



PUBLIC NOTICE

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RURAL DIGITAL OPPORTUNITY FUND SUPPORT FOR 2,061 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 May 17, 2022

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 (RBATF), 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.

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 May 17, 2022.**¹

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

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,

¹ See 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.”).

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.

⁴ *Id.* at 13892-93, para. 16.

⁵ *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*).

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.⁶

On July 26, 2021, the RBATF, 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).⁷ Support amounts have been adjusted for applicants that defaulted on the identified census blocks.

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, 2021.⁸ 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 for the reasons described in the *First RDOF Ready to Authorize Public Notice*.⁹

We also find good cause to waive this deadline for certain applicants that obtained state ETC designations.¹⁰ Generally, the Commission's rules may be waived for good cause shown.¹¹ 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.¹² 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.¹³ 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, 2021.¹⁴ In the

⁶ 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.

⁷ See "Letters to Long-Form Applicants about Identified Census Blocks," <https://www.fcc.gov/auction/904/releases>.

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 *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).

¹⁰ Requests from other long-form applicants seeking waiver of the ETC deadline remain pending and will be addressed in future releases.

¹¹ 47 CFR § 1.3.

¹² 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)).

¹³ *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.

¹⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81; *Auction 904 Closing Public Notice*, 36 FCC Rcd 13888.

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.”¹⁵ 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.¹⁶

Pear Networks, LLC and Youngsville Television Corporation. Pear Networks, LLC (Pear Networks) and Youngsville Television Corporation (Youngsville), separately sought waiver of the June 7 ETC documentation deadline for their respective long-form applications in Vermont and Pennsylvania.¹⁷ We find good cause to grant their petitions for waiver regarding the ETC documentation deadline for these states. Because these applicants filed petitions with the Vermont Public Utility Commission (PUC) and the Pennsylvania Public Utilities Commission (PUC), respectively, within 30 days of the public notice announcing them as winning bidders,¹⁸ we presume that Youngsville and Pear Networks acted in good faith in pursuing their ETC designations.¹⁹ Both Pear Networks and Youngsville were designated as ETCs in their states respectively on August 23, 2021²⁰ and August 26, 2021.²¹ The presumption of good faith has not been overcome, and thus we find good cause to waive the deadline.

Tombigbee Communications, LLC. Tombigbee sought waiver of the June 7, 2021 ETC documentation deadline for its long-form application.²² Though Tombigbee did not file its ETC designation petition with the FCC within the 30-day time frame for the presumption of good faith to apply, we nonetheless find good cause to grant its petition for waiver regarding the ETC documentation deadline.

¹⁵ 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).

¹⁶ 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*).

¹⁷ Petition of Pear Networks, LLC for Waiver of the ETC Designation Deadline, AU Docket No 20-34 at (filed June 3, 2021) (Pear Petition); Petition of Youngsville Television Corporation for Waiver of the ETC Designation Deadline, AU Docket No 20-34 at 3 (filed June 7, 2021) (Youngsville Petition).

¹⁸ Youngsville filed its ETC applications with the Pennsylvania PUC on January 6, 2021. Youngsville Petition at 2. Pear Networks filed its ETC application with the Vermont PUC on January 6, 2021. Pear Petition at 1.

¹⁹ *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.

²⁰ See Vermont Public Utility Commission, Order Granting Eligible Telecommunications Carrier Designation, Docket No. 21-0045-PET (rel. Aug. 23, 2021).

²¹ See Pennsylvania Public Service Commission, Order Eligible Telecommunications Carrier Designation for Youngsville Television Corporation, Docket No. 2021-3023604 (rel. Aug. 26, 2021).

²² Petition of Tombigbee Communications, LLC for Waiver of the ETC Designation Deadline, AU Docket No 20-34 at 3 (filed June 6, 2021) (Tombigbee Petition).

