicable) will be required to certify support received in 2021 was used for its intended purposes when the section 54.314 certification is filed by October 1, 2022 and will be required to certify that support received in 2022 was used for its intended purposes when the section 54.314 certification is filed by October 1, 2023. Accordingly, we conclude that the Commission, USAC, and the states will have assurance that Auction 904 support that is

²⁶ 47 CFR §§ 54.314, 54.806(a).

²⁷ 47 CFR § 54.314(a).

²⁸ 47 CFR § 54.314(b), (c)(2).

²⁹ See Universal Service Administrative Company, Certify Data with 54.314, <https://www.usac.org/high-cost/annual-requirements/certify-data-with-54-314/>.

³⁰ Generally, the Commission’s rules may be waived for good cause shown. 47 CFR § 1.3. 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. 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)). We previously waived the October 1 section 54.314 certification for Connect America Phase II auction long-form applicants that were authorized in 2019 and in 2020. *Connect America Fund Phase II Auction Support Authorized for 459 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3142, 3145-46 (WCB/OEA 2019); *Connect America Fund Phase II Auction Support Authorized for 1060 Winning Bids*, AU Docket NO. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 945, 948-949 (WCB/OEA 2020).

³¹ *Connect America Fund et al.*; Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17861, para. 612 (2011) *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

disbursed in 2021 and 2022 is used for its intended purposes even if the relevant states or federally designated ETCs did not file the section 54.314 certification on October 1, 2021.

All post-designation ETC-related filings must be submitted in good faith and include a certification that, to the best of the ETC's knowledge and belief, the information is complete and accurate.³² In addition, ETCs have an on-going duty to correct or amend information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data are inaccurate, incomplete, or contain errors or anomalies.³³ The failure to timely file information may result in penalties in the form of a reduction in support.³⁴

Defaults. On July 26, 2021, the RBATF, WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns had been raised about whether funding those areas would be the best use of our limited universal service funds.³⁵ Applicants were reminded that one of the Commission's core Universal Service Fund policy objectives is to avoid funding deployment in areas that already receive voice and broadband service from an unsubsidized provider, and that the Rural Digital Opportunity Fund was intended to focus on areas "wholly unserved by 25/3 Mbps" broadband service.³⁶ The letter recommended that applicants assess whether existing service in the identified areas would affect their ability to meet all program requirements and deployment milestones, and applicants were informed that if they no longer wished to pursue support for a winning bid they should identify those census block groups and provide a brief explanation of their decision to default on their bid(s).³⁷

In response to the letter, some applicants indicated that they would no longer pursue support for any of their winning bid(s), some applicants informed the Commission that they wished to default on both census blocks identified by the Commission and additional census blocks that were not raised in the letter, some applicants alerted the Commission of their intention to default only on areas identified in the letter, while others indicated their intent to continue to pursue support for all of their winning bid(s).

Today we take action on the filings of those applicants that continue to pursue support in some census blocks covered by their winning bid(s) but have opted to default only on the specific census blocks that were identified in our letter.³⁸ In the *Auction 904 Procedures PN*, bidders were instructed that in the event of an auction default the Commission would impose a forfeiture based on the criteria set forth in the forfeiture guidelines and that an auction default violation is defined as any form of a default with respect to the census block group (CBG), which includes defaults on specific census blocks in that CBG.³⁹ In the

³² See, e.g., FCC Form 481 Officer Certification (requiring an officer of a petitioning entity to certify that he/she is "an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate"); see also 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading").

³³ See *Location Guidance Public Notice*, 31 FCC Rcd at 12910.

³⁴ 47 CFR §§ 54.313(j), 54.314(d), 54.316(c), 54.320, 54.806.

³⁵ See "Letters to Long-Form Applicants about Identified Census Blocks," <https://www.fcc.gov/auction/904/releases>.

³⁶ *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 689, para. 5 (2020) (*Rural Digital Opportunity Fund Order*).

³⁷ See 47 CFR § 54.805 (RDOF public interest obligations); see generally, 47 USC § 254(e) (USF support must be used for its intended purpose).

