

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Digital Opportunity Fund Phase I Auction)	AU Docket No. 20-34
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
To: Chief, Wireline Competition Bureau		

**REDZONE WIRELESS, LLC
PETITION FOR WAIVER**

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May 20, 2021

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Summary

Despite comprehensive, exhaustive and time-consuming due diligence, and reliance on the Commission's list of eligible Census Block Groups ("CBG") in Maine, Redzone Wireless, LLC ("Redzone") was the auction winner for a single CBG that never should have been available for the Rural Digital Opportunity Fund ("RDOF") Phase I auction. Accepting more than \$500,000 in RDOF support to construct a 50/5 Mbps broadband and voice network to compete with an existing municipally funded symmetric gigabit network would be a waste of taxpayer contributions and contravene Commission objectives designed to steer finite support to areas that actually lack service. For these reasons, Redzone is relinquishing its support and seeking waiver of Commission rules that would deem it to be in default and thus liable for a monetary forfeiture and, perhaps, render it unable to participate in future Commission auctions.

As discussed in the accompanying Waiver Request, Redzone is a victim of an existing provider's violation of Commission rules requiring the semi-annual submission of Form 477. For the June 30, 2019 Form 477 reporting period, the Town of Islesboro did not report that it was then offering symmetric gigabit broadband service to all locations in the Islesboro CBG. Nor did the Town challenge the Commission's preliminary list of eligible census blocks or the final list – meaning the Commission relied on inaccurate information when it included the census blocks in the Islesboro CBG in the RDOF auction. During the auction, Redzone learned that the Town had completed construction of its fiber network in 2018 and was offering gigabit broadband service at \$360 per year, far below the price at which Redzone would be required to offer an inferior 50/5 Mbps service. Redzone immediately stopped bidding, but its' carry forward bid was the winning bid, and the only bid on which it was successful.

There is good cause for grant of a waiver to find that Redzone is not in default. The Commission imposes defaults to ensure the integrity of the auction process and that funds are not disbursed to companies that could have gone to another carrier. Here, the integrity of the auction process was tainted by the Town, which apparently failed to comply with Form 477 reporting obligations that would have kept the Islesboro CBG out of the RDOF auction altogether. Redzone was entitled to rely on the Commission's list of available census blocks, and its due diligence obligations cannot be construed to extend to the discovery of Form 477 reporting deficiencies of third parties.

Penalizing Redzone, the victim, would be inconsistent with the Commission's goal of ensuring that universal service does not fund overbuilding areas that already have service. Moreover, by relinquishing the opportunity to accept support, the Commission can make more than \$500,000 available in RDOF Phase II for areas that are truly unserved instead of funding Redzone at speeds 20 times slower and at costs three times higher than the existing gigabit network. The Commission should not encourage that outcome.

Grant of the waiver also is in the public interest. The Commission can avoid penalizing an innocent party that voluntarily reported that its acceptance of support predicated on a third party's violation of reporting obligations, a result that would incentivize bidders to under-report broadband availability and take advantage of that failure to gain an unfair advantage in support auctions.

Redzone's relinquishment of the opportunity to obtain RDOF support will save taxpayer funds and Commission administrative resources. The Commission should not undermine the public trust by penalizing a law-abiding party that stepped forward to correct an error it did not cause. The Commission should grant the requested waivers.

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**REDZONE WIRELESS, LLC
PETITION FOR WAIVER**

Redzone Wireless, LLC (“Redzone”), pursuant to Section 1.3 of the Commission’s Rules,¹ hereby respectfully seeks a waiver of Sections 1.21004(c) and (d) of the Commission’s rules² establishing financial penalties and potential disqualification from future competitive bidding by Rural Digital Opportunity Fund (“RDOF”) Phase I auction winners. The unique facts and circumstances warrant a deviation from the rules so that Redzone is not unfairly penalized by faulty auction data causing a Census Block Group (“CBG”) with existing Gigabit service to be included in the RDOF reverse auction. To the extent the Commission is unwilling to waive the rules, Redzone respectfully requests that the Commission not impose any default penalty and not bar Redzone from future participation in Commission auctions.³

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. §§ 1.21004(c) and (d).

³ The attached Declaration of Jim McKenna, Redzone’s CEO, confirms the facts described herein.

Background

Redzone was founded in 2015 and currently provides fixed broadband service to approximately 5,000 residential and business customers throughout the state of Maine using a combination of unlicensed 5 GHz spectrum and licensed 2.5 GHz spectrum it leases from the University of Maine System.

