



# PUBLIC NOTICE

Federal Communications Commission  
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DA 22-1321

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## RURAL DIGITAL OPPORTUNITY FUND SUPPORT FOR 1,764 WINNING BIDS READY TO BE AUTHORIZED; BID DEFAULTS ANNOUNCED

Listed Auction 904 Long-Form Applicants Must Submit Letters of Credit and  
Bankruptcy Code Opinion Letters by January 9, 2023

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

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau), and the Office of Economics and Analytics (OEA) announce they are ready to authorize Rural Digital Opportunity Fund (Auction 904) support for the Auction 904 winning bids identified in Attachment A of this Public Notice.

Due to the upcoming federal observance of Christmas Day and New Year's Day, on our own motion we grant a limited waiver of the Commission's rules requiring the listed applicants to obtain and submit irrevocable standby letters of credit and Bankruptcy Code opinion letters within 10 business days.<sup>1</sup> On our own motion, we also grant a limited waiver of 47 CFR § 54.802(c)(1) and require the applicants with winning bids deemed ready to authorize by this Public Notice to meet the same service milestones as all Auction 904 support recipients that were authorized in 2022 if their winning bids are also ultimately authorized.<sup>2</sup>

We find good cause to grant a limited waiver of section 54.804(b)(6)(v) and 54.802(c)(1).<sup>3</sup> First, we find that special circumstances warrant deviation from these rules, including the likely and potential

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<sup>1</sup> 47 CFR § 54.804(b)(6)(v); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6177, para. 319 (2020) (*Auction 904 Procedures Public Notice*) (“No later than 10 business days after the release of the public notice, a long-form applicant must obtain one irrevocable standby letter of credit at the value specified in section 54.804(c)(1) from a bank acceptable to the Commission as set forth in section 54.804(c)(2) for each state where the long-form applicant is seeking to be authorized.”). See also Office of Personal Management, 2022 & 2023 Holiday Schedule, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2022>, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2023>.

<sup>2</sup> 47 CFR § 54.802(c)(1). See also *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 709, para. 45 (2020) (*Rural Digital Opportunity Fund Order*) (requiring “support recipients to commercially offer voice and broadband service to 40% of the [Connect America Cost Model]-calculated number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter”). Specifically, applicants with winning bids being deemed ready to authorize by this Public Notice, if authorized, would be required to serve 40% of the Connect America Cost Model-calculated locations covered by their winning bids in the relevant state by December 31, 2025; 60% by December 31, 2026; 80% by December 31, 2027; and 100% by December 31, 2028.

<sup>3</sup> 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

(continued...)

bank and business closures during the 10 business day period and adjacent days, and the fact that we are nearing completion of the long-form application review and have only a few applications left to address. A limited waiver will serve the public interest by allowing the ready to authorize applicants in this Public Notice sufficient time to obtain and submit the required documents. Moreover, requiring applicants authorized in early 2023 to meet the same service milestones as applicants authorized in 2022 will help reduce the administrative complexity of monitoring compliance by limiting the number of applicable service milestones and may also result in consumers receiving Auction 904-supported voice and broadband services sooner than if service milestones were pushed back a year.

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 January 9, 2023.**

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.<sup>4</sup> Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.<sup>5</sup> 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.<sup>6</sup> On February 18, 2021, we announced that there were 417 long-form applicants.<sup>7</sup>

We have reviewed the long-form applications associated with each of the winning bids identified in Attachment A. These applications were reviewed to determine whether they met all legal, financial, and technical requirements. Based on the representations and certifications in each relevant long-form application, we are prepared to authorize support, subject to submission of the required letter(s) of credit and Bankruptcy Code opinion letter(s), for each of the winning bids identified in Attachment A.<sup>8</sup>

On July 26, 2021, the Rural Broadband Auctions Task Force, WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns of existing service or questions of potential waste had been raised, and informed applicants that if they no longer wished to pursue support for a winning bid they should identify those census block groups with a brief explanation of their decision to default on their bid(s).<sup>9</sup> Support amounts for the winning bids identified in Attachment A

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(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)).