We conclude that Tombigbee demonstrated special circumstances that warrant deviation from the Commission's June 7, 2021 deadline. Tombigbee explains that it filed its ETC petition with the Alabama Public Service Commission (Alabama PSC) within 30 days of the public notice announcing that it was a winning bidder,²³ but it received a notice that the Alabama PSC lacked jurisdiction.²⁴ Tombigbee then petitioned the FCC for ETC designation on June 7, 2021, receiving a designation on February 22, 2022.²⁵ Tombigbee diligently submitted its ETC petition to the Alabama PSC within 30 days of the public notice announcing it as a winning bidder, thus beginning its pursuit of an ETC designation within the presumption of good faith period. After receiving notice that Alabama lacked jurisdiction, Tombigbee was able to obtain its ETC designation while Commission staff were still actively reviewing long-form applications. Though Tombigbee began the ETC designation process within the good-faith presumption period, its delay in re-filing with the Commission after Alabama rejected jurisdiction removed its actions from those to which a presumption of good faith apply. We nonetheless find good cause to grant its petition for waiver regarding the ETC documentation deadline because it otherwise acted in good faith in completing its application, including beginning the ETC designation process on time and filing for and receiving its federal ETC designation while its application was under review.²⁶

Moreover, based on the totality of the circumstances, we find that waiver of the deadline here would serve the public interest. We find the public interest is served by moving forward with authorizing support for applicants that acted in good faith through the application process and obtained their ETC designations within a reasonable amount of time after the deadline, rather than delaying the provision of voice and broadband service to these areas by defaulting long-form applicants that are otherwise ready to authorize.

United Telephone Company of Pennsylvania and Hankins Information Technology. United Telephone Company of Pennsylvania (United) and Hankins Information Technology (Hankins) each separately sought waiver of the June 7, 2021 ETC documentation deadline for their respective long-form applications in Pennsylvania and California.²⁷ Though United and Hankins did not file their ETC petitions in Pennsylvania and California within the 30-day time frame for the presumption of good faith to apply, we nonetheless find good cause to grant their petitions for waiver regarding the ETC documentation deadline for these states.

We conclude that United and Hankins demonstrated special circumstances that warrant deviation from the Commission's June 7, 2021 deadline. First, the Pennsylvania PUC found that United had engaged in good faith efforts to become an ETC by the applicable deadline.²⁸ United explains that it filed

²³ Tombigbee Petition at 2.

²⁴ *Id.* at 2-3.

²⁵ Tombigbee Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed June 7, 2021) (Tombigbee FCC ETC Petition); *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*; WC Docket Nos. 09-197, 10-90, Order, DA 22-184 (WCB Feb. 22, 2022).

²⁶ Tombigbee has shown consistent efforts to obtain its ETC designation, as evidenced by Tombigbee filing its ETC petition with the Alabama PSC within the 30-day time frame, and then ultimately being designated an ETC by the FCC. Tombigbee Petition at 2-3.

²⁷ Petition of United Telephone Company of Pennsylvania, LLC for Waiver of the ETC Designation Deadline, AU Docket No. 20-34, WC Dockets 10-90, 19-126 (filed June 7, 2021) (United Petition); Petition of Hankins Information Technology for Waiver of the ETC Designation Deadline, AU Docket No. 20-34, WC Dockets 10-90, 19-126 (filed May 25, 2021) (Hankins Petition).

²⁸ On May 25, 2021, the Pennsylvania PUC recognized that United acted "in good faith by demonstrating its willingness to work with the Commission to address issues of concern identified by Commission staff in its ETC petition." Letter from Erin N. Tate, Pennsylvania Public Utility Commission, to Zsuzsanna E. Benedek, Level 3 (continued....)

its application on February 19, 2021, well before the June 7 deadline, and acted in good faith by fully complying with all Pennsylvania PUC's requirements associated with its ETC designation.²⁹ On October 21, 2021, the Pennsylvania PUC designated it as an ETC.³⁰

Hankins filed an application with the California PUC requesting a CPCN on February 21, 2021, subsequently amending its application to request designation as an ETC,³¹ and filed a revised financial showing. Hankins fully complied with all California PUC's requirements associated with its ETC designation, providing the PUC the necessary information it requested during the application process.³² On April 11, 2022, the California PUC designated it as an ETC.³³

In light of the applicants' efforts, we conclude that the circumstances surrounding both of their petitions are not similar to those instances where the Bureau has previously found a lack of good faith.³⁴ Both applicants were actively working toward filing their respective ETC petitions and demonstrated consistent engagement with the Pennsylvania PUC and California PUC once their applications were filed.³⁵

United and Hankins filed their ETC applications well before the ETC designation deadline and engaged with the Pennsylvania PUC, Utah PSC, and California PUC responding to their requests for more information, which took more time than each respective applicant had reasonably anticipated.³⁶ Thus, the delays constituted circumstances outside their control.

