

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
73 Applicants for Rural Digital Opportunity Fund	)	File No. [Provided in Appendix A]
in Default	)	FRN No. [Provided in Appendix A]
	)	
	)	
	)	NAL/Acct. No. [Provided in Appendix A]

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 21, 2022**

**Released: July 22, 2022**

By the Commission: Commissioner Starks issuing a statement.

**I. INTRODUCTION**

1. In this Notice of Apparent Liability (NAL), the Federal Communications Commission (FCC or Commission) identifies 73 Rural Digital Opportunity Fund (RDOF) Phase I Auction (Auction 904) applicants that defaulted on their bids for support between July 26, 2021, and March 10, 2022, in apparent violation of the Commission's rules.<sup>1</sup> As detailed below, each of these applicants defaulted on its respective bids for support by withdrawing its application with respect to certain areas, or by its failure to meet deadlines and requirements to which it agreed when it participated in Auction 904. This NAL relates only to those areas, deadlines, and requirements for which the Commission did not determine, in a prior release was appropriate. By defaulting on their bids, these applicants hindered the disbursement of funds that could have otherwise been expended for the advancement of broadband access across primarily rural areas in the United States. The objective of Auction 904 was to facilitate the provision of broadband service to Americans in wholly unserved areas.<sup>2</sup> The Commission took steps to protect the integrity, mission, and functionality of Auction 904 by advising auction participants to adhere strictly to all auction requirements and by providing for forfeitures for violations of those procedures.<sup>3</sup> In light of the

<sup>1</sup> This Notice of Apparent Liability is limited to Auction 904 defaults as determined by the Commission up to and including March 10, 2022. *See Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, 36 FCC Rcd 11651, 11656, Attach. A: Bids in Default (WCB/OEA 2021) (*July 2021 Default Public Notice*); *Fifth Rural Digital Opportunity Fund Public Notice Announcing Support for Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, DA 21-1582, Attach. B: Bids in Default (WCB/OEA Dec. 16, 2021) (*December 2021 Default Public Notice*); *Rural Digital Opportunity Fund Support for 5,254 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, DA 22-96, Attach. B: Bids in Default (WCB/OEA Jan. 28, 2022) (*January 2022 Default Public Notice*); *Rural Digital Opportunity Fund Support for 952 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, DA 22-185, Attach. B: Bids in Default (WCB/OEA Mar. 10, 2022) (*March 2022 Default Public Notice*). Auction 904 applicants that were determined by the Commission to have been in default after March 10, 2022, will be addressed in a future enforcement action.

<sup>2</sup> *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 688-89, paras. 5-6 (2020) (*Rural Digital Opportunity Fund Order*).

<sup>3</sup> *See e.g. Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, 735, paras. 80, 114.

Exhibit B

applicants' defaults spanning 1,702 Census Block Groups (CBGs), this item assesses forfeitures as described herein for each of the 73 Auction 904 defaulters. This item also identifies the two bidding consortia jointly and severally liable for their assignees' forfeitures. The forfeitures assessed here total \$4,353,773.87.

## II. BACKGROUND

2. The Commission conducted competitive bidding for Auction 904 between the dates of October 29, 2020, and November 25, 2020, to assign Universal Service Fund (USF) support to winning bidders seeking to serve eligible areas.<sup>4</sup> Auction 904 made available up to \$16 billion in financial support over the span of ten years to winning bidders that deploy high-speed broadband and voice services to eligible areas.<sup>5</sup> The Commission opted to leverage a multi-round, reverse auction to assign and disseminate the funds,<sup>6</sup> and established clear filing deadlines for companies applying for support.<sup>7</sup>