<sup>4</sup> *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*).

<sup>5</sup> *Id.* at 13890-91, paras. 9-14.

<sup>6</sup> *Id.* at 13892-93, para. 16.

<sup>7</sup> *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*).

<sup>8</sup> See 47 CFR § 54.804(b)(6)(v). We remind all applicants that an ETC satisfies its obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund-related requirements. Accordingly, a broadband provider may satisfy its voice obligations by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options to satisfy this obligation. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6129, para. 139.

<sup>9</sup> See “Letters to Long-Form Applicants about Identified Census Blocks,” <https://www.fcc.gov/auction/904/releases> (July 2021 Letter).

have been adjusted for applicants that defaulted on the identified census blocks by subtracting the support associated with those defaulted census blocks.<sup>10</sup>

*ETC Deadline Waivers.* Auction 904 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit appropriate documentation supporting such certification on or before June 7, 2021.<sup>11</sup> 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 for the reasons described in the *First RDOF Ready to Authorize Public Notice*.<sup>12</sup>

We also find good cause to waive this deadline for certain applicants that obtained state ETC designations.<sup>13</sup> 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

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<sup>10</sup> For applicants defaulting on letter-identified census blocks, we found good cause in the *Fourth RDOF Authorization Public Notice* to waive the requirement that a default encompass the entire winning bid, and to authorize support on a per-census-block basis for the census blocks containing letter-identified census blocks on which the applicants elected to default. *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 21-1560, at 7-8 (WCB/OEA Dec. 14, 2021) (*Fourth RDOF Authorization Public Notice*).

In response to the July 2021 Letter, Hughes Network Systems, LLC (Hughes) identified a number of census blocks that were not identified in the letter and notified the Commission that it would not pursue support in those census blocks. In an accompanying petition for waiver of the default forfeiture, Hughes requested to default on “individual [census blocks] rather than whole census block groups that comprise its winning bids.” See Hughes Network Systems, LLC, Petition for Waiver of Bid Default Penalties, AU Docket No. 20-34 et al., at 3 (filed Aug. 16, 2021). Hughes has more recently notified us that it no longer intends to default in census blocks for which the Commission has not waived the requirement that a default encompass the entire winning bid or for which the Commission has not waived the default forfeiture. We dismiss Hughes’ request as an untimely petition for reconsideration of the requirement that a default encompass the entire winning bid. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6086, 6151, paras. 22, 231 (adopting census block groups containing one or more eligible census blocks as the minimum geographic area for bidding in Auction 904 and explaining that a winning bid represents a binding obligation to serve all of the eligible census blocks covered by the bid). To the extent Hughes’ request could be considered a request for waiver of the requirement, we deny that request for waiver. While we granted waiver of the requirement for census blocks identified in the July 2021 Letter, we find that the considerations warranting waiver there, see *Fourth RDOF Authorization Public Notice* at 7-8, do not apply here. Specifically, the census blocks at issue in Hughes’ request have not been flagged by the Commission for subsequent evaluation, as was the case for the census blocks at issue in the *Fourth RDOF Authorization Public Notice*. Thus, the special circumstances identified in that Public Notice are not applicable here. Likewise, for census blocks not identified in the July 2021 Letter, we are unable to parse the post-auction business judgment of each defaulter and/or their current beliefs about existing or upcoming deployment or the existence of locations in census blocks. Thus, the public interest rationale justifying waiver in the *Fourth RDOF Authorization Public Notice* also is not applicable here. See also *infra* note 28 (addressing petitions for waiver of the default forfeiture).

<sup>11</sup> 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 Order*, 35 FCC Rcd at 727-28, para. 92.

<sup>12</sup> *Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to Be Authorized*, AU Docket No. 20-34 et al., DA 21-909, at 2 & n.9 (WCB/OEA July 26, 2021) (*First RDOF Ready to Authorize Public Notice*). See also *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*; WC Docket Nos. 09-197, 10-90, Order, DA 21-663 (WCB June 8, 2021).