³⁸ Any filing from an applicant that indicated an intent to default on areas not identified in our July 26, 2021 letter will be resolved in a future release.

instant circumstances, for those applicants defaulting on specific areas that were identified in our letter, we find good cause to waive our rules to the extent that they define a default with respect to any area covered by a winning bid as a default on that entire winning bid.⁴⁰ This waiver enables us to move forward with authorizing support for other census blocks within a census block group even though the winning bidder has chosen to default on certain census blocks covered by its winning bid(s) that we identified in our letter.

The Commission adopted CBGs containing one or more eligible census blocks as the minimum geographic area for bidding in Auction 904.⁴¹ As explained in the *Auction 904 Procedures Public Notice*, each bid in the auction represents an offer to serve all the locations in eligible census blocks within the specified CBG at the indicated performance tier and latency combination, for a total amount of annual support that is at least the implied support amount of the bid.⁴² A winning bid represents a binding obligation to serve all of the eligible census blocks covered by the bid.⁴³

In establishing its procedures for Auction 904, the Commission explained that a winning bidder is subject to forfeiture if it defaults on its winning bid or is disqualified for any reason prior to the authorization of support.⁴⁴ For Auction 904, a violation is defined as any form of default with respect to the winning bid for the minimum geographic unit eligible for bidding—i.e., a CBG.⁴⁵ Because these applicants have elected to default for support on some of the census blocks covered by their winning bid(s), absent a waiver, these applicants would be in default with respect to the *entire* area covered by their bid(s), including the census blocks in which the applicants have determined that they can still meet all of the Rural Digital Opportunity Fund program requirements and deployment milestones. Such an outcome would be contrary to the Commission’s policy goal of closing the digital divide.

On our own motion, considering the special circumstances presented in the instant case, we find good cause to waive the requirement that a default encompass the entire winning bid, and we authorize support on a per-census-block basis for the census blocks in which applicants listed in Attachment A are eligible.⁴⁶ Good cause justifying a waiver may be found “where particular facts would make strict

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³⁹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁴⁰ See 47 CFR § 1.21004(a) (“A winning bidder . . . that for any reason is not subsequently authorized to receive support has defaulted on its **bid**.”) (emphasis added). For Auction 904, the Commission defined a winning “bid” as covering at least one CBG, the minimum geographic area for bidding. See RDOF Technical Guide, Section 1. See also, *Auction 904 Procedures Public Notice* 35 FCC Rcd at 6086, 6178, paras. 22 and 322.

⁴¹ *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, 6086, para. 22 (2020) (*Auction 904 Procedures Public Notice*).

⁴² *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6152, para. 234.

⁴³ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6151, para. 231.

⁴⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6086, 6178, paras. 22 and 322. See 47 CFR § 1.21004(a) (“A winning bidder . . . that for any reason is not subsequently authorized to receive support has defaulted on its bid.”).

⁴⁵ As explained in the Auction 904 Technical Guide, a winning bid must cover at least one CBG, the minimum geographic area for bidding. See RDOF Technical Guide, Section 1. See also, *Auction 904 Procedures Public Notice* 35 FCC Rcd at 6086, 6178, paras. 22 and 322.

⁴⁶ 47 CFR § 1.3. We note that the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In determining whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission’s rules is appropriate if special circumstances warrant a deviation from the general rule and if such a deviation will serve the public interest. See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

compliance inconsistent with the public interest.”⁴⁷ Waiver of the Commission’s rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁴⁸ Given the post-auction concerns that were raised to the Commission about the continued eligibility of certain census blocks to receive support and which were supplemented with subsequent staff analysis,⁴⁹ we find that deviating from the rule to the extent that it otherwise requires a default to encompass the entire winning bid is warranted and the public interest will be served by authorizing support only in census blocks where no such concerns exist. This is not an instance of bidder remorse where a bidder initiated an effort to be excused from a winning bid. Instead, in response to concerns that were raised by outside parties about whether some of the census blocks covered by their winning bids should have been eligible for support, these bidders, at the Commission’s behest, undertook a subsequent evaluation of specific identified census blocks within their winning bids and determined that they would no longer pursue support in those areas. These efforts are commendable and are consistent with the Commission’s core Universal Service Fund policy objectives to avoid funding deployment in areas that already receive voice and broadband service from an unsubsidized provider, as well as the Commission’s stated intention that the Rural Digital Opportunity Fund should only fund areas that are “wholly unserved by 25/3 Mbps” broadband service.