3. The Commission explicitly warned Auction 904 applicants that failure to conform to the auction's deadlines and procedures would produce consequences, including but not limited to forfeiture penalties for default.<sup>8</sup> Companies interested in bidding in Auction 904 were required to file FCC Form 183 (Short-Form Application) no later than July 15, 2020.<sup>9</sup> This Short-Form Application was the first phase of a two-phase application process in Auction 904.<sup>10</sup> Bidders were required to provide information in the Short-Form Application that demonstrated their baseline legal, financial, and technical capabilities in order to establish eligibility to participate in a Commission auction for USF support.<sup>11</sup> The second application phase requires bidders or their assignees to file FCC Form 683 (Long-Form Application), which the Commission reviews to "determine if the application should be authorized to receive support for winning bids."<sup>12</sup> The Long-Form Application was due no later than January 29, 2021.<sup>13</sup>

4. The minimum geographic areas established by the Commission for bidding in Auction 904 were CBGs that contained one or more eligible census blocks, identified in a list released by the Commission's Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA), in coordination with the Rural Broadband Auctions Task Force (RBATF), in October 2020.<sup>14</sup> Auction

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<sup>4</sup> 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, 6079, para. 1 (2020) (*Auction 904 Procedures Public Notice*).

<sup>5</sup> See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6069, paras. 1-2.

<sup>6</sup> See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 688, para. 5.

<sup>7</sup> See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, paras. 12-13.

<sup>8</sup> See *e.g. Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114 (explaining that a winning bidder will be "considered in default and will be subject to forfeiture if it fails to timely file a Long-Form Application, fails to meet the document submission deadlines outlined above, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support" and "subject to forfeiture" for the default.).

<sup>9</sup> See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, para. 12.

<sup>10</sup> *Id.* at 6088, para. 27.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</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, para. 2 (WCB/OEA 2020) (*Winning Bidders Public Notice*).

<sup>14</sup> See *Wireline Competition Bureau and Office of Economics and Analytics Release Final List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34, *et al.*, Public

904 included nearly 787,000 eligible census blocks, located in nearly 62,000 CBGs.<sup>15</sup> WCB and OEA identified 386 applicants that were qualified to bid for support in those CBGs on October 13, 2020, and declared that bidding would start on October 29, 2020.<sup>16</sup>

5. On December 7, 2020, the RBATF, WCB, and OEA released a Public Notice announcing the 180 winning bidders who won approximately \$9.23 billion in support over a ten-year period, geographically spanning approximately 99% of the eligible CBGs.<sup>17</sup> Winning bidders were required to file a Long-Form Application, which the Commission reviews to “determine if the application should be authorized to receive support for winning bids.”<sup>18</sup> The Long-Form Application was due no later than January 29, 2021.<sup>19</sup> Winning bidders were also given until December 22, 2020, to assign any or all of their winning bids to related entities.<sup>20</sup> A winning bidder that assigned a winning bid to a related entity was required to certify and acknowledge in its application that it would inform each related entity “of its filing obligation and cause each entity to submit a timely” Long-Form Application, and that the winning bidder would be “at risk for default” if any related entity did not “submit a timely” Long-Form Application.<sup>21</sup>

6. On July 26, 2021, the RBATF, WCB, and OEA sent a letter to certain long-form applicants identifying census blocks where there were concerns about whether funding those areas would be the best use of our limited universal service funds.<sup>22</sup>

7. In response to the letter some applicants informed the Commission that they wished to default on the census blocks identified by the Commission. WCB, in conjunction with RBATF and OEA, found good cause to waive the forfeiture penalties that would be otherwise associated with the default on the

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Notice, 35 FCC Rcd 11283 (WCB/OEA 2020) (*Eligible Census Block List Public Notice*), maps available at <https://www.fcc.gov/auction/904>.

<sup>15</sup> See *Eligible Census Block List Public Notice*, 35 FCC Rcd at 11283, maps available at <https://www.fcc.gov/auction/904>.

<sup>16</sup> See *386 Applicants Qualified to Bid In the Rural Digital Opportunity Fund Phase I Auction (Auction 904); Bidding to Begin on October 29, 2020*, AU Docket No. 20-34, et al., Public Notice, 35 FCC Rcd 11356, paras. 1-2 (WCB/OEA 2020) (*Qualified Bidders Public Notice*).

