



PUBLIC NOTICE

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RURAL DIGITAL OPPORTUNITY FUND AUCTION SUPPORT FOR 1,460 WINNING BIDS READY TO BE AUTHORIZED

Listed Auction 904 Long-Form Applicants Must Submit Letters of Credit and Bankruptcy Code Opinion Letters by Monday, August 9, 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, Wireline Competition Bureau (Bureau), and the Office of Economics and Analytics announce they are ready to authorize Rural Digital Opportunity Fund (Auction 904) support for the Auction 904 winning bids identified in Attachment A of this Public Notice. To be authorized to receive the total 10-year support amounts listed in Attachment A, the long-form applicants identified in that attachment are required to submit acceptable irrevocable stand-by letter(s) of credit and Bankruptcy Code opinion letter(s) from their legal counsel for each state where they have winning bids that are ready to be authorized in accordance with the instructions provided below by the applicable deadline – **prior to 6:00 p.m. ET on Monday, August 9, 2021.**

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

We have reviewed the long-form applications associated with each of the winning bids identified in Attachment A.⁵ These applications were reviewed to determine whether they met all legal, financial,

¹ *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

² *Id.* at 13890-91, paras. 9-14.

³ *Id.* at 13892-93, para. 16.

⁴ *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, DA 21-170 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*). This includes long-form applicants that submitted their applications the night of the deadline and one applicant seeking waiver of the deadline. The list released with this Public Notice omitted the fact that Xiber LLC was assigned winning bids by Hawaii Dialogix Telecom, LLC. We will correct this omission in the list of long-form applicants that is posted on our website.

⁵ H&B Communications, Inc. was permitted to assign its winning bids to its affiliate H&B Cable Service, Inc. after it was verified that the assignment would not result in a transfer of control of the winning bids. *See Auction 904*

(continued....)

and technical requirements. Based on the representations and certifications in each relevant long-form application,⁶ 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.⁷

Auction 904 long-form applicants were required to certify that they are ETCs in all bid areas and to submit appropriate documentation supporting such certification on or before June 7, 2021.⁸ On our own motion, we find good cause to waive this deadline for the applicants that were designated as ETCs by the Commission on June 8, 2021.⁹

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Closing Public Notice, 35 FCC Rcd at 13898 (noting the prohibition on major modifications that result in a transfer of control).

⁶ We note that several long-form applicants deemed ready to authorize by this Public Notice have received letters noting that some areas covered by their winning bids may be served by fixed broadband service. See <https://www.fcc.gov/auction/904/releases> under the “Letters” tab. We note that that this Public Notice does not in itself authorize funding, and we encourage applicants to review the areas in question before submitting their final documentation. We find good cause to waive on our own motion the letter of credit and bankruptcy opinion letter submission deadline for such applicants to the extent they require additional time to review these areas before submitting their letter of credit and bankruptcy opinion letter. Instead, such applicants are required to submit the relevant documentation **prior to 6:00 p.m. ET on Friday, August 27, 2021**. 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 conclude that special circumstances warrant deviation from the deadline because the letter recipients may require additional time to conduct due diligence in the census blocks identified by the letter and determine how to proceed before obtaining their letter of credit. We also find that waiver would serve the public interest because allowing these applicants extra time to conduct this due diligence will further the Commission’s objective of targeting scarce universal service funds to where they are needed the most.

⁷ See 47 CFR § 54.315(b)(6)(v). We remind all applicants that an eligible telecommunications carrier (ETC) satisfies its obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund-related requirements. Accordingly, a broadband provider may satisfy its voice obligations by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options to satisfy this obligation. *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6129, para. 139 (2020) (*Auction 904 Procedures Public Notice*).

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

⁹ *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). 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. See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 317 (citing *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81). We conclude that special circumstances warrant deviation from the deadline because the Bureau released its ETC designation order one day after the deadline due to circumstances unrelated to the actions of the applicants designated by the order. We also find that waiver would serve the public interest because all the relevant applicants listed in Attachment A have since updated their applications to reflect their designation as ETCs, which means there has been no delay in the Commission’s long-form application review or in the deployment of broadband to the relevant areas.

