



# PUBLIC NOTICE

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## WAVELENGTH LLC'S RURAL DIGITAL OPPORTUNITY FUND BIDS IN DEFAULT; LTD BROADBAND'S PETITION FOR WAIVER OF THE JUNE 7, 2021 ETC DOCUMENTATION DEADLINE DISMISSED

**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 (RDOF or Auction 904) long-form applicant has defaulted. The long-form applicant's defaulted bids are identified in Attachment A. We also announce the dismissal of a waiver request that is moot as it relates to a prior default of a different applicant.

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 RDOF support.<sup>1</sup> Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.<sup>2</sup> 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.<sup>3</sup> On February 18, 2021, we announced that there were 417 long-form applicants.<sup>4</sup> 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.<sup>5</sup>

*Wavelength - California.* On June 2, 2021, Wavelength, LLC ("Wavelength") filed a waiver petition to extend the June 7, 2021 deadline to document receiving an ETC certification for its winning bid areas in California.<sup>6</sup> On February 2, 2023, the California Public Utilities Commission (CPUC) denied Wavelength's request for ETC designation, and on March 3, 2023 Wavelength filed a request for

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<sup>1</sup> *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*).

<sup>2</sup> *Id.* at 13890-91, paras. 9-14.

<sup>3</sup> *Id.* at 13892-93, para. 16.

<sup>4</sup> *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*).

<sup>5</sup> 47 CFR § 54.804(b)(5).

<sup>6</sup> 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 2, 2021).

rehearing of the ETC designation denial.<sup>7</sup> On May 23, 2023, we denied Wavelength's petition for waiver of the June 7, 2021 ETC designation documentation deadline as moot and in the alternative also denied it based on the merits.<sup>8</sup> We found that deferring final action on Wavelength's RDOF application in California until "any further proceedings relating to its California ETC designation have been completed" did not serve the public interest.<sup>9</sup> As Wavelength has been unable to obtain an ETC designation covering its winning bid areas in California, Wavelength cannot be authorized to receive RDOF support in those areas. Therefore, we consider Wavelength to be in default on these bids, as listed in Attachment A, and subject to forfeiture. We will refer these defaults to the Enforcement Bureau for further consideration.

A defaulter is subject to a base forfeiture per violation of \$3,000.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

*LTD Broadband – South Dakota.* In an Order on August 10, 2022,<sup>15</sup> the Bureau denied LTD Broadband's (LTD's) Auction 904 application, and LTD thus defaulted in all remaining winning bid areas. In that Order, we neglected to dismiss LTD's request for waiver of the deadline to submit documentation of its ETC Designation in South Dakota. Given that the denial of LTD's long-form

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<sup>7</sup> California Public Utility Commission, Decision Granting Wavelength Internet, LLC A Certificate of Public Convenience and Necessity and Denying Designation as an Eligible Telecommunications Carrier, Order, Application 21-01-009 (Feb. 2, 2023); Wavelength, LLC, Application for Partial Rehearing of Decision 23-02-001 Denying Designation as an Eligible Telecommunications Carrier, Rehearing Request, Application 21-01-009 (Mar. 3, 2023).

<sup>8</sup> *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 Nos. 19-126 and 10-90, Public Notice, DA 23-434 (WCB/OEA May 23, 2023).

<sup>9</sup> *Id.* at 3 (quoting 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)).

<sup>10</sup> *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*).

<sup>11</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>12</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>13</sup> 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.

<sup>14</sup> *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).

<sup>15</sup> *Rural Digital Opportunity Fund Support For 80 Winning Bids Ready to be Authorized; Bid Defaults Announced*, WC Docket No. 19-126 et al., Public Notice, DA 22-848, (WCB/OEA August 10, 2022).

application effectively mooted the outstanding waiver request, we dismiss as moot LTD's request to waive the deadline to submit documentation of its ETC designation in South Dakota. Although LTD is challenging our application denial, subsequent events in South Dakota further compel the dismissal of the waiver request. On March 21, 2022, the South Dakota Public Utilities Commission (SDPUC) released an order denying LTD's application for ETC Designation in the state.<sup>16</sup> Though LTD sought rehearing on this denial and rehearing was initially granted on July 22, 2022, the SDPUC closed the rehearing docket through an Order dated October 12, 2022.<sup>17</sup> We find that the SDPUC's decision to deny LTD's ETC designation application and close the docket on rehearing makes LTD's petition for waiver moot.

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#### Press Information

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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

#### Small Businesses

Additional information for small and disadvantaged businesses

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#### Consumer and Governmental Affairs Bureau

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<sup>16</sup> See Before the Public Utilities Commission of the State of South Dakota, Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks; Notice of Entry of Order, TC21-001 (Mar. 21, 2022), available at <https://puc.sd.gov/commission/dockets/telecom/2021/TC21-001/TC21-001FinalOrderDenyPublic.pdf> (last visited July 18, 2022).

<sup>17</sup> See Before the Public Utilities Commission of the State of South Dakota, Order Denying Request to Suspend the Docket; Order Granting the Motion to Close the Docket, TC21-001 (Oct. 12, 2022), available at <https://puc.sd.gov/Dockets/Telecom/2021/TC21-001Close.pdf> (last visited July 18, 2023).

**FCC Internet Sites**

<http://www.fcc.gov>

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

This Public Notice contains the following Attachment:  
Attachment A: Bids in Default

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