

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Rural Digital Opportunity Fund)	
Auction (Auction 904))	AU Docket No. 20-34
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126

ORDER ON RECONSIDERATION

Adopted: August 10, 2022

Released: August 10, 2022

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics (OEA), denies a petition for reconsideration submitted by AB Indiana LLC (AB Indiana)¹ of the *ETC Waiver Order* denying applicant's request for waiver of the ETC designation deadline in Florida.² We affirm the Bureau's decision in the *ETC Waiver Order* and affirm the finding of default for the carrier's winning bids .

I. BACKGROUND

2. In the *Rural Digital Opportunity Fund Order*, the Commission determined that applicants were required to obtain ETC designations covering each of the geographic areas for which they sought to be authorized for support and established a deadline of June 7, 2021 for submitting this documentation.³ The Commission recognized that, in some cases, applicants may face delays in obtaining their ETC designations and explained that an applicant could seek waiver of the ETC deadline if it anticipated that it would not be able to obtain the required designations within 180 days.⁴ Additionally, the Commission noted that it would presume that an applicant acted in good faith if it filed its ETC application with the relevant state authority within 30 days of the release of the public notice identifying Auction 904 winning bidders.⁵

3. *ETC Waiver Order*. On July 26, 2021, the Bureau denied AB Indiana's request for waiver of the ETC documentation deadline of June 7, 2021.⁶ AB Indiana sought relief of the deadline for providing

¹ See AB Indiana Petition for Reconsideration, AU Docket No. 20-34, WC Docket No. 19-126 (filed Aug. 19, 2021) (AB Indiana Petition).

² *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908 (July 26, 2021) (*ETC Waiver Order*).

³ *Connect America Fund*, Report and Order, 35 FCC Rcd 686, 727-28, para. 92. (2020) (*Rural Digital Opportunity Fund Order*); see also *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, FCC Form 683 Due January 29, 2021, Public Notice, 35 FCC Rcd 13888 (2020) (*Auction 904 Closing PN*).

⁴ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, n.230.

⁵ *Id.* at 723, para. 81. As this public notice was released on December 7, 2020, applicants had until January 6, 2021 to avail themselves of this "good faith" presumption. See *Auction 904 Closing PN*.

⁶ See *ETC Waiver Order*; see also AB Indiana Request for Waiver (filed June 4, 2021) (seeking waiver for Florida) (AB Indiana Request).

documentation of its ETC designation in the state of Florida.⁷ The Bureau denied AB Indiana's waiver request, stating that AB Indiana failed to provide any rationale for its delay in meeting the deadline, and that it did not file its ETC application with the state within the 30-day "good faith presumption" window.⁸ Ultimately, AB Indiana did not present special circumstances that warranted a waiver of the requirement to demonstrate having obtained ETC designation by the June 7 deadline.

4. *Request for Reconsideration.* AB Indiana submitted a petition for reconsideration of the Bureau's denial of its waiver request.⁹ AB Indiana argues that it has acted in good faith by spending its own funds towards meeting the project's broadband deployment goals before it was authorized and it offers to provide evidence of that spending.¹⁰ AB Indiana briefly explains its actions saying, "[l]earning that ETC designation in Florida was impossible and also learning that the FCC knew it was impossible we let this detail slip past us. However, we did submit the necessary paperwork to the Florida PSC in order to get this official denial on June 7."¹¹ AB Indiana apologizes for not providing more information about when it filed its ETC application with the Florida PSC and states that "all work is complete in that regard."¹² AB Indiana further states that it has since provided the Commission with all available information about its application for ETC designation.¹³

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁴ 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.¹⁵ Further, the Commission may reconsider the record and change its decision if the facts in the record demonstrate a waiver is warranted and in the public interest. As explained below, upon reconsideration, we affirm our previous decision and deny the petition for reconsideration filed by AB Indiana.

