



PUBLIC NOTICE

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RURAL DIGITAL OPPORTUNITY FUND SUPPORT FOR 80 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 August 24, 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 August 24, 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

Monster Broadband, Inc. Monster Broadband, Inc. (Monster) has sought waiver of the June 7 ETC documentation deadline for its long-form applications in Texas and Tennessee.¹⁷ We find good cause to grant Monster’s petition for waiver regarding the ETC documentation deadline for Texas. Monster filed its petition with the Public Utilities Commission of Texas (PUC) on January 6, 2021, which is within 30 days of the public notice announcing it as a winning bidder.¹⁸ Monster was designated as an ETC on June 10, 2021, a few days after the applicable deadline for submitting ETC designation documentation.¹⁹ Insofar as Monster met the presumption of good faith effort to file its petition for ETC designation in Texas within the time period, and that presumption has not been overcome, we find good cause to waive the deadline.

We also find good cause to grant Monster’s petition for waiver of the ETC documentation deadline in Tennessee. In Monster’s initial waiver petition filed on June 7, 2021, counsel claimed that Monster had filed its ETC application with the Tennessee PUC on January 6, 2021.²⁰ In addition,

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 Monster Broadband, Inc. for Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No 20-34 et al. (filed June 7, 2021) (*Monster Petition*).

¹⁸ Monster filed its ETC application with the Texas PUC on January 6, 2021. Monster Petition at 2; Public Utility Commission of Texas, Notice of Approval, Docket No. 51692 at 1 (rel. June 10, 2021) (*Monster Texas ETC Designation*).

¹⁹ See *Monster Texas ETC Designation*.

²⁰ Monster Petition at 2. Petitioners seeking an FCC ETC designation to serve non-Tribal lands must submit “an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.” *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12214, para. 7 (2000). The statement may take the form of a “duly authorized letter, comment, or state commission order indicating that [the state] lacks jurisdiction to perform designations over a particular carriers.” *Id.* at 12264, para. 113. We have also said that “[i]f a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.” *WCB Reminds Connect America Fund Phase II Auction Applications of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197 et al., Public Notice, 33 FCC Rcd 6696, 6697 (WCB 2018).

apparently without informing Monster, counsel also filed a petition for ETC designation with the FCC on June 7, 2021.²¹

In order to gain ETC designation from the FCC, however, Monster was required to submit proof that the Tennessee PUC lacked jurisdiction.²² On December 7, 2021, the Tennessee PUC notified the Commission that, despite the facts claimed in Monster's June 2021 waiver petition, Monster's counsel had never contacted or filed anything with the Tennessee PUC related to an ETC designation and that the Tennessee PUC had "not declined jurisdiction related to any application of Monster."²³ Monster's counsel submitted a supplement to the petition for waiver on December 8, 2021, that describes the conversation counsel had with the Tennessee PUC on December 3, 2021, and reiterating Monster's request for waiver.²⁴

Notably, Monster asserts that it was unaware of the false statements in the initial petition for waiver, the letter from the Tennessee PUC, its counsel's discussion with the Tennessee PUC on December 3, 2021, and this supplemental December 2021 waiver petition until it had conversations with Commission staff in February and March of 2022 that alerted Monster to the letter from the Tennessee PUC and of the supplement to the petition for waiver.²⁵ Monster promptly engaged new counsel in April of 2022.²⁶

On June 8, 2022, Monster submitted a second supplement to its petition of waiver with the Commission, which included sworn affidavits from Monster's president and vice president describing the professional misconduct of its counsel.²⁷ In this second supplement, Monster explains that in December 2020 it asked its original counsel to "prepare, file, and prosecute" an application to obtain an ETC designation for the areas covered by its Tennessee winning bids and that it had relied on its counsel's affirmative statements that it had taken the appropriate steps to do so, and that the process was proceeding properly.²⁸

After Monster's new counsel took the appropriate steps with the Tennessee PUC that its original counsel had claimed, but failed, to complete, Monster received a formal letter on May 11, 2022, wherein the Tennessee PUC declined jurisdiction over Monster's ETC petition.²⁹ The FCC conditionally designated Monster as an ETC on July 20, 2022.³⁰

²¹ Petition of Monster Broadband, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, WC Docket No. 09-197 (filed June 7, 2021); Petition of Monster Broadband, Inc. for Waiver of the ETC Designation Deadline, AU Docket No. 20-34, Second Supplement to Petition for Limited Waiver at Exh. B (filed June 8, 2022) (*Monster Petition Second Supplement*).