<sup>17</sup> See *Winning Bidders Public Notice*, 35 FCC Rcd at 13888, para. 1.

<sup>18</sup> See *id.* at 13891, para. 14; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 293. In such circumstances, the assignee has an obligation to file a Long-Form Application and, if it fails to meet that obligation, it would be in default. See *July 2021 Default Public Notice*, 36 FCC Rcd at 11651, n.1 (identifying the assignees that did not file a long-form application). In addition, as stated in both the *Auction 904 Procedures Public Notice* and *Winning Bidders Public Notice*, the winning bidder also remains “at risk for default if any of the related entities do not submit a timely [Long-Form Application].” Accordingly, in cases where assignees of winning bids did not file long-form applications, both the winning bidder (consortium or otherwise) and the assignee that failed to file will be held jointly and severally liable. Our approach here is also consistent with our practice of treating affiliated entities collectively where necessary to ensure compliance with the Communications Act and Commission policies and regulations. As we have previously held, enterprise liability may exist where members of an enterprise act for or on behalf of one another—as bidding consortiums/groups and its bid assignees apparently did—to achieve a unified goal (in this case, participating in Auction 904), and they may be considered a single enterprise for purposes of regulatory compliance (in this case, requiring payment of default penalties).

<sup>19</sup> See *Winning Bidders Public Notice*, 35 FCC Rcd at 13891-92, para. 15.

<sup>20</sup> See *id.* at 13888, para. 2.

<sup>21</sup> See *supra* note 18.

<sup>22</sup> See “Letters to Long-Form Applicants about Identified Census Blocks,” <https://www.fcc.gov/auction/904/releases/Identified-Census-Block-Letter>.

specific census blocks that were identified in the letter, i.e., “letter-identified census blocks.”<sup>23</sup> The July letter identified only urban census blocks as areas of concern.<sup>24</sup> Certain non-urban census blocks appeared similar to staff. WCB, in conjunction with RBATF and OEA, also found good cause to waive the forfeiture penalties for these specific census blocks.<sup>25</sup> For simplicity, we refer to these census blocks and the letter-identified census blocks collectively as “waiver census blocks.”

8. Appendix A, below, sets forth the relevant, unique facts pertaining to each entity identified in the caption of this item, and describes with specificity each entity’s conduct in relation to Auction 904.<sup>26</sup> This includes such facts as the dates of their Short and Long-Form Application filings, the amount of monetary support won (and for how many CBGs), and any default-related correspondence between the entity and the Commission. WCB referred the entities listed in Appendix A to the Enforcement Bureau (EB) on July 26, 2021; December 16, 2021; January 28, 2022; and March 10, 2022.<sup>27</sup> Appendix B, below, identifies those winning bidders that assigned winning bids to related entities, and are jointly and severally liable with their assignees which are identified in Appendix A. Appendix C, below, identifies the specific CBGs in default that were subject to forfeiture and the attendant assigned USF support. Appendix D, below, identifies mailing addresses for the entities.

### III. DISCUSSION

9. The Commission established unambiguous requirements that each Auction 904 bidder must meet, and gave warning that failure to meet such requirements would result in consequences:

Any Auction 904 winning bidder or long-form applicant will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Rural Digital Opportunity Fund support by the Bureau on delegated authority, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination by the Bureau shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise. Agreeing to such payment in the event of a default is a condition for participating in bidding in Auction 904.<sup>28</sup>

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<sup>23</sup> *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34, *et al.*, Public Notice, DA 21-1560, at 9 (WCB/OEA Dec. 14, 2021) (*Fourth Auction 904 Authorization Public Notice*). WCB, in conjunction with the RBATF and OEA, waived the Commission’s rules to the extent they define a default with respect to any area covered by a winning bid as a default on that entire winning bid, effectively permitting applicants to default only on the letter-identified census blocks within a CBG and become authorized in the remaining eligible census blocks within that CBG. *Id.* at 6-7.