Redzone decided to participate in the RDOF auction so it could bid for support in areas near its existing towers and operations to which it could easily and readily expand broadband service. Redzone was eligible to bid at the 50/5 Mbps Baseline Tier, which it believed would be appropriate for its technology solution and business model.

Redzone's preparation for the auction was comprehensive, exhaustive and time-consuming. Four members of Redzone's Senior Management Team were dedicated to analysis and planning for a period of two months prior to the auction start. The Team's efforts were focused on identifying the company's projected costs to build out to the eligible locations as a percentage of the available award within each Census Block Group ("CBG"), and its ability to deliver service at or above its stated performance tier. Redzone's CEO and Founder, Jim McKenna, an Electrical Engineer and Former Naval Officer, gave the team specific instructions, strongly encouraging them to be conservative in their analysis. Only CBGs in which the team could show 100 percent of construction costs covered by the years 1-6 award, and 100 percent coverage to all eligible locations at or above the performance tier were to be considered. Redzone would not bid on any CBGs that failed to meet these criteria.

The Team uploaded the Commission-provided final list of CBGs and eligible locations as a unique layer within the company's proprietary mapping and planning tool, *Compass*. The *Compass* tool contains multiple data sets that can be activated and/or deactivated individually

and collectively to assess the company's ability to reach 100 percent of the eligible locations within each CBG, and forms the basis for the assessment of new construction and engineering required to reach the locations. Fields within the *Compass databased* include but are not limited to (1) E911 addresses, (2) Commission-identified tower locations showing the highest available radiation center, fiber availability, and/or line-of-sight characteristics to nearby towers for gigabit microwave backhaul, (3) Redzone's licensed spectrum availability and unencumbered bandwidth, and (4) all current and outstanding requests for Redzone's broadband Internet service within the CBG. *Compass* provided the Team with propagation maps from every one of the ~1,200 FCC tower locations in the State of Maine, showing coverage to the RDOF-eligible locations and any gaps in coverage. Redzone analyzed all 380 of the RDOF-eligible CBGs in the State of Maine with this tool over a period of 60 days prior to the auction start. The results of their findings were provided to CEO McKenna in the form of an Excel Spreadsheet, along with the team's recommended bid strategy.

Through its analysis, Redzone's Senior Management Team ultimately determined that it could serve 100 percent of the eligible locations in 252 of 380 CBGs in Maine, using CEO McKenna's conservative framework and requirements. Based on this information, Redzone submitted opening bids for each of these 252 CBGs in the first round of the auction. To be clear, the Team did not independently consider underlying service provider networks or the current service offerings of those providers as part of its analysis. It had no way of obtaining this information from competing private communications companies and relied on the integrity of Form 477 data and the Commission's inclusion of the CBGs in the auction as meeting the test of unserved.

Redzone was a successful bidder, with a carry forward bid made in Round 13,⁴ for \$507,752 in support for 39 census blocks in a single CBG (CBG 23027044001) (“Islesboro CBG”) in Waldo County, Maine with 755 locations. The Islesboro CBG includes several islands in West Penobscot Bay, with the only population residing in the Town of Islesboro on Islesboro Island. Redzone has the ability to serve all 755 locations with at least 50/5 Mbps broadband and voice service from existing tower facilities located on and around Islesboro Island.⁵

However, during the course of the auction, and before the clearing round, Redzone noticed some peculiarities about the bidding patterns for the Islesboro CBG. Mr. McKenna then visited the Town of Islesboro’s web site and learned that in 2018, the Town of Islesboro completed a municipal fiber construction project to all locations in the eligible census blocks in the CBG, and it promptly ceased bidding on the CBG. According to the Town’s web site: “The Islesboro Municipal Broadband (IMB) provides every home and business on the island with the option to have 1-gigabit state-of-the-art fiber-to-the-premise broadband Internet access. Subscribers, who choose, pay a \$360 yearly subscriber fee.”⁶ The Town web site states that “[t]his construction project was essentially complete by mid-2018 [*sic*] with more than 600 premises connected.”⁷ The web site explains the way in which service is provisioned:

The Town contracts with an Internet Service Provider (ISP), GWI of Biddeford, ME to light the network, connect subscribers to the Internet, provide subscriber service and support, and perform all maintenance and upgrades to the town-owned infrastructure. . . . the Town maintains the subscriber list and interacts with the stakeholders. It bills each subscriber a yearly fee of \$360 as well as other

⁴ See [FCC PRS](#) (last visited May 15, 2021).

⁵ Redzone timely filed its long-form application and has been designated as an eligible telecommunications carrier (“ETC”) by the Maine Public Utilities Commission. Redzone will be requesting relinquishment of its ETC designation in the near future and submitting a notice to the Commission that Redzone will not be pursuing its long-form application.

