

## APPENDIX A

As described below, each bidder was affirmatively defaulted by the Commission for its inability to fulfill the requirements of Auction 904 and therefore, is in apparent violation of section 1.21004(a) of the Commission's rules and the requirements established specifically for Auction 904 in the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*.<sup>1</sup>

1. **Etheric Communications LLC (Etheric); FRN: 0013358395; File No.: EB-IHD-23-00035840; NAL/Acct No.: 202432080005.** Etheric is a wholly-owned subsidiary of Etheric Networks Incorporated, which provides custom broadband services through a combination of fixed wireless and fiber technologies to residential and business customers across 10 counties in the San Francisco Bay Area.<sup>2</sup> Etheric timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.<sup>3</sup> WCB declared Etheric to be in default on May 23, 2023, and referred the company to the Bureau for enforcement action,<sup>4</sup> after WCB denied Etheric's petition for reconsideration of the Bureau's decision to dismiss as moot and alternatively, denied Etheric's petition seeking waiver of the deadline for demonstrating, with appropriate documentation, that it had been designated as an eligible telecommunications carrier in each of the geographic areas for which it sought to be authorized for Auction 904 support.<sup>5</sup> The Commission finds that Etheric apparently committed 244 violations by defaulting on 244 CBGs subject to forfeiture, which places the company's base forfeiture at \$732,000.<sup>6</sup> Etheric's total assigned support for the CBGs in default subject to forfeiture amounted to \$218,641,793.80, thereby capping the maximum possible forfeiture at \$32,796,269.07, which is 15 percent of Etheric's defaulted support subject to forfeiture in Auction 904.<sup>7</sup> Because the base forfeiture is

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<sup>1</sup> 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 735, paras. 114-115 (2020) (*Rural Digital Opportunity Fund Order*); *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 et al., Public Notice, 35 FCC Rcd 6077, 6178, paras. 321-22 (2020) (*Auction 904 Procedures Public Notice*).

<sup>2</sup> Etheric Networks, *Company, About Etheric*, <https://ethericnetworks.com/about-etheric-networks> (last visited Jul. 5, 2023).

<sup>3</sup> *See 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., 35 FCC Rcd 13888, 13914 (WCB/OEA 2020) (*Winning Bidders Public Notice*).

<sup>4</sup> *Rural Digital Opportunity Fund Support Bid Defaults Announced; Wavelength LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-434, 23 WL 3686087, at \*1-2 & Attach. A. (WCB/OEA May 23, 2023) (*May 23, 2023 Default Public Notice*).

<sup>5</sup> *See May 23, 2023 Default Public Notice*, at \*1 n.6; *Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund*, AU Docket No. 20-34 et al., Order on Reconsideration, DA 23-430, 2023 WL 3685855, at \*1, para. 1 (WCB May 23, 2023); *Rural Digital Opportunity Fund Support Authorized for 1,764 Winning Bids; Etheric Commc'ns LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-33, 2023 WL 195695, at \*1 & n.1 (WCB/OEA Jan. 13, 2023) (dismissing as moot and alternatively denying Etheric's petition for waiver of ETC deadline); *see also* 47 CFR § 54.804(b)(5) (requiring a long-form applicant to certify that it is an eligible telecommunications carrier and submit the relevant documentation supporting that certification by the deadline).

<sup>6</sup> *See Rural Digital Opportunity Fund Order*, *supra* note 1, at 735-36, para. 115 (establishing a \$3,000 base forfeiture per violation); *see also* Appendix B (listing CBGs assigned to Etheric that are in default).

<sup>7</sup> *See id.* at 736, para. 117 (establishing the 15 percent cap on forfeitures); *see also May 23, 2023 Default Public Notice*, *supra* note 5, at Attach. A (describing the total amount of Etheric's won support that is in default for the identified CBGs).

less than the 15 percent cap established in the *Rural Digital Opportunity Fund Order*,<sup>8</sup> the Commission finds that the forfeiture amount of \$732,000 against Etheric is appropriate here.

2. **LTD Broadband LLC (LTD); FRN: 0020926788; File No.: EB-IHD-23-00035839; NAL/Acct No.: 202432080004.** LTD is a broadband service provider operating in the Midwest United States.<sup>9</sup> LTD timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.<sup>10</sup> WCB declared LTD to be in default on August 10, 2022, and referred the company to EB for enforcement action.<sup>11</sup>

