



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 21-624

Released: May 28, 2021

PROCEDURES AND OTHER REQUIREMENTS REGARDING APPLICATION FOR REVIEW FILED BY VIASAT IN RURAL DIGITAL OPPORTUNITY FUND PHASE I (AUCTION 904)

GN Docket No. 21-231

AU Docket No. 20-34

WC Docket No. 19-126

Oppositions Due: June 28, 2021

Replies to Oppositions Due: July 19, 2021

By this Public Notice, the Office of Economics and Analytics (OEA), in coordination with the Rural Broadband Auctions Task Force and the Wireline Competition Bureau (WCB), announces the procedures and other requirements governing the application for review filed by Viasat, Inc. (Viasat) regarding its participation in the Rural Digital Opportunity Fund Phase I auction (Auction 904). Among other things, we announce a new docket for the application for review and the adoption and release of a protective order in that docket. We also set **June 28, 2021** as the due date for oppositions and **July 19, 2021** as the due date for replies.

On January 29, 2021, Viasat submitted an application for review of an order on reconsideration adopted by the Auctions Division of OEA, in which OEA upheld the eligibility determinations for the performance tier and latency combinations that Viasat selected in its Auction 904 short-form application.¹ The application for review seeks to have the Commission reauction certain census block groups won in Auction 904 and block the disbursement of support in those areas until Viasat exhausts its administrative and judicial remedies. At the same time, Viasat submitted a request for confidential treatment of its application for review, including all exhibits thereto.

On May 27, 2021, WCB and OEA opened a new docket—GN Docket No. 21-231—for Viasat’s application for review and all related filings. That same day, WCB and OEA adopted and released a protective order to limit access to the confidential commercial information contained in Viasat’s application for review and any future filings in the docket.² Viasat has since filed a public version of its application for review in that docket.

Viasat timely filed its application for review, but Viasat’s application did not include a certificate of service indicating that Viasat had individually served its application on all parties to the proceeding as

¹ Application for Review of Viasat, Inc. (confidential version filed Jan. 29, 2021; public version filed May 28, 2021).

² *Viasat, Inc. Application for Review of Auction 904 Eligibility Determination*, Protective Order, DA 21-623 (OEA May 27, 2021).

required by section 1.115(f) of the Commission's rules.³ This requirement ensures that all interested parties are timely apprised of the application and the consequent deadline for filing an opposition.

Notwithstanding the certificate of service issue, we waive *sua sponte* the service requirement for Viasat's application for review. Section 1.3 provides that the Commission may waive its rules and requirements where there is "good cause shown" to do so.⁴ Good cause, in turn, may be found "where particular facts would make strict compliance inconsistent with the public interest."⁵ A waiver is therefore "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁶

While Viasat may have the ability and the means to serve its application for review on all required parties, we acknowledge that more than 500 entities filed short-form applications to bid in the auction, and more than 400 parties filed post-auction long-form applications for universal service support.⁷ Each such party may be interested in an application for review seeking a re-auction of census block groups. In a similar context where a proceeding involves twenty or more parties, the Commission allows a public notice to take the place of individualized service by the Commission.⁸ Accordingly, we find that it is in the public interest to relieve Viasat of this service obligation, and we provide notice to all interested parties via this Public Notice.

Under the Commission's rules, oppositions to an application for review must be filed within 15 days after the application for review is filed,⁹ and replies to oppositions shall be submitted within 10 days of the filing of the opposition,¹⁰ in this case June 14, 2021, and June 24, 2021, respectively.

We extend, however, the deadline for filing oppositions to Viasat's application for review to **June 28, 2021**, and the deadline for filing replies to those oppositions to **July 19, 2021**. Although the Commission does not routinely grant extensions of time,¹¹ we find that an extension is warranted in this instance because parties to this proceeding were not served by Viasat.¹² In addition, we find that an

³ 47 CFR § 1.115(f).

⁴ *Id.* § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

⁵ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶ *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

⁷ See *Rural Digital Opportunity Fund Phase I Auction; Status of Short-Form Applications to Participate in Auction 904; Corrections Due September 23, 2020*, Public Notice, 35 FCC Rcd 9875 (OEA/WCB 2020); *417 Long-Form Applicants In The Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, DA 21-170 (OEA/WCB 2021). The winning bidders in the auction that submitted long-form applications did not necessarily file short-form applications themselves. That is, a significant number of long-form applicants were members of consortia, which each filed a single short-form application on behalf of all its members.