²² *Id.*. See also 47 U.S.C. § 214(e)(6). As a general matter, in Tennessee, the Public Utility Commission (Tennessee PUC) disclaims jurisdiction over service providers that request ETC status for broadband and VoIP services.

²³ Letter from Kelly Cashman Grams, General Counsel, Tennessee Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34 et al. at 1-2 (filed Dec. 7, 2021).

²⁴ Petition of Monster Broadband, Inc. for Waiver of Section 54.804(b)(5) of the Commission's Rules, AU Docket No. 20-34 et al., Supplement 1 to Petition for Limited Waiver at 2-4 (filed June 8, 2022) (*Monster Petition First Supplement*); *Monster Petition Second Supplement* at Exh. B.

²⁵ *Monster Petition Second Supplement* at Exh. B.

²⁶ *Id.*

²⁷ *Id.* at 1-2, Exh. B.

²⁸ *Monster Petition Second Supplement* at Exh. B.

²⁹ *Id.* at Exh. A.

³⁰ *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197 et al., Order (WCB July 20, 2022).

We conclude that Monster has demonstrated special circumstances that warrant deviation from the Commission's June 7, 2021 deadline. Based on correspondence to and from Monster's counsel, which included counsel's representations to both Monster and the Commission regarding the counsel's actions, Monster had reason to believe that its counsel had filed its petition for ETC designation for Tennessee within the time frame for the presumption of good faith.³¹ While there is significant Commission precedent that carriers "are responsible for reviewing and understanding the Commission's rules to ensure that submissions are filed in a timely matter," and that the failure to meet a deadline due to the actions of a third party does not constitute "extenuating circumstances sufficient to demonstrate the good cause required for [WCB] to grant a rule waiver,"³² Monster's circumstances are distinguishable from denials of waiver in cases of inadvertent error or attorney negligence.

Rather, here, we find that Monster exercised reasonable diligence to meet the Commission's deadline and took responsibility to promptly remedy its failure to do so upon learning of its counsel's actions. Specifically, in accordance with the Commission's rules, Monster instructed its counsel to file a petition for ETC designation in advance of the presumption of good faith period. Its counsel did so on a timely basis in Texas and advised Monster that counsel had also done so on a timely basis in Tennessee. Monster had no reason to believe that its counsel had not done so in Tennessee as well as in Texas. Moreover, upon learning of its counsel's failure to take appropriate action with respect to Tennessee, Monster engaged new counsel and instructed its new counsel to take remedial actions to obtain its ETC designation in a timely manner.³³ Based on the totality of the circumstances, the information provided by the Tennessee PUC and the correspondence cited in Monster's affidavits, we conclude that it was reasonable for Monster to believe that its counsel had taken the appropriate steps to obtain an ETC designation in a timely manner. Accordingly, we find that these circumstances are distinguishable from WCB's prior precedent and warrant waiver of the deadline.

We also find that waiver of the deadline in this case serves the public interest. As noted above, Monster's efforts evidence that it made a good faith effort to obtain its ETC designation and do not demonstrate circumstances that are similar to those where the Bureau has previously found a lack of good faith.³⁴ Monster acted in good faith throughout the application process and made reasonable efforts to obtain its ETC designation in a timely manner, especially after learning that its counsel had not done so.³⁵

³¹ Monster Petition Second Supplement at 1-2, Exh. B (providing examples of communications from its counsel that Monster relied upon in believing its Tennessee ETC designation petition "was simply running a normal course," and citing specific statements from its counsel explaining that counsel had filed the ETC petition with the Tennessee petition on January 6, 2021 and with the FCC prior to the June 7, 2021 deadline).

³² See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 25 FCC Rcd 4626, 4629, 4630-31, paras. 9, 12-14 (WCB 2010) (denying a petition for waiver of a filing deadline where a "third-party vendor" failed to file data by the required high-cost deadline "due to an administrative oversight").

³³ Monster Petition Second Supplement at Exh. B (explaining that Monster engaged new counsel in April 2022 and describing the actions Monster took "seeking to remedy the situation").