Moreover, based on the totality of the circumstances, we find that waiver of the deadline here would serve the public interest. As discussed above, we find the public interest is served by moving forward with authorizing support for applicants that acted in good faith throughout the application process and obtained their ETC designations within a reasonable amount of time after the deadline, rather than delaying the provision of voice and broadband service to these areas by defaulting long-form applicants that are otherwise ready to authorize.

Qwest Corporation. Qwest sought waiver of the June 7 ETC documentation deadline for its long-form application in New Mexico.³⁷ We find good cause to grant its petition for waiver regarding the ETC documentation deadline for this state. The predecessor company of Qwest, U.S. West, obtained ETC status in New Mexico in 1997³⁸ and has been operating as an ETC receiving USF funding in the state since 1998.³⁹ Qwest notes that it diligently searched for a copy of the 1997 New Mexico ETC

Communications, Petition of Level 3 Communications, LLC for designation as an Eligible Telecommunications Carrier, Dkt. P-2021-3024219 (May 25, 2021) (United Petition).

²⁹ United Petition at 2.

³⁰ See Pennsylvania Public Utility Commission, Order, Docket No. P-2021-3024219 (rel. Nov. 18, 2021).

³¹ Hankins Petition at 2-3. Hankins filed its amended application for ETC designation on March 4, 2021.

³² *Id.* at 2-3.

³³ See California Public Utilities Commission, Order, Application No. 21-02-009 (rel. Apr. 11, 2022).

³⁴ See, e.g., *RDOF ETC Deadline Waiver Denial Order*, at 3-4, paras. 8-16.

³⁵ United Petition at 1; Utah PUC Order at 6; Hankins Petition at 2-3.

³⁶ United and Hankins have shown consistent efforts to obtain their ETC designations. United filed its application with the Pennsylvania PUC one month after the 30-day good faith time frame and Hankins were engaged with the California PUC on a consistent basis prior to the ETC deadline. United at 2; Hankins Petition at 2-3

³⁷ Petition of Qwest Corporation for Waiver of the ETC Designation Deadline, WC Docket No 10-90, 19-126 (filed March 16, 2022) (Qwest Petition).

³⁸ Qwest Petition at fn. 1.

³⁹ *Id.* at fn. 2.

Designation Order in its company records, the New Mexico Public Regulation Commission's (NMPRC's) website, the FCC's Electronic Comment Filing System, and the Universal Service Administrative Company's website, and that it called the NMPRC, which was unable to provide it with a copy.⁴⁰ Qwest also sought a copy of the 1997 New Mexico ETC Designation Order from the law firm that represented it at the time, but the firm was also unable to provide a copy of the 1997 Order.⁴¹ So although Qwest's predecessor U.S. West had obtained an ETC designation in 1997 and had been receiving USF funds continuously since 1998 as it was absorbed into the corporation that has become Qwest, Qwest was unable to document that ETC designation with a copy of the ETC Order. Qwest did submit as evidence an Order from the NMPRC re-certifying Qwest as an ETC in September 2021.⁴² However, in March 2022, Qwest's parent company was able to locate a copy of the original New Mexico ETC Designation Order in its archives, and Qwest filed the Order on March 8, 2022.⁴³ We find that these events constitute special circumstances that prevented Qwest from filing its ETC designation documentation by the June 7, 2021 deadline, despite having held an ETC designation since 1997. Qwest made significant efforts to locate appropriate documentation, submitted alternative evidence to support its certification that it held an ETC designation, and it did eventually find the documentation and upload it to its application. Qwest has otherwise completed its application review in New Mexico and is ready to be authorized. The special circumstances presented, which Qwest eventually resolved, lead to a conclusion that there is good cause to waive the deadline for Qwest to file its ETC designation documentation in New Mexico.

Commission staff is 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.

Defaults. Several winning bidders have notified us that they do not intend to pursue some or all of their winning bids. In Attachment B, 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.⁴⁴ A list of the eligible census blocks covered by these winning bids will be made available on

⁴⁰ *Id.* at 2.

⁴¹ *Id.*

⁴² See New Mexico Public Regulation Commission, Final Order Approving Recertifications Recommended by Staff of the Telecommunications Bureau, Case No. 21-00129-UT, (rel. Sept. 15, 2021).