⁸ 47 CFR § 1.47(a) ("In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents."); *id.* § 1.47(a), note to paragraph (a) ("The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.").

⁹ *Id.* § 1.115(d).

¹⁰ *Id.*

¹¹ *Id.* § 1.46(a).

extension of time will provide parties with sufficient time to comply with the procedures in the protective order that apply to the confidential information in Viasat's application, if they choose to access such information, and to review the issues raised therein. Furthermore, such an extension would allow for the development of a more complete record and would otherwise serve the public interest.¹³

We also find good cause to waive the service requirements in section 1.115(f) of the Commission's rules¹⁴ for oppositions and replies to the application for review, and instead allow parties to file such documents in the Electronic Comment Filing System (ECFS).¹⁵ Viasat's application for review presents special circumstances that warrant a deviation from the general service rule because the rule would unduly burden filers by requiring them to individually serve each party that has participated in the Rural Digital Opportunity Fund Phase I (Auction 904). A waiver of the service rule also will serve the public interest by reducing the burden of filing oppositions or replies, thereby encouraging participation by interested parties. In this limited circumstance, we find that the filing of oppositions and replies in ECFS will provide a suitable alternative to individualized service.

Thus, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended,¹⁶ and sections 0.21(m), 0.91(b), 0.271, 0.291, 1.3, and 1.46 of the Commission's rules,¹⁷ we waive the service requirement for Viasat's application for review, extend the deadline for filing oppositions and replies regarding Viasat's application for review, and waive the service rules for oppositions and replies in section 1.115(f) as set forth herein.

***Ex Parte* Presentations**

This proceeding is designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

(Continued from previous page) _____

¹² See *Applications of Fred R. Morton, Jr.*, Memorandum Opinion and Order, 5 FCC Rcd 606, 606, para. 1 n.1 (1990); *Comcast Cable Communications, LLC*, Order, 24 FCC Rcd 4902, 4902, para. 3 (MB 2009).

¹³ See *Requirements for Oppositions and Replies Regarding Application for Review in Mobility Fund Phase II Proceeding*, Public Notice, 33 FCC Rcd 6263, 6264 (ASAD/WTB 2018); *Requirements for Oppositions and Replies Regarding Application for Review in Mobility Fund Phase II Proceeding*, Public Notice, 33 FCC Rcd 3588 (WCB/WTB 2018); *Wireless Telecommunications Bureau Establishes Filing Deadline for Oppositions to Applications for Review and Replies in Data Roaming Proceeding*, Public Notice, 30 FCC Rcd 596, 596-97 (WTB 2015); *Petition of GCB Communications, Inc.*, Order, 27 FCC Rcd 10951, 10951, para. 3 (WCB 2012); *The Spectrum and Competition Policy Division of the Wireless Telecommunications Bureau Grants the Motion for Extension of Time Filed by the National Park Service to File an Opposition to the Application for Review Filed by Wireless Network Properties, LLC Regarding a Proposed Tower in Chattanooga, Tennessee*, Public Notice, 22 FCC Rcd 11960, 11960 (WTB 2007).

¹⁴ 47 CFR § 1.115(f).

¹⁵ To the extent an opposition or reply contains confidential or highly confidential information, paragraph 5 of the protective order sets forth specific procedures for the submission of the document to the Commission.

¹⁶ 47 U.S.C. § 154(i), (j).

¹⁷ 47 CFR §§ 0.21(m), 0.91(b), 0.271, 0.291, 1.3, 1.46.

¹⁸ 47 CFR §§ 1.1200(a), 1.1206.

Filing Procedures

Under the Commission's current procedures for the submission of filings and other documents, interested parties may file oppositions and replies on or before the dates indicated on the first page of this document. Submissions may be filed electronically through the Commission's ECFS or by filing paper copies. We strongly encourage interested parties to file electronically. **All filings regarding this application for review should include the docket number established for this purpose: GN 21-231.**

Electronic Filers: Documents may be filed electronically using the Internet by accessing the ECFS at <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the website for submitting documents. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, GN Docket No. 21-231. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.

Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Persons with Disabilities: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

For further information, please contact Mark Montano of the Office of Economics and Analytics, Auctions Division, at (202) 418-0660 or Mark.Montano@fcc.gov.

Action by the Chief, Auctions Division, Office of Economics and Analytics.

– FCC –

¹⁹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.