Commission staff are 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 an irrevocable stand-by letter(s) 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*,¹⁰ by a bank that is acceptable to the Commission by **6:00 p.m. ET on Monday, August 9, 2021**.¹¹ **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.¹² 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.¹³

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.¹⁴

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. If an authorization public notice is released prior to October 1, 2021, we expect that, consistent with our Connect America Phase II auction precedent, in that public notice we will waive on our own motion the 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.¹⁵

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 a letter(s) of credit and opinion letter(s) 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

¹⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

¹¹ 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.

¹² *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, paras. 107-08.

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

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

¹⁵ 47 CFR § 54.314 (requiring a certification "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."); *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 2019).

support listed in Attachment A for each winning bid in the state. The letter(s) of credit and opinion letter(s) submitted to the Universal Service Administrative Company (USAC) must reference the relevant study area code as listed in Attachment A.

The hard copy of the letter of credit and opinion letter must be submitted to USAC by the applicable deadline **prior to 6:00 p.m. ET on Monday, August 9, 2021**,¹⁶ at the following address: Universal Service Administrative Company (USAC), High Cost Program, Rural Digital Opportunity Fund LOC, 700 12th Street, NW, Suite 900, Washington, DC 20005. These documents may be sent to the attention of Stephen Snowman. **Applicants should also submit an electronic copy of their original letter of credit and opinion letter to hcinfo@usac.org and OGC-LOC@usac.org by the deadline to ensure your letter is timely filed.**

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 Monday, August 9, 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.¹⁷ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.¹⁸

Any long-form applicant identified in Attachment A that fails to file the required documents¹⁹ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on Monday, August 9, 2021** – will be in default on such bid(s) and subject to forfeiture.²⁰

¹⁶ On our own motion, we find good cause to waive this deadline for price cap carriers that are included in Attachment A for the states where they are authorized to receive a seventh year of Connect America Cost Model-based support. These price cap carriers may instead submit the relevant documents prior to **6:00 pm ET on Wednesday, December 15, 2021**. We conclude that special circumstances warrant deviation from the 10 business day deadline for these price cap carriers because they “will continue to receive support at [their] model-based levels through 2021, with Rural Digital Opportunity Fund support levels commencing in January 2022” if they are authorized prior to 2022. *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 742, para. 130. We conclude it serves the public interest to permit these price cap carriers to submit their letter(s) of credit and bankruptcy opinion letters at a later date so that they do not have to incur costs related to maintaining a letter of credit while waiting for their support to commence next year. 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).

¹⁷ *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 attorney 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.

¹⁸ 47 CFR § 0.459.

¹⁹ 47 CFR § 54.804(b)(6)(v).

²⁰ *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**
Ian Forbes
Lauren Garry
Heidi Lankau
Stephen Wang
(202) 418-7400
Auction904@fcc.gov

Universal Service Administrative Company
Stephen Snowman
(202) 414-2725

Auction 904 Information

General Auction Information, Process, and
Procedures

**Office of Economics and Analytics,
Auctions Division**
(717) 338-2868

Post-Auction Rules, Policies, and Regulations

Rural Broadband Auctions Task Force
Michael Janson, (202) 418-0627
Kirk Burgee, (202) 418-1599
Audra Hale-Maddox, (202) 418-0794
Jonathan McCormack, (202) 418-1065

**Office of Economics and Analytics,
Auctions Division**
(202) 418-0660

Small Businesses

Additional information for small and
disadvantaged businesses

**Office of Communications Business
Opportunities**
(202) 418-0990
<http://www.fcc.gov/ocbo/>

Accessible Formats

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau
(202) 418-0530
fcc504@fcc.gov

FCC Internet Sites

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

This Public Notice contains the following Attachments:

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

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