<sup>24</sup> *Identified Census Block Letter* at 1, n.4.

<sup>25</sup> *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) (*Eighth Auction 904 Authorization Public Notice*).

<sup>26</sup> In the *Ninth Auction 904 Ready to Authorize Public Notice*, WCB, in conjunction with the RBATF and OEA, dismissed petitions filed by applicants seeking waiver of the default forfeiture and other non-compliance measures filed. WCB, in conjunction with RBATF and OEA, also denied petitions from applicants requesting waiver of the default penalty framework to be relieved from the obligation of all winning bidders (or their assignees) to apply for Auction 904 support. *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 5, n.51 (WCB/OEA May 3, 2022).

<sup>27</sup> See *July 2021 Default Public Notice*, 36 FCC Rcd at 11656, Attach. A: Bids in Default; *December 2021 Default Public Notice*, Attach. B: Bids in Default; *January 2022 Default Public Notice*, Attach. B: Bids in Default; *March 2022 Default Public Notice*, Attach. B: Bids in Default.

<sup>28</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321.



Because each entity listed in the Applicant Appendix at Appendix A failed to meet at least one of these requirements, we find that these 73 entities apparently willfully violated the Commission's rules and orders governing Auction 904.

10. By withdrawing an application for support, a bidder defaults on its winning bids for Auction 904 in apparent violation of section 1.21004(a) of the Commission's rules and the requirements established specifically for Auction 904.<sup>29</sup> That a bidder submits an advance notice of default explaining logistical and/or financial hardships motivating its withdrawal does not absolve it from its default. In general, under the rules in effect at the time Auction 904 was conducted, a winning bidder of a Commission auction that, for any reason, is not subsequently authorized to receive support has defaulted on its bid and is liable for a default payment.<sup>30</sup> For Auction 904, the Commission determined that a defaulting bidder would be subject to a forfeiture payment under section 503 of the Communications Act of 1934, as amended (the Act), in lieu of a default payment.<sup>31</sup> The forfeiture penalties for default were clearly stated in both the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice* before bidding ever began.<sup>32</sup>

11. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>33</sup> In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received by the person against whom the notice has been issued or be sent to the last known address of the person by certified mail, and the person must have an opportunity to show, in writing, within a reasonable amount of time, why no such forfeiture penalty should be imposed.<sup>34</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>35</sup>

12. The Commission's *Forfeiture Policy Statement*<sup>36</sup> specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act, *i.e.*, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>37</sup> Moreover, section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of such act, *irrespective of any intent* to violate . . . any rule or regulation of the Commission . . . ."<sup>38</sup>

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<sup>29</sup> 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321.

<sup>30</sup> 47 CFR § 1.21004(a), (b); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321.

<sup>31</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114 & n.314.

<sup>32</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 115, 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>33</sup> See 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(2).

<sup>34</sup> See 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(f).

<sup>35</sup> See, *e.g.*, *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>36</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17,087, 17,100-01, para. 27 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 CFR § 1.80(b).

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E); see also 47 CFR § 1.80(b)(10); *Forfeiture Policy Statement*, 12 FCC Rcd at 17, 100-101, para. 27.

<sup>38</sup> 47 U.S.C. § 312(f)(1) (emphasis added). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess.

13. A monetary forfeiture is warranted against each entity listed in the Appendices A and B for its apparent willful violations of section 1.21004(a) of the Commission's rules and the procedures established for Auction 904.<sup>39</sup> Each applicant agreed, prior to participating in Auction 904, to be subject to a forfeiture in the event of default, or upon its failure to satisfy the requirements of the *Auction 904 Procedures Public Notice*.<sup>40</sup> Additionally, each applicant was cautioned to carefully craft its plans to meet all auction requirements and to prepare for any complications that could occur.<sup>41</sup> As to the applicants that subsequently assigned its winning bids, each applicant was cautioned that winning bidders and their assignees will be held jointly and severally liable if an assignee does not file a long-form application.<sup>42</sup> In considering these factors, as well as the section 1.21004 rule establishing liability for payment in the event of default, the procedures established for Auction 904 and the *Forfeiture Policy Statement*, we believe that a forfeiture is warranted against each entity cited in Appendices A and B for its apparent willful violations of section 1.21004(a) of the Commission's rules and the procedures established for Auction 904.