3. LTD's application was lacking in a number of ways. First, LTD failed to provide proof of Eligible Telecommunications Carrier (ETC) designation, a requirement to receive universal service funds, in three of the states in which it had winning bids.<sup>12</sup> Second, LTD did not show that it had available funds for all project costs that exceed the amount of support to be received for the first two years of its support term.<sup>13</sup> In particular, WCB determined that LTD would not be able to meet the initial prerequisites of a new term sheet for a loan and equity fundraising round submitted with its final financial plan. Third, LTD did not, as required, differentiate between anticipated project costs and related funding for each of the areas for which LTD was seeking support, nor did LTD explain why its apparent assumption that all deployment costs are equal across all of its winning bids states and rural regions within each state might be reasonable.<sup>14</sup> Fourth, a number of the cost assumptions on which LTD based its deployment costs were unrealistic, raising concerns that the overall determination of deployment costs was too low. Fifth, LTD did not provide evidence that it could cover the necessary debt service payments over the life of its loans. Sixth, LTD failed to provide specific and localized project designs; instead, LTD applied an unrealistic one-size-fits-all approach for the vast areas where it would be required to deploy last-mile fiber to every serviceable location and the supporting middle-mile and core infrastructures. LTD's technical submissions reflect a lack of understanding of how significantly their business needs to scale up to achieve equipment purchases, hiring, construction, deployment, maintenance, operations, and customer service for the sizeable network of LTD's remaining winning bids. For these reasons and "based on the totality of the long-form [application], the expansive service areas reflected in [its] winning bids, and [its] inadequate responses to the Bureau's follow-up questions," WCB concluded that LTD was "not reasonably capable of complying with the Commission's requirements."<sup>15</sup>

4. Accordingly, the Commission finds that LTD apparently committed 7,238 violations by defaulting on 7,238 CBGs subject to forfeiture, which places the company's base forfeiture at

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<sup>8</sup> *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

<sup>9</sup> LTD, *About Us*, <https://ltdbroadband.com/about> (last visited Oct. 11, 2023). LTD Broadband is now known as GigFire.

<sup>10</sup> See *Rural Digital Opportunity Fund Phase I Auction Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13917-18, Attach. A: Winning Bidder Summary (WCB/OEA 2020).

<sup>11</sup> See *Rural Digital Opportunity Fund Auction Support for 80 Winning Bids Ready to Be Authorized, Bid Defaults Announced*, Public Notice, DA 22-848, 2022 WL 3339591, at \*9 (WCB/OEA Aug. 10, 2022) (*Aug. 10, 2022 Authorization and Default Public Notice*).

<sup>12</sup> 47 U.S.C. § 254(e) ("[O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support.").

<sup>13</sup> 47 CFR § 54.804(b)(2)(v); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, 6174-75, paras. 64, 312.

<sup>14</sup> 47 CFR § 54.804(b)(2)(vi), *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6174-75, para. 312.

<sup>15</sup> Aug. 10, 2022 Authorization and Default Public Notice at 9.

\$21,714,000.<sup>16</sup> LTD's total assigned support for the CBGs in default subject to forfeiture amounted to \$1,130,106,773.40, thereby capping the maximum possible forfeiture at \$169,516,016.01, which is 15 percent of LTD's defaulted support subject to forfeiture in Auction 904.<sup>17</sup> Because the base forfeiture is less than the 15 percent cap established in the *Rural Digital Opportunity Fund Order*,<sup>18</sup> the Commission finds that the forfeiture amount of \$21,714,000 against LTD is appropriate here.

5. Additionally, we propose to hold GigFire LLC (GigFire) jointly and severally liable for the total amount of LTD's forfeiture. LTD and GigFire, a new entity that apparently was recently created by the owner of LTD, appear to share so many operational traits that they share a substantial identity and, as such, we propose to hold them jointly and severally liable for the auction default violations. When analyzing two companies "the factors that enter into a determination of alter ego status are substantial identity of management, business purpose, operation, equipment, customers, supervision and ownership between the old entity and its successor."<sup>19</sup>

6. Holding GigFire jointly and severally liable is appropriate here because the same individual—Mr. Corey Hauer—appears to control both LTD and GigFire. In the long-form application LTD submitted to be authorized for RDOF support (FCC Form 683), Mr. Hauer, as CEO, certified on behalf of LTD that he fully owned the entity.<sup>20</sup> Mr. Hauer is presently the CEO of GigFire according to its website,<sup>21</sup> though we do not know whether Mr. Hauer is the sole owner of this entity as well. According to the Nevada Secretary of State's website, Mr. Hauer is the sole manager of LTD and the sole managing member of GigFire.<sup>22</sup> Both companies list only one corporate officer—Mr. Hauer.<sup>23</sup> Further, according to the Illinois Secretary of State's website, both companies have the same principal address in Las Vegas.<sup>24</sup>

7. Further, we have evidence suggesting that Mr. Hauer has transferred most of LTD's assets to GigFire. According to an article dated March 22, 2023, Mr. Hauer stated in an interview that

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<sup>16</sup> *Rural Digital Opportunity Fund Order*, *supra* note 1, at 735-36, para. 115.

