



PUBLIC NOTICE

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DA 21-910
July 26, 2021

RURAL DIGITAL OPPORTUNITY FUND BID DEFAULTS ANNOUNCED

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, and the Office of Economics and Analytics announce that certain Rural Digital Opportunity Fund (Auction 904) winning bidders have notified us that they do not intend to pursue some or all of their winning bids. In addition, in some cases, winning bidders assigned their winning bids to related entities and those assignees have notified us that they do not intend to pursue some or all of the winning bids they have been assigned.¹ These winning bidders and assignees are identified in Attachment A.

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.² Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.³ All winning bidders that retained their winning bids and

¹ A winning bidder that assigns some or all its winning bids to a related entity must make a number of certifications when it submits the Divide Winning Bids portion of the FCC Form 683, including that it “will inform each entity of its filing obligation and cause each entity to submit a timely FCC Form 683 long-form application” and acknowledging that the winning bidder “will be at risk for default if any of the related entities do not submit a timely FCC Form 683 long-form application.” *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, 6165, para. 293 (2020) (*Auction 904 Procedures Public Notice*). The winning bidders that assigned their winning bids to related entities that filed long-form applications can be identified by reviewing the list of Auction 904 long-form applications released with *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, DA 21-170 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*). See “Long-Form Applicants Spreadsheet” under the Results tab of the Auction 904 website, <https://www.fcc.gov/auction/904/round-results>. Some of the related entities that were assigned winning bids have informed the Commission that they do not intend to pursue these winning bids and thus did not file a long-form application with respect to those bids. This group includes: 1) Pathfinders USA, Inc. which was assigned winning bids by Enduring Internet, 2) iZone Broadband which was assigned winning bids by NexTier Consortium, and 3) Consolidated Fiber, Inc.; Cooperative Connect, Inc.; Edisto Electric Cooperative, Inc.; Guernsey-Muskingum Electric Cooperative, Inc.; Licking Rural Electrification; Lynchess River Communications, Inc.; Palmetto Link LLC; Pierce Pepin Cooperative Services; Steuben County Rural Electric Membership Corporation; South Central Power Company; Shelby Fiber, LLC; Tennessee Valley Electric Cooperative; and Yazoo Valley Electric Power Association which were all assigned winning bids by the Rural Electric Cooperative Consortium.

² *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*).

³ *Id.* at 13890-91, paras. 9-14.

all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.⁴ On Feb. 18, 2021, we announced that there were 417 long-form applicants.⁵

In Attachment A, we list the relevant winning bids associated with winning bidders or their assignees that have notified us that they do not intend to pursue all or some of their winning bids in a state.⁶ A list of the eligible census blocks covered by these winning bids will be made available on the Auction 904 website under the “Results” tab, <https://www.fcc.gov/auction/904/round-results>.

Auction 904 support will not be authorized for these winning bids. We consider these winning bidders and assignees to be in default for these bids and subject to forfeiture.⁷ We will refer these defaulters to the Enforcement Bureau for further consideration.⁸ Because Commission staff are reviewing

⁴ *Id.* at 13892-93, para. 16.

⁵ *Auction 904 Long-Form Applicants Public Notice*, DA 21-170.

⁶ Attachment A does not include two census block groups that Charter Fiberlink – Missouri, LLC identified that it would not pursue but that are part of a package bid. It also does not include two census block groups that Time Warner Cable Information Services (Massachusetts) identified that include census blocks that the applicants do not intend to pursue. *See* Petition of Charter Communications, Inc.; Time Warner Cable Information Services (Kentucky), LLC; Time Warner Cable Information Services (Massachusetts), LLC; Charter Fiberlink CCO-MA, LLC; Charter Fiberlink – Missouri, LLC; Charter Fiberlink CCO, LLC; and Charter Fiberlink VA-CCO, LLC for Waiver of Rural Digital Opportunity Fund Deployment Requirements with Respect to Specific Census Blocks Groups and Locations in Kentucky, Massachusetts, Missouri, Virginia, and Wisconsin, WC Docket Nos. 19-126, 10-90, Petition for Waiver (filed May 11, 2021) (Charter Petition for Waiver); Petition of Charter Communications, Inc.; Time Warner Cable Information Services (Kentucky), LLC; Time Warner Cable Information Services (Massachusetts), LLC; Charter Fiberlink CCO-MA, LLC; Charter Fiberlink – Missouri, LLC; Charter Fiberlink CCO, LLC; and Charter Fiberlink VA-CCO, LLC for Waiver of Rural Digital Opportunity Fund Deployment Requirements with Respect to Specific Census Blocks Groups and Locations in Kentucky, Massachusetts, Missouri, Virginia, and Wisconsin, Amendment to Petition for Waiver, WC Docket Nos. 19-126, 10-90 (filed June 30, 2021) (Charter Petition for Waiver Amendment). The defaults in these four census blocks groups involve additional complications and we expect to address these in a future release.