14. In Auction 904, the Commission established a base forfeiture of \$3,000 per violation in the event of an auction default, meaning there would be a separate violation for each geographic unit subject to a bid.<sup>43</sup> Consistent with the approach taken in previous universal service support auctions, the Commission deemed a \$3,000 base forfeiture appropriate, explaining that \$3,000 is equivalent to the base forfeiture usually imposed for failing to file required forms or information with the Commission.<sup>44</sup> To prevent the base forfeiture amount from being disproportionate to the amount of a winning bidder's bid, however, the Commission limits the total base forfeiture for Auction 904 to 15% of the bidder's total assigned support for the CBGs in which it is defaulting.<sup>45</sup> The Commission regarded 15% of the total bid amount as not unduly punitive, while providing sufficient incentive for auction participants to diligently inform themselves of the obligations associated with participation in the auction.<sup>46</sup> This constituted an increase from the 5% base forfeiture cap adopted for Auction 903, in order to satisfy commenters who worried that the total forfeitures for defaults lacked a sufficient deterrent effect.<sup>47</sup>

15. WCB's decision, in coordination with the RBATF and OEA, to waive forfeiture penalties for defaulting on the waiver census blocks has the following impact on the calculation of the total base

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51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>39</sup> 47 CFR § 1.21004.

<sup>40</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321.

<sup>41</sup> See, e.g., *id.* at 6125-27, paras. 128-134.

<sup>42</sup> *Winning Bidders Public Notice*, 35 FCC Rcd at 13891, para. 14; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6165, para. 293.

<sup>43</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115. In other words, there is a separate violation for each CBG assigned in a bid. *Id.*; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>44</sup> *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, WC Docket No. 10-90 and 14-58, Report & Order & Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6000-01, para. 144 (2016).

<sup>45</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117. This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 CBGs for \$100,000 over the support term. We may impose a total base forfeiture of \$15,000 (15% of \$100,000) because otherwise the base forfeiture would be \$300,000 (\$3,000 x 100 CBGs), three times the entire bid amount. In contrast, if Bidder B bids to serve 50 CBGs for \$1,000,000 over the support term, we may impose a total base forfeiture of \$150,000 (\$3,000 x 50 CBGs), which is 15% of the total bid. See *id.* at 736, para. 117 & n.322.

<sup>46</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117.

<sup>47</sup> *Id.* at 736, paras. 116-117.

forfeiture.<sup>48</sup> If an applicant defaulted on a CBG for which all the eligible census blocks are waiver census blocks, that CBG is not subject to the \$3,000 base forfeiture. Similarly, if an applicant defaulted on only the letter-identified census blocks within a CBG but is pursuing support in the remaining eligible census blocks covered by that CBG, the CBG is not subject to the \$3,000 base forfeiture.<sup>49</sup> In contrast, if an applicant defaulted on a CBG that contains both waiver census blocks and non-waiver eligible census blocks, the CBG is subject to the \$3,000 base forfeiture.<sup>50</sup> However, when calculating the 15% cap on the base forfeiture for such CBGs, the defaulted support subject to forfeiture is calculated by subtracting the support associated with the waiver census blocks from the total support associated with the CBG so that only the support associated with the non-waiver eligible census blocks within the CBG remains. The 15% is then applied to the defaulted support subject to forfeiture associated with all CBGs subject to forfeiture to calculate the 15% cap.

16. As seen in the Appendix A, this item assesses a cumulative forfeiture of \$4,353,773.87 apportioned amongst the 73 defaulting Auction 904 applicants. Appendix A explains in specific detail the amount applied to each defaulter, and the relevant factual background pertaining to its individual circumstances of default. In accordance with the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*, none of the proposed forfeitures exceed 15% of any single bidder's total bid amount for CBGs subject to forfeiture.<sup>51</sup> In addition, Appendix B explains in specific detail the amount of joint and several liability attached to those winning bidders that assigned bids to related entities that subsequently defaulted and are identified in Appendix A.

17. Finally, after considering all the circumstances presented in the instant case, we conclude that a departure from the base forfeiture is not warranted for any of the Auction 904 applicants identified in the Applicant Appendix. For Auction 904 defaults, the Commission allows adjustment of the total base forfeiture, upward or downward, based on the criteria set forth in section 503(b)(2)(E) of the Act, notwithstanding the 15% limitation on base forfeitures as discussed above.<sup>52</sup> However, on balance, we find that there are no other factors present in the instant case that justify a departure from the established base forfeiture for any of the defaulters identified in the Applicant Appendix. Accordingly, we find the forfeiture amounts listed in the Applicant Appendix are appropriate here.

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<sup>48</sup> Fourth Auction 904 Authorization Public Notice at 9; Eighth Auction 904 Authorization Public Notice at 6, n.38.

<sup>49</sup> See also *id.* at 6-7 (permitting applicants to partially default on a CBG by defaulting on letter-identified census blocks within the CBG and becoming authorized on the remaining eligible census blocks within the CBG).

<sup>50</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117 & n.322.

<sup>51</sup> *Id.* at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

<sup>52</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, paras. 116-117.

#### IV. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act<sup>53</sup> and section 1.80 of the Commission's rules,<sup>54</sup> that all entities identified in the Applicant Appendix are hereby **NOTIFIED** of their **APPARENT LIABILITY FOR FORFEITURE** in the amount specified in the Appendix A for their willful violations of section 1.21004(a) of the Commission's rules,<sup>55</sup> and the orders specifically prescribing procedures for Auction 904 (the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*), and **IT IS FURTHER ORDERED** that all entities identified in Appendix B are hereby **NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR FORFEITURE** in the amount specified in Appendix B for violating section 1.21004(a) of the Commission's rules,<sup>56</sup> and the orders specifically prescribing procedures for Auction 904 (the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*).

19. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,<sup>57</sup> that within thirty (30) calendar days of the release date of this Notice, each recipient of this Notice of Apparent Liability **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 23 below.

20. Each defaulter shall send electronic notification of payment to the Enforcement Bureau of the Federal Communications Commission at [EnforcementBureauIHD@fcc.gov](mailto:EnforcementBureauIHD@fcc.gov), Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Rizwan Chowdhry at [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), Ryan McDonald at [Ryan.McDonald@fcc.gov](mailto:Ryan.McDonald@fcc.gov), and Pam Slipakoff at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by wire transfer, credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>, or ACH (Automated Clearing House) debit from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>58</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>59</sup> or printed CORES form<sup>60</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>61</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>53</sup> 47 U.S.C. § 503(b).

<sup>54</sup> 47 CFR § 1.80.

<sup>55</sup> 47 CFR § 1.21004(a).

<sup>56</sup> *Id.*

<sup>57</sup> 47 CFR § 1.80.

<sup>58</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>59</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>60</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

<sup>61</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated with the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated with the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>62</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

22. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the rules.<sup>63</sup> The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, and must include the NAL account number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at [EnforcementBureauIHD@fcc.gov](mailto:EnforcementBureauIHD@fcc.gov), Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Rizwan Chowdhry at [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), Ryan McDonald at [Ryan.McDonald@fcc.gov](mailto:Ryan.McDonald@fcc.gov), and Pam Slipakoff at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov). Until further notice, the Commission will not accept any hand or messenger delivered filings.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>64</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E)

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<sup>62</sup> See 47 CFR § 1.1914.

<sup>63</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>64</sup> 47 U.S.C. § 503(b)(2)(E).

support that result.<sup>65</sup>

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested to each entity at the address listed in Appendix D below.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>65</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

## APPENDIX A

The apparent violations identified in this Appendix generally arise from one of the following two fact patterns: (1) the applicant failed to submit a Long-Form Application; or (2) the applicant submitted a Long-Form Application but subsequently withdrew its application by notifying the Commission of its intent to default on one or more CBGs. To the extent that an entry below involves a different fact pattern, the relevant facts are described in the entry. Unless otherwise specially stated below, all of the fact patterns described in this Appendix represent apparent violations 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. AMG Technology Investment Group, LLC (AMG) d/b/a Nextlink Internet; FRN: 0021701891; File No.: EB-IHD-22-00033835; NAL/Acct No.: 202232080012. AMG provides fixed wireless and fiber internet services to residential, business and governmental entities located in rural areas.<sup>2</sup> AMG timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.<sup>3</sup> On August 16, 2021, and April 23, 2021, AMG notified the Commission of its intent to default on its CBGs, including one CBG subject to forfeiture in New Mexico.<sup>4</sup> The Wireline Competition Bureau (WCB) declared AMG to be in default on July 26, 2021, and January 28, 2022, including one CBG subject to forfeiture and referred the company to the Enforcement Bureau (EB) for enforcement action.<sup>5</sup> The Commission finds that AMG apparently committed one violation by defaulting on one CBG subject to forfeiture, which places the company's base forfeiture at \$3,000.00.<sup>6</sup> AMG's CBG in default subject to forfeiture amounted to \$75,554.00, thereby capping the maximum possible forfeiture at \$11,333.10.<sup>7</sup> Because the base forfeiture is less than the 15% cap established in the *Rural Digital Opportunity Fund Order*,<sup>8</sup> the Commission finds that the forfeiture amount of \$3,000.00 against AMG is appropriate here.

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<sup>1</sup> 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, paras. 114-15; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, paras. 321-22.

<sup>2</sup> AMG Technology Investment Group, LLC d/b/a NextLink Internet, *About*, <https://www.nextlinkinternet.com> (last visited May 10, 2022).

<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.*, Public Notice, 35 FCC Rcd 13888, 13904-05, Attach. A: Winning Bidder Summary (WCB/OEA 2020) (*Winning Bidders Public Notice*).

<sup>4</sup> E-mail from Stephen E. Coran, Counsel to AMG Technology Investment Group, LLC d/b/a Nextlink Internet, to [Auction904@fcc.gov](mailto:Auction904@fcc.gov), Federal Communications Commission (Aug. 16, 2021, 15:48 EDT). Exhibit A attached to the Coran E-mail lists the census blocks that were in default.

<sup>5</sup> *Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, 36 FCC Rcd 11651, 11656, Attach. A: Bids in Default (WCB/OEA 2021) (*July 2021 Default Public Notice*); *Rural Digital Opportunity Fund Support for 5,254 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, *et al.*, Public Notice, DA 22-96, Attach. B: Bids in Default (WCB/OEA Jan. 28, 2022) (*January 2022 Default Public Notice*).

<sup>6</sup> *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 735-36, para. 115 (2020) (*Rural Digital Opportunity Fund Order*).

<sup>7</sup> See *id.* at 736, para. 117 (establishing the 15% cap on forfeitures). *July 2021 Default Public Notice*, 36 FCC Rcd at 11656, Attach. A: Bids in Default (describing the total amount of AMG's won support that is in default for the identified bids); *January 2022 Default Public Notice*, Attach. B: Bids in Default (describing the total amount of AMG's won support that is in default for the identified bids).