6. We reject AB Indiana's cursory arguments and deny AB Indiana's request for reconsideration regarding Florida. AB Indiana's request lacks any additional information that suggests a change in the Bureau's initial decision is warranted. As an initial matter, AB Indiana's attempt to shift the blame for its failure to timely seek and obtain ETC designation is unavailing.¹⁶ The Commission has been clear that obtaining ETC designation is the responsibility of the applicant.¹⁷ Every applicant is subject to the same ETC requirements and deadlines so there is nothing unique about the Bureau's expectation for AB Indiana. The Commission recognizes that some states do not consider ETC applications in some or all circumstances. In those instances, the applicant must seek designation directly with the Commission.

⁷ AB Indiana Request at 1.

⁸ *ETC Waiver Order* at 3-4, para. 8.

⁹ See generally AB Indiana Petition.

¹⁰ AB Indiana Petition at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.3.

¹⁵ 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)).

¹⁶ AB Indiana Petition at 1 ("ETC designation in Florida was impossible and also learning that the FCC knew it was impossible we let this detail slip by us.").

¹⁷ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, 727-28, paras. 81, 92; see also 47 C.F.R. § 54.315(b)(5).

However, application for ETC status directly with the Commission does not change the deadline or the period for good faith presumption.

7. AB Indiana has not obtained ETC status from either the Florida PSC or the Commission by the Commission's June 7 deadline. While it is unclear when AB Indiana filed its ETC application in Florida,¹⁸ the Florida PSC subsequently denied jurisdiction in an order that was finalized on August 3, 2021 and directed AB Indiana to seek status directly from the Commission.¹⁹ Yet the Commission still has not received an application for ETC status from AB Indiana.²⁰ In its petition, AB Indiana provides no additional details to explain the timing of its ETC application in Florida or why it has not filed with the Commission. Accordingly, there continues to be no good cause to grant a waiver of the ETC deadline to AB Indiana. We thus deny AB Indiana's petition for reconsideration and affirm the Bureau's determination in the *ETC Waiver Order*.

8. We find that AB Indiana failed to present special circumstances that would warrant a waiver of the Auction 904 long-form requirements, and that AB Indiana failed to demonstrate the Bureau erred in its decision. We find that granting the petition would not serve the public interest. Consequently we deny AB Indiana's petition for reconsideration and affirm the Bureau's finding of AB Indiana in default of its winning bids in Florida.²¹ The Bureau will release a public notice in the near future announcing the default. Consistent with the *ETC Waiver Order* and the Commission's direction in the *Rural Digital Opportunity Fund Order*, applicants who default will be subject to the applicable forfeiture under the Commission's rules, and defaults will be referred to the Enforcement Bureau.²²

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.131, 0.271, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.271, 0.291, 1.3, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for reconsideration of the deadline for providing documentation of ETC designation for Auction 904 filed by AB Indiana, LLC, IS DENIED as described herein.

¹⁸ The Florida PSC's online docket report shows that AB Indiana's petition for ETC designation was docketed on June 7, 2021, which means it was not filed during the good faith period but instead on the day of the Commission's deadline. See Florida Public Service Commission, Office of Industry Development and Market Analysis, Report of New Dockets, Docket 20210110-TP, available at <http://www.floridapsc.com/ClerkOffice/WeeklyDocketDetail?startAndEndDate=June%2007,%202021;June%2011,%202021>.

¹⁹ Florida Public Service Commission, *Notice of Proposed Agency Action Order Finding Lack of Jurisdiction Over AB Indiana LLC's Eligible Telecommunications Carrier Application*, Docket No. 2010110-TP, Order No. PSC-2021-0248-PAA-TP (July 9, 2021); Florida Public Service Commission, *Consummating Order*, Docket No. 2010110-TP, Order No. PSC-2021-0291-CO-TP (Aug. 3, 2021).

²⁰ See *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, WC Docket Nos. 19-126, 10-90, Public Notice, 35 FCC Rcd 6077, 6166, 6176, paras. 300, 316-17 (2020) (*Auction 904 Procedures Public Notice*).

²¹ See *ETC Waiver Order* at para. 16.

²² *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 114-117 ("A recipient will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines outlined above, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support.").

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau