

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

In the Matter of)	
)	AU Docket No. 20-34
Rural Digital Opportunity Fund)	
)	WC Docket No. 19-126
Connect America Fund)	
)	WC Docket No. 10-90
A2D, Inc. Petition for Waiver of Rule Prohibiting)	
Assignment of RHMD, LLC’s Rural Digital)	
Opportunity Fund Award to A2D, Inc.)	

PETITION FOR WAIVER TO ASSIGN WINNING BIDS

Pursuant to Section 1.3 of the rules and regulations of the Federal Communications Commission (“Commission”),¹ and for the reasons set forth below, A2D, Inc. (“A2D”) respectfully requests a waiver of the Commission’s rule stating that “[a] winning bidder in Auction 904 may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (i.e., July 15, 2020).”² Specifically, A2D requests that the Rural Digital Opportunity Fund (“RDOF”) funds awarded to RHMD, LLC (“RHMD”) be assigned to A2D, its joint venture partner for purposes of the RDOF award.³ As discussed *infra*, as part of the joint venture, A2D was responsible for crucial aspects of the RDOF rollout in Georgia, including network design, constructing and operating the fiber infrastructure for RHMD to provide advanced broadband and voice services to consumers and

¹ 47 C.F.R. §1.3.

² *Rural Digital Opportunity Fund Phase 1 Auction (Auction 904) Closes; Winning Bidders Announced*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90 (2020) (“Winning Bidder Announcement”).

³ To the extent that the window for dividing winning bids has closed, A2D also respectfully requests a waiver of that deadline. *See id.*

businesses in some of Georgia’s most rural areas and underserved areas. The joint venture has since dissolved, and as such, RHMD is incapable of meeting its RDOF obligations on its own, and is already in default. Given that the Commission has expressed concern that winning bidders not “default and strand consumers with no service, unreliable service, or with service that is not reasonably comparable to services offered in urban areas”,⁴ public policy dictates that the Commission assign RHMD’s winning census block groups (“CBG”) in Georgia to A2D, in order to avoid this very scenario. In the alternative, A2D requests, pursuant to Section 1.41 of the FCC rules,⁵ that the Commission deny RHMD’s application and open the CBGs for other federal funding program opportunities.

I. BACKGROUND

A2D is a African American-owned competitive local exchange carrier headquartered in Georgia that specializes in developing and operating open access networks in underserved rural and urban communities. It was established in 2005 and currently owns and operates lit fiber networks in Georgia and Alabama. A2D’s mission is to deploy multiple fiber-based networks throughout the United States and develop nearly 15,000 route miles of optical fiber that will connect one million households, businesses, and anchor institutions as well as provide fiber to the tower connectivity that will enable wireless carriers to finally provide 4G+ access in rural America. As RHMD acknowledged in its Eligible Telecommunications Carrier (“ETC”) application before the Georgia Public Service Commission, A2D’s “network platform is the only one in the world that has the unique ability to segregate commercial access from community-

⁴ *Rural Digital Opportunity Fund Auction Scheduled for October, 29 2020 Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, 35 FCC Rcd 6077, 6113-16 (2020) (“Auction Procedures Public Notice”), ¶ 98.

⁵ 47 C.F.R. § 1.41.

based access” and accordingly, “consumers, regardless of their socio-economic condition, may be provided no-cost access to the community-based content and resources they need to survive in a digital economy.”⁶ It was this very expertise that motivated RHMD to seek out A2D as its joint venture partner.

RHMD is a limited liability company headquartered in Georgia. RHMD participated in the RDOF auction and was awarded a total of \$18,303,843.20 in funding for 6,943 locations in Georgia servicing sixty-four census blocks in three counties.⁷ Most likely out of recognition that it was alone unable to perform its obligation under RDOF, RHMD partnered with A2D in a joint venture, whereby A2D performed all pre-bid analysis and the actual bidding. A2D would provide the network and infrastructure necessary for the project. While RHMD filed the Short Form Application, RHMD listed Keith Quarles, Jr., President of A2D, as a primary contact and authorized bidder, and also referenced the Joint Venture Agreement with A2D in the “Agreements” section.⁸ The Initial Project Overview in RHMD’s Long Form Application also references A2D, stating that “A2D will operate and maintain the OSP and core transport systems” necessary for the project.⁹ Notably, the engineer of record is Mr. Jerrald Rector, Vice President of A2D Inc. In fact, all substantial documentation, design, budgeting, financial projections required by RHMD were created by A2D.

⁶ *Application of RHMD, LLC for Designation as an Eligible Telecommunications Carrier to Receive Rural Digital Opportunity Fund Auction Support and Request for Expedited Consideration*, Georgia Public Service Commission, (May 7, 2021) (“Georgia ETC Application”).

⁷ *See Public Notice, Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, AU Docket No. 20-34, WC Docket 19-126, WC Docket No. 10-90, DA 20-1422 (Dec. 7, 2020).

⁸ *See RHMD, LLC, FRN 0021036439, Auction 904 Short-Form Application Form 183, File No. 0009150076* (Sept. 14, 2020).

⁹ *See id.*

II. STATEMENT OF FACTS

On May 7, 2021 (and later amended on May 25, 2021), RHMD submitted the Georgia ETC Application, with multiple references to A2D's involvement, including noting that A2D "will construct the fiber infrastructure to provide advanced broadband and voice services to consumers and businesses in some of Georgia's rural areas that currently lack access to advanced broadband and communications services."¹⁰ RHMD's ETC Application is still pending, putting RHMD in default of its RDOF obligations, given that the deadline for securing ETC status was June 7, 2021.¹¹ RHMD did not request a waiver of the filing deadline for submitting documentation of its designation as an ETC.

On June 7, 2021, RHMD informed A2D that it was abandoning the joint venture for purposes of the RDOF project. On June 25, 2021, A2D sent a formal request to RHMD to remove A2D's name, work product, designs, engineering and all association from the FCC Auction 904 Short and Long Form Application and the State of Georgia Public Service Commission petition/application for CLEC and/or ETC status.¹² A2D requested that RHMD provide a copy of the request to the associated governing entities by June 29, 2021. A follow up email was sent to RHMD's counsel of record for the ETC application by A2D's counsel on July 27, 2021. A2D has yet to receive a response. On information and belief, RHMD still has not removed any references to A2D from its formal filings.

¹⁰ Georgia ETC Application at 2.

¹¹ See Federal Communications Commission Public Notice, *Wireline Competition Bureau Seeks Comment on Rural Digital Opportunity Fund Petitions for Designations as an Eligible Telecommunications Carrier*, DA 21-279 (March 8, 2021).

III. THE REQUESTED WAIVER WOULD SERVE THE PUBLIC INTEREST

The Commission may waive any provision of its rules “if good cause therefor is shown.”¹³ The Commission has found that good cause exists to waive its rules “where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.”¹⁴ The waiver requested here satisfies this standard as set forth below.

The public interest will be served by granting an assignment of RHMD’s winning bids to A2D. Indeed, RHMD, without A2D’s support, will be unable to meet the performance levels required by RDOF in the areas in which it seeks support, leaving the residents and businesses in those areas without access to adequate broadband service. Simply put, RHMD alone is grossly unqualified and lacks the infrastructure to complete the project, a fact made all the more evident by its reliance on A2D in all of its RDOF related filings, and its refusal to remove references to A2D despite the breakdown of the joint venture. At the time of the separation of the Parties, A2D was and is still prepared for immediate full network deployment; with network, routing, and fiber design completed, all necessary vendor quotes received and pending contracts/POs, initial community outreach commenced and the necessary private financing secured.

The fact that RHMD has already defaulted on its RDOF obligations by failing to obtain ETC designation by June 7, 2021, without seeking a waiver, speaks volumes and does not bode well for the for the underserved rural communities that are within RHMD’s CBGs. Indeed, the Commission has made clear that “it will not tolerate any provider participating in the program that is not serious about providing broadband service or has not made appropriate efforts to

¹³ 47 C.F.R. §1.3.