Moreover, granting this waiver is not inconsistent with the purposes of the auction’s bidding procedures. For Auction 904, the minimum geographic area available for bidding did not reflect any fundamental feature of the support being offered but instead was a mechanism to facilitate bidding and the conduct of the auction. The Commission recognized that using census blocks as the minimum biddable unit would be administratively complicated and chose CBGs over larger areas as the minimum geographic area for bidding because commenters overwhelmingly supported them, arguing that the benefits of smaller minimum biddable units outweighed any increase in auction complexity.⁵⁰ Likewise, affording bidders the opportunity to place bids on packages of CBGs was provided as a bidding convenience and did not convey any advantage over bids made on individual CBGs.⁵¹ Accordingly, in addition to the applicants that are authorized today for all of the eligible CBs in their bids, we now authorize Rural Digital Opportunity Fund support for applicants listed in Attachment A that have indicated an intention to continue to pursue support in specific census blocks in the CBGs that were previously announced as ready to authorize.⁵²

⁴⁷ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴⁸ *Id.*

⁴⁹ *See, e.g.*, Letter from Michael Janson, Director, Rural Broadband Auctions Task Force, Kris Monteith, Chief, Wireline Competition Bureau, and Giulia McHenry, Chief, Office of Economics and Analytics to Chris Coleman, Plains Internet, LLC at 1, n.4 (Jul. 26, 2021), <https://www.fcc.gov/auction/904/releases> (follow “Letters to Long-Form Applicants about Identified Census Blocks” hyperlink under “Releases” and “Letters”; then follow “RDOF A904 LF Letter to Applicants - 0025360173 - Plains Internet LLC.docx” hyperlink) (outlining the process by which staff narrowed the list of “census blocks identified in the record to include only those in urban areas and that either overlap with data reporting measurements of fixed broadband of at least 25/3 Mbps or otherwise raise significant concerns about the best use of our limited universal service funds (e.g., business areas that already have commercial service, areas without serviceable locations)”).

⁵⁰ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6087, para. 23.

⁵¹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6153-54, paras. 236-40.

⁵² Three companies were partially authorized in prior authorization PNs (Citynet West Virginia, Cox, and Gibson Connect). Attachment A lists the affected bids for these three companies with reduced support amounts. Attachment A also lists companies that did not default on some CBs while retaining others within a CBG bid, and have completed the post-ready to authorize PN requirements. Going forward, authorization PNs will authorize support to all of a company’s bids that have been found ready to authorize (with reduced support amounts if some CBs are not being pursued), subject to submission of an acceptable letter of credit and bankruptcy opinion letter to USAC and adherence to program requirements.

With respect to the identified census blocks raised in our letter where the applicants have chosen not to pursue support, on our own motion, considering the special circumstances presented in the instant case, we find good cause to waive the forfeiture penalties that would be otherwise associated with the default on the specific census blocks that we identified in our letter. In granting this waiver of the forfeiture penalties for these defaults, we are mindful of the Commission's intent to maximize the value the American people receive for the universal service funds we spend. The Commission was explicit that Phase I of the Rural Digital Opportunity Fund would close the digital divide by targeting support to census blocks that were wholly unserved with broadband at speeds of 25/3 Mbps.⁵³ For this reason, when concerns were raised about whether specific areas should have been eligible for support, we encouraged applicants to exercise additional due diligence to determine if they could meet their public interest and performance obligations in those areas and whether they would continue to pursue support.⁵⁴ As the Commission explained when it adopted the rules for the program, its overarching goal was to ensure that finite universal service support was awarded in an efficient and cost-effective manner and did not go toward overbuilding areas that already have service.⁵⁵ Forfeiture penalties are generally intended to deter winning bidders from defaulting, but here defaults in these specified areas further the Commission's programmatic goals. Therefore, waiving the forfeiture penalties associated with those defaults serves the public interest.