³⁴ See e.g., *RDOF ETC Deadline Waiver Order* at 3-4, paras. 8-16 (finding 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); *Rural Digital Opportunity Fund Auction (Auction 904) et al.*, AU Docket No. 20-34 et al., Order, DA 22-318 at 3, para. 7 (WCB/OEA Mar. 25, 2022) (finding a lack of good-faith pursuit of ETC designation where the applicant made "no claim that it acted in good faith to obtain its ETC designation in a timely manner").

³⁵ Monster Petition Second Supplement at Exh. B.

We find that the public interest is served by moving forward with authorizing support for such an applicant.³⁶

E Fiber San Juan. E Fiber San Juan and E Fiber Moab are wholly owned subsidiaries of Emery Telephone.³⁷ Emery Telephone was announced as a winning bidder and, following release of the *Auction 904 Closing Public Notice*, assigned its winning bids to E Fiber Moab and E Fiber San Juan.³⁸ On April 20, 2020, E Fiber Moab and E Fiber San Juan then applied for Certificates of Public Convenience and Necessity (CPCN) “to provide rate of return regulated service as a carrier of last resort with the Utah Public Service Commission (PSC) ...”³⁹ Due to unique Tribal issues involving some areas in which a certificate had been sought, the Utah PSC denied their applications without prejudice on December 16, 2020, leading Emery Telephone to request permission from the FCC to reassign the winning bids to another wholly owned subsidiary, Emery Telecommunications & Video, Inc (ET&V).⁴⁰ Emery was allowed to reassign its bids to ET&V, and ET&V petitioned the Utah PSC for ETC designation on February 9, 2021.⁴¹

Simultaneously, E Fiber Moab and E Fiber San Juan requested that the Utah PSC reconsider where they needed to file their ETC designation applications.⁴² On May 10, 2021, the Utah PSC found that it had made an error and granted their respective CPCN applications.⁴³ Following the Utah PSC’s decision, Emery Telephone requested permission from the Commission to reassign its winning bids back to E Fiber Moab and E Fiber San Juan.⁴⁴ Considering the unique circumstances involving Tribal areas, Emery Telephone was allowed to do so, and shortly thereafter E Fiber San Juan filed its application for ETC designation with the Utah PSC on May 8, 2021.⁴⁵ On July 22, 2021, the Utah PUC designated E Fiber San Juan and E Fiber Moab as ETCs in the areas where they are eligible to receive RDOF support.⁴⁶ We waived the ETC deadline for E Fiber Moab on March 10, 2022.⁴⁷

We conclude that E Fiber San Juan has demonstrated special circumstances that warrant deviation from the Commission’s June 7, 2021 deadline. Emery’s wholly-owned subsidiary ET&V filed its ETC petition on February 9, 2021 for the areas covered by Emery’s winning bids after E Fiber San Juan was denied a CPCN and well before the ETC designation deadline. Emery and its wholly-owned subsidiaries

³⁶ See, e.g., *Rural Digital Opportunity Fund Support for 88 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al. Public Notice, DA 22-581 at 5-6 (WCB/OEA May 25, 2022) (*Tenth RDOF Ready to Authorize Public Notice*) (finding “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”).

³⁷ Petition of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No. 20-34 et al., Petition for Waiver at 1 (filed June 2, 2021).

³⁸ *Id.* at 2.

³⁹ *Id.* Before a service provider can construct facilities or operate in Utah, it must obtain a CPCN. Utah Code § 54-4-25.

⁴⁰ *Id.*

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Utah Public Service Commission, Order, Docket No. 21-2618-01 (rel. July 22, 2021) (Utah PSC Order)..

⁴⁷ *Rural Digital Opportunity Fund Support for 952 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, Public Notice, DA 22-185 at 5-6 (WCB rel. Mar. 10, 2022).

then engaged with the Utah PSC under unique circumstances, responding in good faith to its requests for more information, which took more time than they had reasonably anticipated.⁴⁸ E Fiber San Juan then filed its ETC petition on May 28, 2021 for the relevant areas, shortly after Utah reversed its decision and decided to grant E Fiber San Juan's CPCN on May 10, 2021, and after Emery reassigned its winning bids to E Fiber San Juan.⁴⁹ Thus, the delays constituted circumstances outside of E Fiber San Juan's control.