¹⁴ *In re Applications of Intelsat LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15486 ¶59 (2000).

secure state approvals.”¹⁵ In fact, RHMD’s required Letter of Credit was also delinquent by over 90 days. At the time of submission, RHMD’s access to a Letter of Credit was reliant on the private funding A2D had secured. RHMD’s default only means such communities will have to wait that much longer for support, which flies in the face of the primary goal of RDOF, which is to connect “all Americans, no matter where they live and work” to broadband services.¹⁶ A2D’s work product was the core of the RHMD RDOF application and bidding victories and without A2D, RHMD will be unable to fulfill its public interest obligations (even if the Commission grants RHMD a waiver of the ETC and Letter of Credit requirement).¹⁷

Denying this request for waiver would result in harm to the public interest as it would result in further delays in getting broadband access to residents in Georgia who continue to be on the wrong side of the digital divide.¹⁸ A2D, conversely, is ready and willing to complete the RDOF project as planned, and is armed with the ability, existing infrastructure, and private financing to get the job done expeditiously.¹⁹

¹⁵ *FCC Makes Available Over \$311 Million for Broadband in 36 States, While Taking Steps to Clean Up the Rural Digital Opportunity Fund Program*, FCC News Release, available at <https://docs.fcc.gov/public/attachments/DOC-374406A1.pdf> (July 26, 2021) (stating that the “FCC rejected requests from AB Indiana in Florida and LTD Broadband in California, Oklahoma, and Kansas to waive program deadlines, in light of their failure to act in a timely way to seek state certification.”)

¹⁶ *In the Matter of Rural Digital Opportunity Fund Connect America Fund*, Report and Order, WC Docket No. 19-126, WC Docket No. 10-90 (Feb. 7, 2020).

¹⁷ A2D does consider the separation act by RHMD a violation of their Agreement and in bad faith overall. As such A2D is currently evaluating certain legal actions against RHMD should they continue under the current Application.

¹⁸ Alternatively, if the Commission does not grant this application, they should deny RHMD’s Long Form Application. In turn, A2D will apply for other federal subsidies for the area covered by the award so that the unserved communities in Georgia can be connected as soon as possible.

¹⁹ A2D is aware that should it be assigned RHMD’s winning bids, it would also be in default due to RHMD’s failure to secure ETC status by the June 7, 2021 deadline. Should the Commission grant A2D’s request for waiver, A2D requests a waiver of the filing deadline for submitting documentation of its designation as an ETC in Georgia and any other documentation necessary for the Commission to vet A2D as an RDOF recipient.

IV. CONCLUSION

As explained herein, granting A2D's request for a waiver of the Commission's rule stating that "[a] winning bidder in Auction 904 may only assign its winning bids to a related entity that is named in its short-form application or that was formed after the short-form application deadline (i.e., July 15, 2020)"²⁰ is in the public interest. RHMD not only has already defaulted on its RDOF obligations, but it lacks both the infrastructure, expertise and funding to complete the project on its own. By assigning RHMD's awards to A2D, its former joint venture partner, the Commission can be assured that the unserved citizens of Georgia will receive the broadband services they so desperately need. In the alternative, the Commission should deny RHMD's application, which will have the effect of allowing the 6,943 locations and opportunity to be included in RDOF phase II auction or available for funding from other federal subsidy programs.

Respectfully submitted,



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August 6, 2021

²⁰ *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90 (2020) ("Winning Bidder Announcement").

Declaration of Antwon Alsobrook

I, Antwon Alsobrook., do hereby declare under penalty of perjury the following:

1. I am the Founder & CEO of A2D, Inc.
2. I have read the foregoing Petition for Waiver, and that the factual statements made therein are true and correct to the best of my knowledge, information and belief.



Antwon Alsobrook

August 6, 2021

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Herman & Whiteaker, LLC, 6720-B Rockledge Drive, Suite 150, Bethesda, MD 20817, hereby certify that the foregoing Petition for Waiver to Assign Winning Bids was sent via electronic mail to RHMD, LLC on this 6th day of August, 2021:

David Funderburk
President
RHMD, LLC
5 Weldon Street
Greenville, SC 29609
Email: dfund@globalvision.net

/s/ Colleen von Hollen

Colleen von Hollen