National Security Supply Chain Proceeding. We remind winning bidders that all Auction 904 support recipients will be subject to the Commission's National Security Supply Chain proceeding, including the rule that "no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain."⁵⁶ The prohibition on using universal service funds applies "to upgrades and maintenance of existing equipment and services."⁵⁷ Additionally, federal subsidies made available through a program administered by the Commission that are "to be used for the capital expenditures necessary for the provision of advanced communications service" cannot be used to "purchase, rent, lease, or otherwise obtain any covered communications equipment or service; or maintain any covered communications equipment or service."⁵⁸ Moreover, the Commission will require ETCs to certify prior to receiving universal service funds that they do not use covered communications equipment or services.⁵⁹

Document Retention and Compliance Audits. Under section 54.320 of the Commission's rules, recipients of high-cost support must retain, for at least ten years, all records necessary to demonstrate to

⁵³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 690, para. 9.

⁵⁴ See "Letters to Long-Form Applicants about Identified Census Blocks," <https://www.fcc.gov/auction/904/releases>.

⁵⁵ *Id.* at 692, para. 13.

⁵⁶ 47 CFR § 54.9(a).

⁵⁷ *Protecting Against National Security Threats to the Communication Supply Chain through FCC Programs et al.*, WC Docket No. 18-89 et al., Report and Order et al., 34 FCC Rcd 11423, 11453, para. 77 (2019).

⁵⁸ 47 CFR § 54.10.

⁵⁹ *Id.* § 54.11. This certification requirement is not required "until one year after the date the Commission releases a Public Notice announcing the acceptance of applications for filing during the initial filing window of the [Secure and Trusted Communications Networks] Reimbursement Program." *Id.* § 54.11(c). See *Wireline Competition Bureau Announces Application Filing Window for the Secure and Trusted Communications Networks Reimbursement Program – Filing Window Opens October 29, 2021*, WC Docket No. 18-89, Public Notice, DA 21-1207 (WCB Sept. 27, 2021). "Covered communications equipment or services means any communications equipment or service that is on the Covered List" published pursuant to section 1.50002 of the Commission's rules. 47 CFR §§ 1.50002, 54.11(b).

auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the Commission (and any of its Bureaus or Offices) and to USAC, and to their respective auditors.⁶⁰ In addition, all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders, including verification of actual deployment to reported locations.⁶¹

Consequences for Non-Compliance. A support recipient is subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement or other service requirements, or fails to fulfill any other term or condition of Auction 904 support.⁶² These measures scale with the extent of non-compliance and include additional reporting, withholding of support, and support recovery.⁶³ A defaulting support recipient may also be subject to sanctions, including, but not limited to, potential revocation of ETC designations and suspension or debarment.⁶⁴

ETC Obligations. All Auction 904 support recipients were required to obtain a high-cost ETC designation prior to being authorized for Auction 904 support, and thus should be familiar with ETC requirements. For example, all high-cost ETCs commit to serving the entire area covered by an ETC designation and must offer Lifeline voice and broadband service throughout such area to qualifying low-income consumers pursuant to the Lifeline program rules.⁶⁵ While an Auction 904 support recipient was not required to obtain an ETC designation that was limited only to the eligible census blocks covered by its winning bids, it may only use its Auction 904 support to offer the required voice and broadband services to locations in eligible census blocks. If an Auction 904 support recipient has obtained an ETC designation that covers more area than the eligible census blocks in its winning bids, that support recipient has the obligation to provide Lifeline services throughout its designated service area, including in areas where it cannot use its Auction 904 support.⁶⁶ A high-cost ETC may also be subject to state-specific requirements imposed by the state that designated it as an ETC.

Discontinuance of Service and/or Relinquishment of Support. It is a violation of Commission rules to receive universal service support if that support is not used to provide, maintain, and upgrade voice and/or broadband facilities and services in eligible areas or if the recipient is no longer offering supported services. A carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Communications Act of 1934, as amended (the Communications Act).⁶⁷ An ETC that was designated by a state commission should follow the state commission's rules to seek relinquishment.⁶⁸ ETCs designated by the Commission must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service

⁶⁰ 47 CFR §§ 54.320(b), 54.806(b).

⁶¹ *Id.* §§ 54.320(a), 54.806(b).

⁶² *Id.* §§ 54.320, 54.804(c)(4), 54.806(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

⁶³ 47 CFR §§ 54.320, 54.804(c)(4), 54.806(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-701, paras. 142-57; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

⁶⁴ 47 CFR §§ 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 715-16, para. 63.