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

applicant.<sup>14</sup> The Commission has explained that it would presume such good faith efforts when the petitioner submitted its petition to the relevant authority within 30 days of the release of the *Auction 904 Closing Public Notice*, i.e., by January 6, 2021.<sup>15</sup> In the Connect America Phase II auction, we granted petitions for waiver for applicants that filed outside the 30-day window after finding that the applicant “acted diligently in attempting to obtain its ETC designation prior to the deadline,” that a delay did not “rise to the level of lack of good faith that should result in [the applicant’s] default,” and that “late-filing of [the] ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers.”<sup>16</sup> In contrast, we have found a lack of good-faith pursuit of ETC designation where (1) an applicant had provided no explanation or defense of its failure to timely submit its ETC application to its respective state commission, (2) an applicant relied on a specific corporate strategy or business consideration to delay its submission, or (3) an applicant filed its ETC designation petition a few days before the ETC deadline and “failed to provide a compelling rationale” for the delay.<sup>17</sup>

*Resound Networks LLC.* On January 5, 2021, Resound Networks LLC (Resound) filed an ETC designation application with the Oklahoma Corporation Commission (OCC) for the areas where it is eligible to receive RDOF support.<sup>18</sup> Resound was informed that the OCC required a Certificate of Convenience and Necessity (CCN), and it filed for a CCN on January 25, 2021, participated in discovery in the ETC designation docket and the CCN docket, and amended its CCN application on May 6, 2021.<sup>19</sup> On October 28, 2021, Resound supplemented its Petition for Waiver with a copy of an OCC October 27, 2021 Order granting ETC status, which noted that the OCC had granted the CCN on August 19, 2021.<sup>20</sup> Resound further supplemented its Petition for Waiver with a copy of the final OCC Order adding Ellis and Beaver Counties to its Oklahoma RDOF ETC Designation Order after negotiations with Texas were completed (these Oklahoma counties had been served by a Texas ILEC previously).<sup>21</sup>

We conclude that Resound has demonstrated special circumstances that warrant deviation from the Commission’s June 7, 2021 deadline. Resound filed its ETC petition with the OCC on January 5,

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<sup>14</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6002, para. 152 (2016); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81.

<sup>15</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81; *Auction 904 Closing Public Notice*, 36 FCC Rcd 13888.

<sup>16</sup> See, e.g., *Connect America Fund Phase II Auction Support for 2,121 Winning Bids Ready to Be Authorized*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 12384, 12385-86 (WCB/OEA 2019); *Connect America Fund Phase II Auction Support for 611 Winning Bids Ready to be Authorized*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 4648, 4649 (WCB/OEA 2019).

<sup>17</sup> See *Rural Digital Opportunity Fund Auction (Auction 904)*, *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908, at 3-4, paras. 8-16 (WCB/OEA July 26, 2021) (*RDOF ETC Deadline Waiver Order*).

<sup>18</sup> Petition of Resound Networks LLC for Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No. 20-34 et al., (Resound Petition) at 2 (filed June 4, 2021).

<sup>19</sup> *Id.* at 2.

<sup>20</sup> Supplement to Petition of Resound Networks LLC for Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No. 20-34 et al., (filed Oct. 28, 2021); Oklahoma Corporation Commission, Order 721380, Docket No. 202100009 at 1-2 (rel. Oct. 27, 2021).

<sup>21</sup> Second Supplement to Petition of Resound Networks LLC for Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No. 20-34 et al., (filed April 18, 2022); See Oklahoma Corporation Commission, Order 724771, Docket No. 202200016 (rel. April 7, 2022).

2021, which was within 30 days of the public notice announcing that it was a winning bidder.<sup>22</sup> We thus presume that Resound acted in good faith to obtain ETC designation in a timely manner. Resound's participation in the ETC designation discovery process, the CCN process, and in seeking the additional ETC Designation Order after learning which jurisdiction should address establishing its ETC status in Ellis and Beaver counties indicates that the delay of the ETC designation of all Resound's RDOF census blocks constituted circumstances outside of its control.