⁶ See [Town of Islesboro: Islesboro Municipal Broadband](#) (last visited May 15, 2021).

⁷ *Id.*

service fees. The Town, acting as the billing agent, substantially reduces the monthly GWI management fees. GWI invoices the Town for subscriber service dispatches, connectivity, oversight management, repairs and upgrades.⁸

Based on this information, Redzone did not place any further bids for the Islesboro CBGs.

However, its earlier carry-forward bid resulted in Redzone being the auction winner.

Upon further investigation, including a phone call with a Town official after Redzone ceased bidding, Redzone determined that neither the Town nor GWI (its contractor) that manages the customer relationship filed Form 477 for the December 2019 reporting period for the eligible census blocks in the CBG. Nor did the Town or GWI respond to the Public Notice initiating a challenge process specifically implemented to seek correction of the Commission's preliminary list of eligible census blocks.⁹ The preliminary list was based on the most recent publicly available Form 477 data, which (at the time) represented deployment as of June 30, 2019, after the Town completed construction of its gigabit network.¹⁰ Redzone has reviewed GWI's Form 477 for the June 30, 2019 reporting period (the Town did not file Form 477 at that time), and confirmed that it does not include the census blocks in the Islesboro CBG.¹¹ As a result of the failure of the Town and/or GWI to file an accurate Form 477 reflecting the gigabit network and

⁸ *Id.*

⁹ *See Wireline Competition Bureau Releases Preliminary List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, 35 FCC Rcd 2685 (2020).

¹⁰ *See id.*

¹¹ The most recent Fixed Broadband Deployment Map available on the Commission's web site indicates that the Town of Islesboro offers 1 Gbps/1 Gbps fixed broadband service in each of the census blocks comprising the Islesboro CBG as of June 30, 2020 (one year after the June 30, 2019 data used for the RDOF auction). The most recent Map also shows that other companies also are offering broadband service of at least 25/3 Mbps in the Islesboro census blocks as of June 30, 2020.

their failure to challenge the preliminary list,¹² the unserved census blocks in the Islesboro CBG were included on the final list of eligible census blocks for the RDOF Phase I auction.¹³

Discussion

The Commission may waive a rule for good cause shown.¹⁴ Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”¹⁵ The Commission may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation

¹² See *Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, 35 FCC Rcd 6499 (2020). The Commission has issued Notices of Apparent Liability for Forfeiture for broadband providers that have not timely filed Form 477 or reported inaccurate information on Form 477. See, e.g., *Barrier Communications Corporation d/b/a BarrierFree*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186 (2020) (proposing \$163,912 forfeiture for apparent repeated failure to file Form 477, overstating broadband deployment and subscribership and submitting non-responsive and inaccurate responses to Commission requests); *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB 2015), cancelled by Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty); *City of Sandy, Oregon d/b/a SandyNet*, Notice of Apparent Liability for Forfeiture, DA 21-127 (rel. Feb. 25, 2021) (proposing \$10,000 forfeiture for apparent non-filing and late filing of Form 477); *Slopeside Internet, LLC*, Notice of Apparent Liability for Forfeiture, DA 21-220 (rel. Feb. 25, 2021) (proposing \$20,000 forfeiture for apparent non-filing and late filing of Form 477); *Western Iowa Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, DA 21-221 (rel. Feb. 25, 2021) (proposing \$10,000 forfeiture for apparent non-filing and late filing of Form 477); *Your Town Online, Inc. d/b/a Willis Online*, DA 21-222 (rel. Feb. 25, 2021) (proposing \$20,000 forfeiture for apparent non-filing and late filing of Form 477); *MidwayNet, LLC*, Notice of Apparent Liability for Forfeiture, DA 21-223 (rel. Feb. 25, 2021) (proposing \$10,000 forfeiture for apparent non-filing and late filing of Form 477); *Ryan Root d/b/a Root Automation and 4Fast.net*, Notice of Apparent Liability for Forfeiture, DA 21-224 (rel. Feb. 25, 2021) (proposing \$20,000 forfeiture for apparent non-filing and late filing of Form 477).

¹³ 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*, Public Notice, 35 FCC Rcd 11283 (2020). Redzone brought this matter to the Commission’s attention in a phone call with Bureau staff on December 23, 2020, seeking guidance and relief.

¹⁴ See 47 C.F.R. § 1.3.