⁶⁵ *See* 47 CFR §§ 54.101(d), 54.405(a); 47 CFR Subpart E.

⁶⁶ For example, some Auction 904 support recipients may have obtained an ETC designation for an entire census block group(s) that was covered by its winning bid(s) but may only use its Auction 904 support to offer service to locations in the eligible census blocks within the census block group(s).

⁶⁷ 47 U.S.C. § 214(e)(4).

⁶⁸ 47 CFR § 54.205.

Support, using the Commission's Electronic Comment Filing System (ECFS).⁶⁹ WCB will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.⁷⁰ The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first obtain authorization to discontinue service pursuant to section 214(a) of the Communications Act and section 63.71 of the Commission's rules.⁷¹

Transfers of Control. ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications.⁷² Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.⁷³ Except where the Commission has forbore from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs. More information is available on the Commission's website at <http://www.fcc.gov/general/transfer-control>.

Price Cap Carrier Obligations. Price cap carriers that serve the census blocks where an Auction 904 long-form applicant that is not the incumbent price cap carrier has been authorized to receive support will no longer have a federal high-cost ETC obligation to continue to offer voice service in those census blocks pursuant to the forbearance granted by the Commission, unless they have elected to receive a seventh year of model-based support in these census blocks.⁷⁴ Price cap carriers electing to receive a seventh year of model-based support will maintain their obligation to provide both voice and broadband service throughout 2021 in the relevant census blocks.⁷⁵

Transitioning Legacy Support. WCB will soon update the list of census blocks where incumbent price cap carriers will continue to receive legacy support through the disaggregated legacy high-cost support mechanism by removing the eligible census blocks that are covered by the winning bids in Attachment A.⁷⁶ In the census blocks removed from the list, incumbent price cap carriers will no longer

⁶⁹ 47 U.S.C. § 214(e)(4); *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*; WC Docket Nos. 09-197; 10-90, Order, DA 21-663, at 10, para. 30 (WCB June 8, 2021).

⁷⁰ See, e.g., *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 21-660 (WCB June 8, 2021) (approving T-Mobile USA, Inc.'s request on behalf of T-Mobile Northeast LLC to relinquish its ETC designation in Virginia).

⁷¹ 47 U.S.C. § 214(a); 47 CFR § 63.71.

⁷² 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04.

⁷³ 47 CFR § 63.24.

⁷⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 743-45, paras. 133-39. On the first day of the month after an Auction 904 support recipient that is not the incumbent price cap carrier is authorized, the incumbent price cap carrier will be relieved of its federal high-cost ETC obligation to offer voice telephony in those specific census blocks to the extent the price cap carrier has not elected to receive a seventh year of model-based support in these census blocks. *Id.* at 745, para. 139. See also *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70; 47 CFR § 54.201(d)(3). We will remove these census blocks as applicable from the list of census blocks where price cap carriers continue to have the federal high-cost ETC obligation to provide voice service. The "List of Census Blocks Subject to Federal High-Cost Voice Obligations" is available at <https://www.fcc.gov/encyclopedia/price-cap-resources>.

⁷⁵ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 740-43, 745, paras. 126-132, 139. 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).

receive legacy support beginning on the first day of the next month.⁷⁷ Separately, price cap carriers that elected to receive a seventh year of model-based support will receive such support in the relevant census blocks through 2021.⁷⁸

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Auction 904 Information

General Auction Information, Process, and
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**Office of Economics and Analytics,
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(717) 338-2868

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force

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Additional information for small and
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⁷⁶ *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, 34 FCC Rcd 807, 809-12, paras. 9-16 (2019). Incumbent price cap carriers were also given the option of declining legacy support in each state that they serve. See *Wireline Competition Bureau Announces Universal Service Support Amounts Offered to Price Cap Carriers and Fixed Competitive Eligible Telecommunications Carriers after Authorization of Connect America Phase II Auction Support*, Public Notice, 34 FCC Rcd 1296 (WCB 2019).

⁷⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 738-40 (stating that price cap carriers will no longer receive legacy support for the census blocks where Auction 904 support is authorized beginning on the first day of the month after the Auction 904 support is authorized for those census blocks).

⁷⁸ *Id.* at 741, para. 129.

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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: Authorized Long-Form Applicants and Winning Bids

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