Moreover, based on the totality of the circumstances, we find that waiver of the deadline here serves the public interest. As discussed above, Resound has shown consistent efforts to obtain its ETC designation. Resound was engaged with the OCC prior to the end of the good faith time frame.<sup>23</sup> The circumstances surrounding its petition are not similar to those instances where the Bureau has previously found a lack of good faith.<sup>24</sup> Resound also demonstrated consistent engagement with the OCC.<sup>25</sup>

We find the public interest is served by moving forward with authorizing support for an applicant that acted in good faith through the application process and obtained its ETC designation within a reasonable amount of time after the deadline.

*Defaults.* In Attachment B, we list the relevant winning bids associated with winning bidders or their assignees that are in default.<sup>26</sup> 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 the winning bids listed in Attachment B.<sup>27</sup> Because Commission staff are reviewing information that is

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<sup>22</sup> Resound Petition at 2.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., *RDOF ETC Deadline Waiver Denial Order*, at 3-4, paras. 8-16.

<sup>25</sup> OCC December Order at 1-5.

<sup>26</sup> Attachment B contains bid defaults for Xiber, LLC (Xiber). On October 12, 2022, the Bureau, in conjunction with OEA, denied Xiber's petitions for waiver seeking an extension of time to file its audited financials as well as for filing a commitment letter from a qualified bank committing to issue an irrevocable standby letter of credit. *Rural Digital Opportunity Fund Support Authorized for 1,865 Winning Bids; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-1086, at 9-10 n.57 (WCB/OEA Oct. 12, 2022). Xiber did not seek reconsideration of the denials of its separate petitions for waiver and is, thus, in default.

Resound has also defaulted on certain census blocks that stem from interagency coordination pursuant to the Broadband Interagency Coordination Act of 2020. Accordingly, for reasons similar to those articulated in the *Fourth RDOF Authorization Public Notice*, we waive the default forfeitures for these areas and the requirement that a default encompass the entire winning bid. *Fourth RDOF Authorization Public Notice* at 6-9.

Additionally, Hughes has defaulted on one additional census block that was identified in the July 2021 Letter and was inadvertently excluded when we previously announced Hughes' defaults on letter-identified census blocks. See *Rural Digital Opportunity Fund Support for 5,254 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-96 (WCB/OEA Jan. 28, 2022).

<sup>27</sup> *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*). In the *Fourth RDOF Authorization Public Notice*, we waived the default forfeiture for letter-identified census blocks and in the *Eighth RDOF Authorization Public Notice* we waived the default forfeiture for non-urban areas that similarly appeared to staff as being served with 25/3 Mbps broadband and for which applicants informed the Commission that they wished to default. *Fourth RDOF Authorization Public Notice* at 9; *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-402, at 6 n.38 (WCB/OEA Apr. 15, 2022). Accordingly, to the extent applicants filed petitions seeking waiver of the default forfeiture or other non-compliance measures for these areas, we dismiss those petitions as moot.

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

A defaulter is subject to a base forfeiture per violation of \$3,000.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> In addition, any applicant that failed to submit the audited financial statements as required by the June 7, 2021 deadline 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.<sup>32</sup>

### Instructions for Submission of Letter of Credit and Opinion Letter

Pursuant to section 54.804(b)(6)(v) of the Commission's rules, the long-form applicants identified in Attachment A that may be authorized to receive Rural Digital Opportunity Fund auction support must submit irrevocable stand-by letters of credit, issued in substantially the same form as set forth in the model letter of credit provided in Appendix C of the *Rural Digital Opportunity Fund Order*,<sup>33</sup> by a bank that is acceptable to the Commission by **6:00 p.m. ET on January 9, 2023**.<sup>34</sup> **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.<sup>35</sup> The value of the letter of credit must increase each year until it has been verified that the support

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For all other defaulted areas, we dismiss petitions seeking waiver of the default forfeiture and other non-compliance measures. All relevant facts, including the claimed public interest benefits that could result from the applicants' defaults, will be given due consideration in accordance with the default penalty framework adopted by the Commission. *Rural Digital Opportunity Fund Support for 2,061 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, Public Notice, DA 22-483 at 5 n.51 (WCB/OEA May 3, 2022). For the reasons explained in the *First RDOF Default Public Notice*, we also deny outstanding petitions that request that we waive the default penalty framework to relieve applicants of the obligation to apply for support. *First RDOF Default Public Notice* at 2-3 n.8

<sup>28</sup> *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.