¹⁵ See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

from the general rule, and such deviation will better serve the public interest than strict adherence to the general rule.¹⁶ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷

In the *RDOF Report and Order*, the Commission adopted a \$3,000 base forfeiture per violation “subject to adjustment based on our forfeiture guidelines. To determine the final forfeiture amount, the Commission’s Enforcement Bureau will consider the ‘nature, circumstances, extent and gravity of the violations.’”¹⁸ Redzone respectfully requests waiver of Sections 1.21004(c) and (d) such that it is not determined to be in default. However, if the Commission determines otherwise, the Commission should impose no financial penalty and should not bar Redzone from future participation in Commission auctions in light of the “nature, circumstances, extent and gravity of the violations.” To assess any sanction would waste taxpayer contributions to the Universal Service Fund (“USF”) by endorsing the supported provision of 50/5 Mbps support to areas already receiving superior gigabit service that was unreported by the existing provider in violation of Commission rules. Redzone, the honorable party in this matter, should not be made to suffer these consequences.

¹⁶ See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁷ See *id.* at 1159; *Northeast Cellular* at 1166.

¹⁸ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 736 ¶ 115 (2020) (“*RDOF Report and Order*”) (citations omitted).

I. GRANT OF THE WAIVER REQUEST WOULD NOT FRUSTRATE THE PURPOSES OF THE RULES

A. Waiver Will Advance, Not Frustrate, Commission Policy Objectives

The Commission adopted Sections 1.21004(c) and (d) “to ensure the integrity of the auction process and to safeguard against costs to the Commission and the USF.”¹⁹ The Commission also has stated that auction defaults “hinder the disbursement of funds that could have gone to another carrier, and thereby further delay the deployment of broadband service offerings in unserved areas.”²⁰

These purposes would not be frustrated by their application here. The “integrity of the auction process” includes more than just a bidder’s due diligence. It must also include the integrity of those who are required to produce inputs for the auction to make the auction reliable for bidders. Where, as here, a provider fails to report required information on Form 477, fails to update and correct its Form 477 and fails to raise questions about the Commission’s list of eligible areas, the Commission cannot conduct a credible auction upon which bidders may reasonably rely. What will happen is what occurred here – a bidder will successfully win the auction and be entitled to support for an area that does not meet the Commission’s criteria for inclusion in the auction. To make matters worse, Redzone would be required to offer broadband service at speeds 20 times slower than the gigabit service the Town is offering, and at three times the cost.²¹

¹⁹ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17814 ¶ 460 (2011).

²⁰ *Establishing a 5G Fund for Rural America*, Report and Order, 35 FCC Rcd 12174, 12271 ¶ 248 (2020).

²¹ *See Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and*

By relinquishing its RDOF census blocks, Redzone would be advancing, not frustrating the Commission’s goal of safeguarding against costs to the Commission and the USF. Simply put, the Commission should not make USF contributions available to areas that are already served, much less where the existing service is faster and less expensive than the Commission’s benchmark. Redzone’s decision will actually save the USF more than \$500,000 – funds that should be used for areas that are truly unserved and consistent with the overarching objectives of the RDOF program.

Likewise, Redzone is not hindering the disbursement of support that could have gone to another carrier. The Islesboro census blocks should never have been available in the RDOF auction and RDOF support should thus not be available to another carrier. Rather, the funds are better applied to areas without eligible broadband service, consistent with the overall goal of “ensur[ing] that finite universal service support is awarded in an efficient and cost-effective manner and *does not go toward overbuilding areas that already have service.*”²²

And, by relinquishing support, Redzone is not delaying deployment of broadband service offerings in unserved areas – since 2018, all locations in the eligible census blocks in the Islesboro CBG have been able to receive gigabit fiber-to-the-home service that the residents and businesses have funded. These consumers should not have to pay again for broadband service – especially one that is far inferior to its municipal network – that no one is likely to buy. There can be no harm to the public interest where the entire Islesboro CBG is already served by another provider with superior broadband service.

Explanatory Notes, and Minimum Usage Allowance for Eligible Telecommunications Carriers, Public Notice, 35 FCC Rcd 13667 (WTB/OEA 2020).

²² *RDOF Report and Order* at 692 ¶ 13 (emphasis added).

Rather than frustrating the purposes of the RDOF program and undermining the integrity of the auction, Redzone’s relinquishment of more than \$500,000 in support will advance the Commission’s objective of driving taxpayer contributions to areas that lack broadband service, and at the same time protect the integrity of the auction process. The Town and GWI failed to fulfill their obligations to comply with Commission reporting rules and neglected to challenge the lists of eligible census blocks. Fortunately, Redzone discovered the problem, is not willing to take support when it is not needed, and is taking steps to ensure that finite USF dollars are not misdirected to areas that already have gigabit service and are allocated to areas that truly lack broadband service. The Commission and the public are much better served by adding the \$500,000 in support to RDOF Phase II where it can be available for those areas.