Moreover, based on the totality of the circumstances, we find that waiver of the deadline here serves the public interest. As discussed above, E Fiber San Juan has shown consistent efforts to obtain its ETC designation. E Fiber San Juan was engaged with the Utah PSC prior to the end of the good faith time frame.⁵⁰ The circumstances surrounding its petition are not similar to those instances where the Bureau has previously found a lack of good faith.⁵¹ E Fiber San Juan was actively working toward filing its ETC petition and demonstrated consistent engagement with the Utah PSC once its application was filed.⁵²

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.

Audited Financial Statements Deadline Waiver. We grant Northern Arapaho Tribal Industries' (Northern Arapaho) petition for waiver of the June 7, 2021 deadline for submitting audited financial statements.⁵³ All Auction 904 applicants with at least two years of experience providing voice, broadband, and/or electric distribution were required to submit with their short-form application financial statements from the prior fiscal year.⁵⁴ If an applicant was not audited in the ordinary course of business, it had the option of submitting unaudited financial statements with its short-form application and, if it was announced as a winning bidder, submitting audited financial statements with its long-form application by the June 7, 2021 deadline.⁵⁵ On June 7, 2021, Northern Arapaho submitted a petition seeking waiver of this deadline with its long-form application and later submitted its audited financial statements on June 14, 2022.⁵⁶

We find good cause to waive the June 7, 2021 audited financial statements deadline for Northern Arapaho. Northern Arapaho explains that it initiated a request for a proposal process to find an accountant to audit its financial statements in August 2020 before it had been announced as a winning bidder.⁵⁷ However, Northern Arapaho was delayed in engaging an auditor due to challenges it faced

⁴⁸ E Fiber San Juan Petition at 2.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 2.

⁵¹ See, e.g., *RDOF ETC Deadline Waiver Denial Order*, at 3-4, paras. 8-16.

⁵² Utah PSC Order at 6.

⁵³ Petition of Northern Arapaho Tribal Industries d/b/a Wind River Internet for Waiver of Deadline for Audited Financial Statements, WC Docket No. 09-197 (filed June 7, 2021) (*Northern Arapaho Petition*). Northern Arapaho also sought waiver of the requirement to obtain audited financial statements. *Id.* Because Northern Arapaho was able to obtain audited financial statements while review of its long-form application was ongoing, we dismiss this request is moot.

⁵⁴ 47 CFR § 54.804(a)(7)(i); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6094-95, paras. 50-54.

⁵⁵ 47 CFR § 54.804(a)(7)(i), (b)(4); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6095, 6177, paras. 54, 318; *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13894-95, para. 7.

⁵⁶ Northern Arapaho Petition.

⁵⁷ *Id.* at 2.

resulting from the coronavirus pandemic.⁵⁸ Northern Arapaho is a Tribally-owned applicant and explains it “suffered severe economic losses as a result of the shutdown of most of its key businesses” as a result of the pandemic.⁵⁹

First, we find that special circumstances warrant deviation from the Commission’s audited financial statements deadline. We have found that challenges that companies face due to the pandemic, like the challenges experienced by Northern Arapaho, constitute special circumstances when they cause obstacles to a company meeting a universal service program’s requirements.⁶⁰ We have also found that special circumstances exist that justify a waiver when a Tribal entity’s core businesses have “severely suffered due to the pandemic,” as experienced by Northern Arapaho.⁶¹

Second, we find that it serves the public interest to grant Northern Arapaho’s waiver petition. We have found that it serves the public interest to waive universal service rules for Tribal communities in recognition of the fact that they are uniquely impacted by the pandemic and have “to adjust to the burdens and restrictions imposed by the coronavirus pandemic while also facing challenges caused by the digital divide.”⁶² The same public interest considerations apply in these circumstances. Northern Arapaho submitted its audited financial statements while its application was still undergoing review by the Commission staff and Commission staff has deemed Northern Arapaho financially qualified to meet the relevant Auction 904 obligations.

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. 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.⁶³ 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.

⁵⁸ See, e.g., *id.* at 1-3, Exh. (explaining that the auditor that had previously audited its financial statements “has been unwilling to proceed with an audit to date due to COVID-19 circumstances” and that “[t]he pandemic has only made the challenges of obtaining audited financial statements for Tribally owned broadband providers infinitely more difficult and unpredictable”).

⁵⁹ *Id.* at 2.

⁶⁰ See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 6556, 6558-59, para 8 (WCB/OEA 2020) (“The public health crisis has increased consumer demand for robust broadband services, while at the same time directly impeded the ability of companies to conduct their business”); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 21-1502, at 3, para. 8 (WCB/OEA Dec. 2, 2021) (extending the waiver of letter of credit requirements in part because “letter of credit conditions have not substantially improved and carriers are still facing difficulties with financial markets and operational capacity due to the pandemic”).