⁴³ See New Mexico State Corporation Commission, Findings of Fact, Conclusions of Law, and Order, Docket No. 97-511-TC, (rel. Dec. 22, 1997).

⁴⁴ Attachment B contains one bid default for Plateau Telecommunications, Incorporated. The one census block covered by its winning bid did not appear to contain any serviceable locations and was a vestigial census block that was not included in the 2020 Census.

Additionally, Attachment B contains bid defaults for RHMD, LLC (RHMD). On March 25, 2022, the Bureau, in conjunction with RBATF and OEA, denied RHMD's deadline waiver request, stating that this applicant would be found in default at a later date. *Rural Digital Opportunity Fund Auction et al.*, AU Docket No. 20-34 et al., Order, DA 22-318 at 4, para. 9 (WCB/OEA Mar. 25, 2022). RHMD did not seek reconsideration of the denial of its waiver. Thus, this applicant has effectively defaulted.

Attachment B also contains bid defaults for Time Warner Cable Information Services (Massachusetts) that were inadvertently included on a prior authorization public notice. *Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, at Attach. A (WCB/OEA Mar. 15, 2022). The applicant notified us that it does not intend to pursue support in these census block groups. We dismiss as moot the portion of its petition for waiver seeking a partial default in these census block groups. See *Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, at 6 n.6 (WCB/OEA July 26, 2021) (*First RDOF Default Public Notice*); 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

(continued....)

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.

Included in attachment B are 8 bid defaults for Conexon Connect LLC (Conexon) in Colorado. Conexon has not received Tribal consent to build and operate its own facilities that will meet the Auction 904 program requirements in the relevant eligible census blocks, and Conexon failed to demonstrate that it has a viable path for meeting the program requirements in these areas.⁴⁵ Thus, we find this applicant has defaulted on the bids identified in Attachment B.

Moreover, we find that Conexon has defaulted on certain census blocks covered by two additional bids that are not included in Attachment B. The two additional bids cover some census blocks where Conexon has received ETC designation and some census blocks where it has not received an ETC designation from the Colorado Public Utilities Commission (Colorado PUC) due to its inability to obtain Tribal consent.⁴⁶ We are ready to authorize support for the census blocks covered by these two bids where Conexon was designated as an ETC by the Colorado PUC, so the bids are included in Attachment A and the support amounts for the two bids have been adjusted to remove support for the defaulted census blocks where Conexon does not have ETC designation from the Colorado PUC.

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, which includes defaults on specific census blocks in that census block group.⁴⁷ In other words, because

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).

That Public Notice also inadvertently authorized the entire package bid MO_PWRCO_PKG_2 for Charter Fiberlink-Missouri, although the applicant had indicated that it intended to default on two census block groups within the package bid. *First Default Public Notice* at 6 n.6. For this package bid, we waive on our own motion the requirement that a default encompass the entire winning bid. We conclude special circumstances warrant deviation from this requirement. The applicant is able to make a business case to serve part of the area even though it has decided not to pursue its support in the other census block groups included in the package. It also serves the public interest to permit applicants to become authorized in the census block groups they still wish to pursue. As we have explained, it would be contrary to the Commission’s policy goal of closing the digital divide to require applicants to default with respect to an entire area covered by their package bid, including census block groups in which applicants have determined that they can still meet all of the Rural Digital Opportunity Fund program requirements and deployment milestones. *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 6 (WCB/OEA Dec. 14, 2021) (*Fourth RDOF Authorization Public Notice*). Moreover, for the reasons we articulated in the *Fourth RDOF Authorization Public Notice*, granting this waiver is not inconsistent with the purposes of the auction’s bidding procedures. *Id.* at 8. We will update the Authorized Auction 904 Long-Form Applicants spreadsheet available at <https://www.fcc.gov/auction/904/round-results> to reflect the changes to support amounts, census blocks, and location totals for this package bid. USAC will be directed to true up disbursements for these bids, as appropriate.

⁴⁵ See, e.g., Letter from Rebekah P. Goodheart, Counsel to the Southern Ute Indian Tribe, and Stephanie S. Weiner, Counsel to the Ute Mountain Ute Tribe, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 et al. at 5 (filed Feb. 3, 2022) (Explaining that “[f]or development within the Southern Ute and Ute Mountain Ute Reservations, a provider would need the consent of the Tribe, irrespective of whether the existing electric co-ops already have right-of-way access for the electric service,” and noting that “Conexon does not currently have that consent”).