<sup>17</sup> *See id.* at 736, para. 117 (establishing the 15% cap on forfeitures); *see also August 10, 2022 Default Public Notice*, *supra* note 11, at 9, Attach. B: Bids in Default (describing the total amount of LTD's won support that is in default for the identified CBGs).

<sup>18</sup> *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

<sup>19</sup> *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416, 1419 (D.C. Cir. 1984); *see also Flynn v. R.C. Tile*, 353 F.3d 953, 958-60 (D.C. Cir. 2004) (adopting an alter ego test for purposes of determining liability for a successor company); *Greater Kansas City Laborers Pension Fund v. Superior Gen. Contractors, Inc.*, 104 F.3d 1050, 1055 (8th Cir. 1997) (articulating an alter ego test); *Flynn v. Ohio Bldg. Restoration, Inc.*, 317 F. Supp. 2d 22, 28 (D.D.C. 2004) ("While 'the alter ego doctrine is primarily applied to situations involving successor companies, where the successor is merely a disguised continuance of the old employer, . . . it also applies to situations where the companies are parallel operations.'" (quoting *Massachusetts Carpenters Central Collection Agency v. Belmont Concrete*, 139 F.3d 304, 307 (1st Cir. 1998)); *In the Matter of Gregory Robbins; Interstate Brokers of Am. LLC; Nat'l Health Agents LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 2591, 2603-04, paras. 35-37 (2022) (finding that the two companies were alter egos after applying the test in *Fugazy*).

<sup>20</sup> This is consistent with LTD's short-form application to participate in the auction (FCC Form 183). *See* <https://auctionfiling.fcc.gov/form175/search175/index.htm> (search Auction 904 and LTD). There, Mr. Hauer was named as the sole authorized bidder for LTD, even though an applicant could name up to three persons. *See id.*

<sup>21</sup> GigFire, About, <https://gigfire.com/leadership.html#senior-management>. (last visited Nov. 3, 2023).

<sup>22</sup> *See* <https://esos.nv.gov/EntitySearch/OnlineEntitySearch> (Nevada Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC") (last visited Nov. 3, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> *See* <https://apps.ilsos.gov/businessentitysearch/businessentitysearch> (Illinois Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC") (last visited Nov. 3, 2023).

most of LTD's assets—outside of those in Minnesota, Iowa, and Illinois—will be transferred to GigFire.<sup>25</sup> This transfer appears to have occurred as LTD's website states, "LTD Broadband has become GigFire!" and viewers are automatically redirected to a website at GigFire.com.<sup>26</sup> The Nevada Secretary of State's website identifies the formation date for GigFire as February 25, 2023.<sup>27</sup> The website also shows LTD's entity status as, "Default,"<sup>28</sup> which means that the company "did not file an Initial or Annual List of Officers/State Business License by the due date."<sup>29</sup>

8. To the extent that LTD continues to exist and in fact has retained assets, LTD and GigFire are not easily distinguishable as they apparently share the same owner, manager, business purpose (i.e., broadband services), and address. Notably, GigFire was apparently created only *after* penalties were proposed for LTD's conduct during the RDOF Phase I auction<sup>30</sup> and after penalties were proposed for LTD's default on its winning bids in that same auction.<sup>31</sup> Therefore, it appears that Mr. Hauer created GigFire to carry on the work of LTD (using LTD's former assets), rather than for a distinct business purpose. This raises the possibility that GigFire may have been founded for the purpose of evading liability for LTD's actions.

9. Accordingly, out of an abundance of caution, we find that LTD and GigFire are apparently alter egos for purposes of liability and thus jointly and severally liable for the proposed penalty.

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<sup>25</sup> See Diana Goovaerts, "LTD Broadband – now GigFire – puts RDOF on a shelf, targets 1M new passings," Fierce Telecom (Mar. 22, 2023), <https://www.fiercetelecom.com/broadband/ltd-broadband-now-gigfire-puts-rdof-shelf-targets-1m-new-passings>.

<sup>26</sup> LTD Broadband, LTD Has Become GigiFire <https://ltdbroadband.com/>. (last visited Nov. 3, 2023).

<sup>27</sup> See <https://esos.nv.gov/EntitySearch/BusinessInformation> (Nevada Sec'y of State Business Entity Search – search result for "GigFire LLC") (last visited Nov. 3, 2023).

<sup>28</sup> See *id.*

<sup>29</sup> See <https://www.nvsilverflume.gov/questions?q=179> (last visited Nov. 3, 2023).

<sup>30</sup> See *LTD Broadband LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5736 (EB 2022).

<sup>31</sup> See *Applicants for Rural Digital Opportunity Fund in Default*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 9009 (2022).