⁶¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 5844, 5845-46, paras. 7-8 (WCB/OEA 2020) (*Redwire Waiver Order*).

⁶² *Id.* at 5846, para. 9.

⁶³ On August 10, 2022, the Wireline Competition Bureau denied AB Indiana’s petition for reconsideration. AB Indiana has not obtained ETC status from either the Florida Public Service Commission or the Commission by the Commission’s June 7 deadline. Thus, AB Indiana is deemed in default and will not be authorized to receive support in Auction 904. Attachment B lists all of AB Indiana’s bids as in default. Attachment B also includes all of Fond du Lac Communications Inc.’s (Fond du Lac) bids as in default. Fond du Lac did not submit acceptable ETC documentation on or before the June 7, 2021 deadline and did not file a waiver of the ETC deadline.

The Bureau has concluded its review of LTD Broadband's (LTD) and Starlink's long form applications. LTD proposes to deploy gigabit fiber to 475,616 estimated locations in 11 states.⁶⁴ Starlink, relying upon a nascent LEO satellite technology and the ability to timely deploy future satellites to manage recognized capacity constraints while maintaining broadband speeds to both RDOF and non-RDOF customers, seeks funding to provide 100/20 Mbps low latency service to 642,925 estimated locations in 35 states. The Bureau has determined that, based on the totality of the long-form applications, the expansive service areas reflected in their winning bids, and their inadequate responses to the Bureau's follow-up questions, LTD and Starlink are not reasonably capable of complying with the Commission's requirements. The Commission has an obligation to protect our limited Universal Service Funds and to avoid extensive delays in providing needed service to rural areas, including by avoiding subsidizing risky proposals that promise faster speeds than they can deliver, and/or propose deployment plans that are not realistic or that are predicated on aggressive assumptions and predictions. We observe that Ookla data reported as of July 31, 2022 indicate that Starlink's speeds have been declining from the last quarter of 2021 to the second quarter of 2022, including upload speeds that are falling well below 20 Mbps. Accordingly, we deny LTD's and Starlink's long-form applications, and both are in default on all winning bids not already announced as defaulted. Because LTD has defaulted on its remaining winning bids, we also dismiss as moot LTD's petition for reconsideration of the Bureau's denial of its request for additional time to obtain an ETC designation in Nebraska and North Dakota.⁶⁵

Additionally, we find that E Fiber San Juan has defaulted on certain census blocks covered by one bid. Accordingly, we included the bid in Attachment A with an adjusted support amount and location total to reflect only the support amount and location total associated with the non-defaulting census blocks. The additional bid covers some census blocks where E Fiber San Juan has received an ETC designation and some census blocks where it has not received an ETC designation from the Utah PSC due to its inability to obtain Tribal consent.⁶⁶ Specifically, E Fiber San Juan communicated to the Bureau that it 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 notified the Bureau that it will not pursue

⁶⁴ LTD defaulted on all of its bids in Kansas, Oklahoma, California, and Iowa.

⁶⁵ Petition for Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket No. 19-126 (filed Nov. 19, 2021) (LTD Nov. Petition) (requesting reconsideration for the states of Iowa, Nebraska and North Dakota). On June 7, 2021, LTD submitted requests for waiver of the ETC requirement to submit, within 180 days of being announced as a winning bidder, appropriate documentation of ETC designation in multiple states, which the Bureau denied in six states (California, Kansas, Oklahoma, Iowa, Nebraska, and North Dakota). On July 26, 2021, we addressed LTD's requests, denying its requests in three of those states: California, Kansas, and Oklahoma. *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908 (July 26, 2021). LTD subsequently defaulted on all bids in Kansas and Oklahoma and filed a Petition for Partial Reconsideration of the ETC waiver denial order for California, but then later withdrew that request. *See* Request for Withdrawal of Petition for Partial Reconsideration, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 21, 2022) (request to withdraw reconsideration petition for the state of California); Petition for Partial Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Aug. 21, 2021) (requesting reconsideration for the state of California). On October 20, 2021, the Bureau denied LTD's request for waiver of the ETC documentation deadline regarding Iowa, Nebraska, and North Dakota. *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-1311 (Oct. 20, 2021). Similarly, LTD filed a Petition for Reconsideration of the ETC waiver denial order for Iowa, Nebraska, and North Dakota, and then withdrew that request for Iowa. *See* Supplement to Petition for Reconsideration, AU Docket No. 20-34, WC Docket No. 19-126 (filed July 21, 2022) (request to withdraw reconsideration petition for the state of Iowa); LTD Nov. Petition. Thus, the Commission's announcement of LTD's ETC requirement waiver denials in California and Iowa remains in place.