⁷ *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 735-36, paras. 114-17 (2020) (*Rural Digital Opportunity Fund Order*).

⁸ Several applicants request waiver of the penalties and other non-compliance measures related to their decisions to default on certain of their winning bids. *See, e.g.*, Charter Petition for Waiver; Charter Petition for Waiver Amendment; Redzone Wireless, LLC Petition for Waiver, AU Docket No. 20-34 et al. (filed May 20, 2021) (Redzone Waiver Petition); Petition of One Ring Networks, Inc. for Waiver of Rural Digital Opportunity Fund Deployment Requirements with Respect to Specific Census Block Groups and Locations in Maryland, WC Docket Nos. 19-126, 10-90 (filed June 7, 2021) (One Ring Waiver Petition). Charter and One Ring request that the Commission relieve them of the obligation to apply for support in certain census blocks groups that they do not intend to serve so that these census block groups can be removed from their long-form applications and for no support to be disbursed from the Universal Service Fund to support these winning bids. Charter Petition for Waiver at 16; One Ring Waiver Petition at 5. In the alternative, they seek to default without “incurring forfeitures or other penalties.” Charter Petition for Waiver at 16; One Ring Waiver Petition at 6. Redzone similarly requests waiver of sections 1.21004(c) and (d) of the Commission’s rules (47 CFR §§ 1.21004(c), (d)) to avoid forfeitures and non-compliance measures related to its decision to not pursue certain census block groups. Redzone Waiver Petition at 7.

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 do not find good cause to grant Charter and One Ring’s requests that they be relieved of their obligation to apply for support for the census block groups at issue without being subject to the Commission’s default penalty framework. The Commission emphasized that winning bids are binding and adopted a specific process whereby applicants that do not pursue some or all of their winning bids would be referred to the

(continued....)

information that is submitted with long-form applications on a rolling basis, we expect to announce additional defaults in future public notices.

A defaulter will be subject to a base forfeiture per violation of \$3,000.⁹ A violation is defined as any form of default with respect to the census block group. In other words, there shall be separate violations for each census block group assigned in a bid.¹⁰ So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to 15% of the bidder's total assigned support for the bid for the support term.¹¹ Notwithstanding this limitation, the total base forfeiture will also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.¹² In addition, any applicant that failed to submit the audited financial statements as required by the June 7, 2021 deadline

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Enforcement Bureau, and all applicants agreed to be subject to this framework as a condition of participating in Auction 904. 47 CFR § 1.21004(a) ("A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid."); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 114-17; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321. Accordingly, regardless of the professed reason the applicant does not pursue its winning bids, we are not convinced that such a subjective decision presents special circumstances that warrant deviation from the framework adopted specifically for this purpose. For purposes of announcing defaults, we are unable to parse the post-auction business judgment of each defaulter and/or their current beliefs about existing or upcoming deployment, but instead we need to rely upon the objective, verifiable declaration of whether they intend to pursue a winning bid or not. Additionally, we are not persuaded that it would serve the public interest to subject some applicants to the default penalty framework and not others. We preserve auction integrity by subjecting all auction participants to the same participation rules. If participants in Auction 904 knew they had the option to not pursue some of their winning bids and avoid being subject to the default penalty framework, they may have adopted different bidding strategies. Moreover, the default penalty framework provides for the Commission to consider the "nature, circumstances, extent and gravity of the violations." *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, para. 115; *see also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, paras. 321-22; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note 2 to paragraph (b)(10). Accordingly, we deny these requests for waiver of the default penalty framework.

We do not at this time address the merits of Charter, One Ring, and Redzone's requests in their waiver petitions regarding the nature of the forfeiture and other non-compliance measures that may be imposed due to their decision to not pursue their winning bids. These requests are premature. All relevant facts, including the claimed public interest benefits that could result from the applicants' voluntary defaults, will be given due consideration in accordance with the default penalty framework adopted by the Commission. *See, e.g.*, Charter Waiver Petition at 17-21 (claiming that grant of its request would prevent overbuilding with universal service funds and that therefore forfeitures and other penalties should not be imposed for withdrawing these areas from its application for support); One Ring Waiver Petition at 6-7 (claiming that grant of its request would ensure that federal resources are effectively deployed and would avoid "unnecessary financial hardship to service providers"); Redzone Waiver Petition at (claiming that grant of its requested waiver would avoid penalizing a party that "voluntarily reported that its acceptance of support would be based on a third party's violation of reporting obligations and would waste taxpayer contributions").

⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

¹⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

¹¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

¹² *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note to paragraph (b)(10); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

will be subject to a base forfeiture of \$50,000, which will be subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines.¹³

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
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Auctions Division**
(202) 418-0660

¹³ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note to paragraph (b)(10).

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: Bids in Default

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