

**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

Adopted: August 31, 2022

Released: August 31, 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), dismisses as moot two waiver requests submitted by California Internet, L.P. dba GeoLinks (GeoLinks)¹ and Cal.Net, Inc. (Cal.net)² of the June 7, 2021 deadline requiring each Rural Digital Opportunity Fund Phase I auction (Auction 904) long-form applicant to demonstrate, with appropriate documentation, that it has been designated as an eligible telecommunications carrier (ETC) in each of the geographic areas for which it seeks to be authorized for Auction 904 support.³ The Bureau will release a public notice in the near future announcing their defaults in these areas.

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.⁴ 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

¹ See Petition for Limited Waiver of Section 54.804(b)(5) of the Commission's Rules, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 4, 2021) (GeoLinks Petition). We note that despite GeoLink's reference to rule 54.804(b)(3) in the conclusion of its waiver request, based on the context, the Bureau has determined that the applicant actually seeks waiver of rule 54.804(b)(5) regarding ETC designation deadline.

² See Petition of Cal.Net for Waiver of Section 54.804(b)(3) of the Commission's Rules, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 3, 2021) (Cal.Net Petition); Supplement to Petition for Waiver, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed May 12, 2022) (Cal.Net Supplemental Petition). We note that despite Cal.Net's reference to rule 54.804(b)(3) (Letter of credit commitment letter) in its request and supplemental request, based on the context of the request, the Bureau has determined that the applicant actually seeks waiver of rule 54.804(b)(5) regarding ETC designation deadline.

³ *Rural Digital Opportunity Fund; Connect America Fund*, Report and Order, 35 FCC Rcd 686, 727-28, para. 92. (2020) (*Rural Digital Opportunity Fund Order*); 47 CFR § 54.804(b)(5) (Eligible telecommunications carrier designation).

⁴ *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*).

would not be able to obtain the required designations within 180 days.⁵ 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.⁶

3. *GeoLinks Petition for Limited Waiver.* On June 4, 2022, GeoLinks submitted a request for limited waiver of the requirement to submit, within 180 days of being announced as a winning bidder, appropriate documentation of ETC designation in California.⁷ GeoLinks stated that it filed its request to expand its California ETC designation for RDOF Auction 904 purposes within the “good faith presumption” period,⁸ but it was subsequently notified by the California Public Utilities Commission (CPUC) that the CPUC would not be able to issue a decision on GeoLinks’ request prior to the June 7, 2021 deadline.⁹

4. On April 11, 2022, the CPUC issued Resolution T-17764 denying the request of GeoLinks to expand its ETC service area in the state of California to cover GeoLinks’ RDOF Auction 904 winning areas in the state.¹⁰ The CPUC noted that the determinations made for issuing ETC designation in the Auction 903 funded areas were different from the areas in which GeoLinks would receive Auction 904 support. As such, the ETC designation in California that GeoLinks received previously cannot be used for RDOF purposes.¹¹

5. *Cal.net Petition and Supplemental Petition for Waiver.* On June 3, 2021 Cal.net submitted a request for waiver of the requirement to submit, within 180 days of being announced as a winning bidder, appropriate documentation of ETC designation in California.¹² Cal.net also stated that it filed its request to expand its California ETC designation for RDOF Auction 904 purposes within the “good faith presumption” period,¹³ but that, due to factors outside its control, it would not receive a decision on its request by the CPUC before the June 7, 2021 deadline.¹⁴ On May 12, 2022, Cal.net supplemented its waiver request stating that the CPUC issued Resolution T-17763 denying its request on April 12, 2022.¹⁵

⁵ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723 n.230.

⁶ *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*.

⁷ See generally *GeoLinks Petition*.

⁸ GeoLinks filed its request with the California Public Utilities Commission on Jan. 6, 2021. *GeoLinks Petition* at 3 n.4. The CPUC previously designated Geolinks as an ETC in areas that Geolinks had won in the CAF Phase II auction (Auction 903). See Public Utilities Commission of the State of California, Resolution T-17646 (issued Feb. 2019).

⁹ *GeoLinks Petition* at 2-3.

¹⁰ See Public Utilities Commission of the State of California, Resolution T-17764 (issued Apr. 11, 2022) (*April 2022 GeoLinks CPUC Resolution*).

¹¹ *Id.* at 5-6, 10.

¹² See *Cal.net Petition*.

¹³ Cal.net filed its request with the CPUC on Jan. 6, 2021. *Cal.net Petition* at 1-2. The CPUC previously designated Cal.net as an ETC in the areas that Cal.net had won in Auction 903. See Public Utilities Commission of the State of California, Resolution T-17640 (issued Jan. 2019).

¹⁴ *Id.* at 2-3.

¹⁵ See *Cal.net Supplemental Petition* at 2; see also Public Utilities Commission of the State of California, Resolution T-17763 (issued Apr. 12, 2022) (*April 2022 Cal.net CPUC Resolution*). On May 12, 2022, Cal.net also filed an application for rehearing with the CPUC requesting review and reversal of its decision. *Cal.net Supplemental Petition* at 2.

6. On April 12, 2022 the CPUC issued Resolution T-17763 denying the request of Cal.net to expand its ETC service area in the state of California to cover Cal.net's RDOF Auction 904 winning areas in the state.¹⁶ The CPUC listed several reasons for the denial, including delayed completion on buildout of state obligations, concerns regarding financial ability to fund the RDOF buildout, and lack of responsiveness to the CPUC.¹⁷ Further, the CPUC stated that Cal.net's 2019 ETC designation was only issued for areas funded in Auction 903 and thus does not extend to the areas that would be funded through Auction 904.¹⁸

II. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.¹⁹ 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.²⁰ As explained below, we dismiss as moot the petitions filed by both GeoLinks and Cal.net to waive the deadline to submit documentation of its ETC designation in California.

8. We find that the CPUC's decisions to deny GeoLinks' and Cal.net's applications to expand their ETC designation service areas makes the applicants' petitions for waiver moot. Because GeoLinks and Cal.net have been unable to obtain ETC designation covering their respective winning areas in California, the applicants cannot be authorized to receive RDOF support in those areas. We note that because the CPUC denied the ETC designation requests of GeoLinks and Cal.net on their merits, the Commission does not have jurisdiction to decide the applicants' ETC statuses in California.²¹

9. Consequently, we dismiss the petitions for waiver of both GeoLinks and Cal.Net as moot. The Bureau will release a public notice in the near future announcing their defaults in these areas.

III. ORDERING CLAUSES

10. 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.

11. IT IS FURTHER ORDERED that the petition for limited waiver of the deadline for providing documentation of ETC designation for Auction 904 filed by California Internet, L.P. dba GeoLinks, IS DISMISSED.

12. IT IS FURTHER ORDERED that the petition for waiver and supplemental petition for waiver of the deadline for providing documentation of ETC designation for Auction 904 filed by Cal.net, Inc., IS DISMISSED.

¹⁶ See *April 2022 Cal.net CPUC Resolution* at 6-11.

¹⁷ *Id.*

¹⁸ *April 2022 Cal.net CPUC Resolution* at 6 n.32, 15-16.

¹⁹ 47 CFR § 1.3.

²⁰ 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)).

²¹ See 47 USC § 214(e)(2), (6).

13. 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