<sup>8</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117.

defaulted support subject to forfeiture in Auction 904.<sup>304</sup> Because the base forfeiture exceeds the 15% cap established in the *Rural Digital Opportunity Fund Order*, the Commission finds that the forfeiture amount of \$10,066.92 against Licking is appropriate here.<sup>305</sup>

**36. LTD Broadband LLC (LTD Broadband); FRN: 0020926788; File No.: EB-IHD-22-00033870; NAL/Acct No.: 202232080047.** LTD Broadband is a Nevada company that provides fiber and fixed wireless service to customers, businesses and governmental entities located in rural areas.<sup>306</sup> LTD Broadband timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.<sup>307</sup> On August 16, 2021, LTD Broadband notified the Commission of its intent to default on certain census blocks.<sup>308</sup> On August 25, 2021, LTD Broadband also notified the Commission that it would not seek reconsideration of WCB's denial of the company's deadline waiver request for its Kansas and Oklahoma bids.<sup>309</sup> The areas where LTD Broadband intended to default cover 768 CBGs subject to forfeiture. WCB declared LTD Broadband to be in default on December 16, 2021,<sup>310</sup> and on January 28, 2022,<sup>311</sup> and referred the company to EB for enforcement action. The Commission finds that LTD Broadband apparently committed violations by defaulting on 768 CBGs subject to forfeiture, which places the company's base forfeiture at \$2,304,000.00.<sup>312</sup> LTD Broadband's CBGs in default subject to forfeiture amounted to \$78,496,778.40, thereby capping the maximum possible forfeiture at \$11,774,516.76, which is 15% of LTD Broadband's defaulted support subject to forfeiture in Auction 904.<sup>313</sup> Because the base forfeiture is less than the 15% cap established in the *Rural Digital Opportunity Fund Order*,<sup>314</sup> the Commission finds that the forfeiture amount of \$2,304,000.00 against LTD Broadband is appropriate here.

**37. Lynches River Communications, Inc. (Lynches); FRN: 0029688389; File No.: EB-IHD-22-00033871; NAL/Acct No.: 202232080048.** Lynches is a South Carolina company located in Pageland, South Carolina.<sup>315</sup> Lynches was a member of RECC.<sup>316</sup> RECC timely submitted its Short-

<sup>304</sup> See *id.* at 736, para. 117 (establishing a 15% cap on forfeitures). *July 2021 Default Public Notice*, 36 FCC Rcd at 11666-67, Attach. A: Bids in Default (describing the total amount of Licking's won support that is in default for the identified bids).

<sup>305</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117.

<sup>306</sup> LTD Broadband, *About*, <https://ltdbroadband.com/about> (last visited May 10, 2022).

<sup>307</sup> See *Winning Bidders Public Notice*, 35 FCC Rcd at 13917-18, Attach. A: Winning Bidder Summary.

<sup>308</sup> E-mail from Stephen E. Coran, Counsel to LTD Broadband LLC, to [Auction904@fcc.gov](mailto:Auction904@fcc.gov), Federal Communications Commission (Aug. 16, 2021, 15:45 EDT).

<sup>309</sup> Petition for Partial Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, *et al.*, at 1-2 (filed Aug. 25, 2021).

<sup>310</sup> *December 2021 Default Public Notice*, at 4-5, n.38 & Attach. B: Bids in Default.

<sup>311</sup> *January 2022 Default Public Notice*, Attach. B: Bids in Default.

<sup>312</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, para. 115.

<sup>313</sup> See *id.* at 736, para. 117 (establishing the 15% cap on forfeitures). *December 2021 Default Public Notice*, Attach. B: Bids in Default (describing the total amount of LTD Broadband's won support that is in default for the identified bids); *January 2022 Default Public Notice*, Attach. B: Bids in Default (describing the total amount of LTD Broadband's won support that is in default for the identified bids).

<sup>314</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117.

<sup>315</sup> See South Carolina Sec. State, *Business Name Search: Lynches River Communications, Inc.*, <https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/622f7185-d20a-4613-9c56-1235c6e9ab5c> (last visited Apr. 15, 2022).

<sup>316</sup> See RECC Short-Form Filing, at Attach. 2, p. 36.