B. Redzone’s Due Diligence Obligations Should Not Require It To Discover Unreported Violations Of Commission Rules That Caused Ineligible Census Blocks To Be Included In The RDOF Auction

Redzone is aware that, pursuant to Section 54.804(a)(8), it certified in its short-form application that it “has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund.”²³ In adopting this rule, the Commission explained that this “certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of default, and that the applicant will not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties.”²⁴

As explained above, Redzone conducted significant due diligence before the auction, carefully and conservatively identifying CBGs that made economic and engineering sense for

²³ 47 C.F.R. § 54.804(a)(8).

²⁴ *RDOF Report and Order*, 35 FCC Rcd at 725 ¶ 85 (citations omitted).

Redzone to serve with RDOF support. But that due diligence cannot be construed to require Redzone, or any other applicant, to review other providers' Form 477 reports for all areas in which it intends to bid and to question other providers' certifications under penalty of perjury that the information in those Form 477 reports are true and accurate. Nor should the Commission – it is the responsibility of all providers to submit true and accurate reports so the Commission can conduct an auction with integrity based on accurate and reliable information.

Moreover, the circumstances would be much worse if Redzone had not, during the auction, reviewed the Town of Islesboro's web site, contacted the Town's representative to verify the information, and researched the circumstances predicating the Commission's inclusion of the Islesboro CBG in the RDOF auction. Had Redzone not undertaken this extraordinary level of due diligence, it could have accepted RDOF support and constructed and commenced operations on its network – only to find out months or years down the road that it was offering 50/5 Mbps service at about \$100 per month in competition with a municipally funded gigabit network with service offered to all locations at \$30 per month. That is not an outcome the Commission should encourage, and it can avoid that result by granting the requested waiver or, alternatively, by not penalizing Redzone for the reporting violations of another broadband provider.

II. GRANT OF THE WAIVER WOULD BE CONSISTENT WITH THE PUBLIC INTEREST

Grant of the waiver is in the public interest because it will avoid penalizing an innocent party that voluntarily reported that its acceptance of support would be based on a third party's violation of reporting obligations and would waste taxpayer contributions to the USF. Bidders like Redzone should be encouraged to step forward when their receipt of support would be premised on the erroneous inclusion of census blocks that should not have been eligible for

support, and allow the perpetrator of the harm to get off scot-free. Such a perverse outcome would incentivize bidders to under-report broadband availability and speeds (or not report at all) and bid for support in those areas, knowing full well that their failure to file, correct or update Form 477 enabled them to receive support where it should not have been available.

In addition, by relinquishing the opportunity to accept support, the Commission will have an additional \$500,000 of support to include in RDOF Phase II. Those funds should be made available for areas that truly lack broadband service, not areas that have already been constructed with taxpayer dollars where gigabit service is available at below-market rates.

To be sure, Redzone could continue to prosecute its long-form application. It could construct its 50/5 Mbps network and comply with Commission and state rules and obligations. It could offer its 50/5 Mbps at the urban rate survey amount, or even lower. And this would be a waste of time and effort, since there are no unserved locations in these specific areas.

The Commission should view Redzone's gesture for what it is – saving taxpayer funds and Commission administrative resources from being expended to perpetuate a third party's violation of a basic Commission reporting rule. In these circumstances, the Commission would undermine the public trust by honoring that mistake and penalizing the law-abiding party that stepped forward to correct an error it did not cause, before wasting more than \$500,000 in RDOF support.

Conclusion

In light of the foregoing, Redzone respectfully requests waiver of Sections 1.21004(c) and (d) so that it is not found to be in default or, alternatively, if it is found to be in default, Redzone should not be required to make any forfeiture payment and should not be barred from future participation in Commission auctions.

Respectfully submitted,

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May 20, 2021

DECLARATION OF JIM McKENNA

I, Jim McKenna, hereby declare under penalty of perjury that I am the CEO of Redzone Wireless, LLC ("Redzone"). I am making this Declaration in connection with Redzone's Petition for Waiver of Section 1.21004(c) and (d) of the Commission's Rules ("Waiver Request"). I have personal knowledge of the statements of fact stated in Redzone's Waiver Request. I hereby verify that the representations made in the Waiver Request are true and correct to the best of my knowledge, information and belief.



Jim McKenna, CEO
Redzone Wireless, LLC

Dated: May 20, 2021