⁶⁶ Utah PSC Order at 6.

support in these areas.⁶⁷ Thus, we are ready to authorize support for the census blocks covered by the bid where E Fiber San Juan was designated as an ETC by the Utah PSC. Given E Fiber San Juan's decision to no longer pursue support in the areas where it has not received Tribal consent, we also dismiss the federal ETC petition it currently has pending with the Commission as moot.⁶⁸

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.⁶⁹ In other words, because E Fiber San Juan is ineligible for support in some of the census blocks covered by one winning bid, E Fiber San Juan would be in default with respect to all areas covered by the bids, absent a waiver, 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 E Fiber San Juan has ETC designation if E Fiber San Juan submits a letter of credit and Bankruptcy Code opinion letter that meets our requirements.⁷⁰ We find here that E Fiber San Juan'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. The public interest will also be served by authorizing support in the census blocks where E Fiber San Juan is eligible.

With respect to the census blocks covered by its winning bid in Utah in which E Fiber San Juan has not received ETC designation, we find E Fiber San Juan in default. The fact that E Fiber San Juan'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.⁷¹ All relevant facts, including the claimed public interest benefits that could result from E Fiber San Juan's defaults, will be given due consideration in accordance with the default penalty framework adopted by the Commission.

We consider these winning bidders and assignees to be in default for these bids and subject to forfeiture.⁷² We will refer these defaulters to the Enforcement Bureau for further consideration. Because

⁶⁷ See, e.g., Letter from Brock Johansen, CEO for E Fiber San Juan, to Trent Harkrader, Chief of the Wireline Competition Bureau, FCC (filed June 13, 2022) (Explaining that "EFSJ has . . . engage[d] in good faith negotiations with representatives of the Ute Tribe. . . [but] have yielded no agreement. [E]FSJ will no longer pursue RDOF support in the census blocks located on Ute Tribe land.").

⁶⁸ E Fiber San Juan, LLC Petition for Designation as an Eligible Telecommunications Carrier in Certain Tribal Locations in the State of Utah Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 (filed Sept. 29, 2021).

⁶⁹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁷⁰ See *Rural Digital Opportunity Fund Support for 2,061 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-483 at (WCB/OEA May 3, 2022) (finding good cause to waive on our own motion the requirement that a default encompass an entire winning bid to announce certain census blocks covered by Conexon Connect LLC's (Conexon) winning bids as ready to authorize and announce in default the remaining census blocks where Conexon was not designated as an ETC by the Colorado Public Utility Commission due to its inability to obtain Tribal consent).

⁷¹ 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.").

⁷² *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*,

(continued...)

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 \$3,000.⁷³ 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.⁷⁴ 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.⁷⁵ 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.⁷⁶ 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.⁷⁷

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*,⁷⁸ by a bank that is acceptable to the Commission by **6:00 p.m. ET on August 24, 2022**.⁷⁹ **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/>.**

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

⁷³ *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.

⁷⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁷⁵ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

⁷⁶ 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.

⁷⁷ *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).

⁷⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

⁷⁹ 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.

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.⁸⁰ 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.⁸¹

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.⁸²

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 August 24, 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,⁸³ 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

⁸⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732-33, paras. 107-08.

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

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

⁸³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

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 August 24, 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 from routine public inspection.⁸⁴ As such, a long-form applicant need not submit a separate section 0.459 confidentiality request for this information with its FCC Form 683.⁸⁵

Any long-form applicant identified in Attachment A that fails to file the required documents⁸⁶ for any of the identified winning bids by the applicable deadline – **prior to 6:00 p.m. ET on August 24, 2022** – will be in default on such bid(s) and subject to forfeiture.⁸⁷

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

⁸⁴ *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.

⁸⁵ 47 CFR § 0.459.

⁸⁶ 47 CFR § 54.804(b)(6)(v).

⁸⁷ *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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