



PUBLIC NOTICE

Federal Communications Commission
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DA 23-434

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**RURAL DIGITAL OPPORTUNITY FUND SUPPORT
BID DEFAULTS ANNOUNCED; WAVELENGTH LLC'S PETITION FOR WAIVER OF
THE JUNE 7, 2021 ELIGIBLE TELECOMMUNICATIONS CARRIER
DOCUMENTATION DEADLINE DENIED**

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

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau), and the Office of Economics and Analytics (OEA) announce that a Rural Digital Opportunity Fund (Auction 904) long-form applicant has defaulted. The long-form applicant is identified in Attachment A. We also announce a waiver denial that will result in a state-level default at a later date.

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.¹ Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.² 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, 2021.³ On February 18, 2021, we announced that there were 417 long-form applicants.⁴ By June 7, 2021, each Auction 904 long-form applicant was required 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.⁵

In Attachment A, we list the relevant winning bids associated with winning bidders or their assignees that are in default.⁶ A list of the eligible census blocks covered by these winning bids will be

¹ *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*).

² *Id.* at 13890-91, paras. 9-14.

³ *Id.* at 13892-93, para. 16.

⁴ *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34, Public Notice, 36 FCC Rcd 4140 (WCB and OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*).

⁵ 47 CFR § 54.804(b)(5).

⁶ On May 23, 2023, WCB denied Etheric Communications LLC's (Etheric) petition for reconsideration of the Bureau's decision to dismiss and/or alternatively deny its petition seeking waiver of the June 7, 2021 ETC designation documentation deadline. *Rural Digital Opportunity Fund Auction (Auction 904) et al.*, AU Docket No. 20-34 et al., Order on Reconsideration, DA 23-430 (WCB May 23, 2023). Etheric did not obtain an ETC designation from the California Public Utilities Commission by the June 7, 2021 deadline. Thus, Etheric has defaulted on all of its winning bids, which are included in Attachment A.

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 A.⁷ We consider winning bidders and assignees to be in default for these bids and subject to forfeiture. We will refer these defaulters to the Enforcement Bureau for further consideration.

A defaulter is subject to a base forfeiture per violation of \$3,000.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.¹²

We also dismiss as moot and/or alternatively deny Wavelength LLC’s (Wavelength) petition for waiver of the June 7, 2021, ETC designation documentation deadline. Wavelength has proposed to deploy gigabit, low latency service to more than 68,000 locations in California and Arizona.

On June 7, 2021, Wavelength filed a petition for waiver, as to its application for California, of the June 7, 2021 deadline.¹³ We dismiss that petition as moot because on February 2, 2023, the California

⁷ On July 26, 2021, the Rural Broadband Auctions Task Force, WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns had been raised about whether funding those areas would be the best use of our limited universal service funds. See “Letters to Long-Form Applicants about Identified Census Blocks,” <https://www.fcc.gov/auction/904/releases>. 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. *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 9 (WCB/OEA Dec. 14, 2021); *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. See *Petition of Wavelength LLC for Waiver of Section 1.21004 of the Commission’s Rules*, OEA Docket No. 20-34 et al. (filed Aug. 18, 2021).

⁸ *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 735-36 para. 115 (2020) (*Rural Digital Opportunity Fund Order*); *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, 6178, para. 332 (2020) (*Auction 904 Procedures Public Notice*).

⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

¹⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

¹¹ 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.

¹² *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).

¹³ 47 CFR § 54.804(b)(5); Wavelength, LLC Petition for Waiver of Section 54.804(b)(5) of the Commission’s Rules, AU Docket No. 20-34 et al. (filed June 7, 2021) (Wavelength ETC Petition).

(continued...)

Public Utilities Commission (CPUC) issued a decision denying Wavelength's request for an ETC designation covering its Auction 904 winning bids in the state.¹⁴ As a result, Wavelength has been unable to obtain an ETC designation covering its winning bid areas in California. On this basis alone, Wavelength cannot be authorized to receive Auction 904 support in those areas.¹⁵

In addition and in the alternative, we deny Wavelength's petition for waiver on the merits. Wavelength's counsel filed an *ex parte* letter on March 6, 2023, notifying the Commission of the California PUC denial of its ETC designation petition and noting that Wavelength has filed for rehearing in California. Wavelength requested that the Commission defer final action on Wavelength's RDOF application in California until "any further proceedings relating to its California ETC designation have been completed."¹⁶ We find that it does not serve the public interest to delay action on Wavelength's Auction 904 long form application indefinitely after the CPUC has already denied Wavelength's ETC petition, and while Wavelength pursues what could be a lengthy process seeking recourse. Numerous federal and state programs have been established or are being established to fund broadband deployment. By denying Wavelength's petition for waiver, which will lead to the denial of its long-form application for California and its default of its California winning bids, we will open up the relevant areas covered by its Auction 904 winning bids to eligibility for future funding programs to the extent they remain unserved, rather than tying up these areas for an indefinite period of time with no indication that Wavelength will ultimately obtain an ETC designation from California. The Bureau expects to release a public notice in the near future announcing Wavelength's default in these areas.

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Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule and (2) such deviation will serve the public interest. *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (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)).

¹⁴ California Public Utility Commission, Decision Granting Wavelength Internet, LLC a Certification of Public Convenience and Necessity and Denying Designation as an Eligible Telecommunications Carrier, Order, Application 21-01-009 (rel. Feb. 2, 2023).

¹⁵ *See Rural Digital Opportunity Fund Auction et al.*, AU Docket No. 20-34 et al., Order, DA 22-912 (WCB/OEA Aug. 31, 2022) (dismissing California Internet, L.P. dba GeoLinks and Cal.Net, Inc.'s petitions for waiver as moot after the CPUC denied their requests for ETC designation).

¹⁶ Letter from Casey Lide, Counsel to Wavelength LLC, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Mar. 6, 2023).

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Auction 904 Information

General Auction Information, Process, and
Procedures

**Office of Economics and Analytics,
Auctions Division**

(717) 338-2868

Post-Auction Rules, Policies, and Regulations

**Office of Economics and Analytics,
Auctions Division**

(202) 418-0660

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disadvantaged businesses

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FCC Internet Sites

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<https://www.fcc.gov/auction/904>

This Public Notice contains the following Attachment:

Attachment A: Bids in Default

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