⁴⁶ See Public Utilities Commission of the State of Colorado, *In the Matter of the Application of Conexon Connect, LLC for Eligible Telecommunications Carrier Designation for Purposes of Receiving Rural Digital Opportunity Fund Phase I Support and Lifeline Support*, Decision Granting Application Subject to Conditions, Proceeding No. 21A-0170T at Exh. A (adopted May 26, 2021).

⁴⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

Conexon is ineligible for support in some of the census blocks covered by these two winning bids, absent a waiver, Conexon would be in default with respect to all areas covered by the bids, including the census blocks in which it qualified as an ETC.

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 will authorize support on a per-census-block basis for the census blocks where Conexon has ETC designation if Conexon submits a letter of credit and Bankruptcy Code opinion letter that meets our requirements. We find here that Conexon's inability to obtain Tribal consent constitutes special circumstances that warrant authorizing support for an area that is smaller than the entire area covered by its winning bid.⁴⁸ The public interest will also be served by authorizing support in the census blocks where Conexon is eligible.

With respect to the census blocks covered by its winning bids in Colorado in which Conexon has not received ETC designation, we find Conexon in default. The fact that Conexon's failure to obtain ETC designation is a result of its inability to get Tribal consent does not absolve it from liability for forfeiture for its default in those census blocks.⁴⁹ All relevant facts, including the claimed public interest benefits that could result from Conexon's defaults, will be given due consideration in accordance with the default penalty framework adopted by the Commission. Given our decision to find Conexon in default for the relevant census blocks, we also dismiss the federal ETC petition it currently has pending with the Commission as moot.⁵⁰

We consider these winning bidders and assignees to be in default for these bids and subject to forfeiture.⁵¹ We will refer these defaulters to the Enforcement Bureau for further consideration. Because

⁴⁸ Conexon Connect LLC, Petition for Waiver of Certain Rural Digital Opportunity Fund Rules with Respect to Certain Census Blocks Located within Federally-Recognized Tribal Lands in the State of Colorado, WC Docket Nos. 19-126 et al., at 3-5 (filed June 8, 2021) (Conexon Petition for Waiver). Conexon subsequently withdrew its petition for waiver. Letter from Todd B. Lantor, Counsel to Conexon Connect LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 et al. (filed Jan. 24, 2022) (withdrawing petition for waiver).

⁴⁹ The bidding certification requirement adopted in the *Rural Digital Opportunity Fund Order* was designed to "ensure that an applicant has conducted due diligence to provide service should it win support for an area that includes Tribal Lands." See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6126-27, paras. 133-34 ("We encourage applicants to engage in outreach to Tribal entities as early as possible to ensure that no issues arise post-auction that may delay the authorization of support.").

⁵⁰ See Conexon Connect LLC Petition for Designation as an Eligible Telecommunications Carrier in Certain Tribal Lands in the State of Colorado Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 (filed Apr. 30, 2021).

⁵¹ *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.

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. 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

Commission staff are reviewing 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 \$3,000.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.⁵⁶

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*,⁵⁷ by a bank that is acceptable to the Commission by **6:00 p.m. ET on May 17, 2022**.⁵⁸ **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.⁵⁹ 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.⁶⁰

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

⁵² *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.

⁵³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁵⁵ 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.

⁵⁶ *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).

⁵⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

⁵⁸ 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.

⁵⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, paras. 107-08.

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

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.⁶¹

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.

Instructions for Submission of Letter of Credit and Opinion Letter

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 May 17, 2022**, 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 and 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,⁶² 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 May 17, 2022**. 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

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

⁶² *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

from routine public inspection.⁶³ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.⁶⁴

Any long-form applicant identified in Attachment A that fails to file the required documents⁶⁵ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on May 17, 2022** – will be in default on such bid(s) and subject to forfeiture.⁶⁶

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**

Lauren Garry
Heidi Lankau
Katie King
(202) 418-7400
Auction904@fcc.gov

Universal Service Administrative Company

Stephen Snowman
(202) 414-2725

⁶³ *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.

⁶⁴ 47 CFR § 0.459.

⁶⁵ 47 CFR § 54.804(b)(6)(v).

⁶⁶ *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).

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

Attachment B: Bids in Default

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