<sup>29</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>30</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>31</sup> 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.

<sup>32</sup> *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).

<sup>33</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

<sup>34</sup> 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.

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

recipient has met certain milestones, as described in more detail in section 54.804(c)(1) of the Commission's rules.<sup>36</sup>

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.<sup>37</sup>

By future public notice, we will authorize support for specific winning bids for which all requirements, including submission of the letter of credit and opinion letter, have been met.

Details concerning the next steps are set forth below.

Long-form applicants identified in Attachment A of this Public Notice must submit letters of credit and Bankruptcy Code opinion letters for each state where they have winning bids identified in Attachment A. The minimum amount of the first letter of credit for each state is determined by adding up the first year of support listed in Attachment A for each winning bid in the state. Each letter of credit and opinion letter submitted to the Universal Service Administrative Company (USAC) must reference the relevant study area code as listed in Attachment A.

A long-form applicant should:

- Submit the hard copy of the letter of credit and opinion letter to USAC by **6:00 p.m. ET on January 9 2023**, at the following address: Universal Service Administrative Company (USAC), High Cost Program, Rural Digital Opportunity Fund LOC, Attn: Stephen Snowman, 700 12th Street, NW, Suite 900, Washington, DC 20005;
- **Submit an electronic copy of its original letter of credit and opinion letter to [hcinfo@usac.org](mailto:hcinfo@usac.org) and [OGC-LOC@usac.org](mailto:OGC-LOC@usac.org) by the deadline to ensure that they are timely filed.** Note: 1) the electronic copies should be scanned versions of the hard copies mailed to USAC, which should be signed and include Annex A, B, & C, as shown in the model letter of credit,<sup>38</sup> 2) electronic copies are used for the purpose of determining the timeliness of submissions, 3) thus, USAC will only review the mailed, hard copies of the letters of credit and opinion letters, not the electronic copies;
- Expect to receive feedback from USAC on letters of credit within approximately 10 days of USAC's receipt of the hard copies;
- Avoid sending additional documents until the applicant has received feedback from USAC. If an applicant notices an error in its letter of credit or bankruptcy opinion letter prior to receiving feedback from USAC, do not send USAC a revised copy of the relevant document. Instead, applicants should wait to receive feedback from USAC and then make their corrections to the version of the document they send back to USAC that also incorporates any USAC feedback.

A copy of the letter of credit and opinion letter must also be submitted in the FCC Auction System by the applicable deadline—**prior to 6:00 p.m. ET on January 9, 2023**. 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

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<sup>36</sup> 47 CFR § 54.804(c)(1)(i)-(vii); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729-31, paras. 98-104.

<sup>37</sup> 11 U.S.C. § 541; 47 CFR § 54.804(c)(3); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 113.

<sup>38</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

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.<sup>39</sup> As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.<sup>40</sup>

Any long-form applicant identified in Attachment A that fails to file the required documents<sup>41</sup> for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on January 9, 2023** – will be in default on such bid(s) and subject to forfeiture.<sup>42</sup>

### Further Information Contact:

#### Press Information

#### Office of Media Relations

Anne Veigle  
(202) 418-0500

#### General Universal Service Information

#### Wireline Competition Bureau, Telecommunications Access Policy Division

Lauren Garry  
Heidi Lankau  
Katie King  
(202) 418-7400

#### 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

#### 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/>

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<sup>39</sup> *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13899, para. 28. If a request for public inspection under section 0.461 is made for the long-form applicant's letter of credit or opinion letter, the long-form applicant will have an opportunity to object to disclosure and justify the continued confidential treatment of the information. 47 CFR §§ 0.459, 0.461.

<sup>40</sup> 47 CFR § 0.459.

<sup>41</sup> 47 CFR § 54.804(b)(6)(v).

<sup>42</sup> *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).



**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](mailto: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

Attachment B: Bids in Default

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