

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

In the Matter of	)	
	)	WC Docket No. 10-90
Mobility Fund Phase I	)	
	)	WT Docket No. 10-208
Waiver of Section 54.1007(a)(1) of the	)	
Commission's Rules	)	AU Docket No. 12-25

**ORDER**

**Adopted: November 1, 2012**

**Released: November 1, 2012**

By the Associate Chief, Wireless Telecommunications Bureau and Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the "Bureaus"), on their own motion, waive section 54.1007(a)(1) of the Commission's rules to allow Auction 901 winning bidders seeking authorization for Mobility Fund Phase I support to use CoBank, ACB ("CoBank") as an issuing bank for the irrevocable stand-by letters of credit ("LOCs") required as part of the post-auction long-form application process.<sup>1</sup> While CoBank does not meet all of the specific requirements in section 54.1007(a)(1), we find it in the public interest and consistent with the intent of the rule to allow winning bidders to submit LOCs from CoBank.

**II. BACKGROUND**

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund ("USF") to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel.<sup>2</sup> To further that goal, the Commission created the Mobility Fund, specifically intended to bring mobile service to areas where private investment by itself is insufficient to meet our universal service goals for availability of mobile services.<sup>3</sup> In Phase I of the Mobility Fund, the Commission will, based on a reverse auction, award up to \$300 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in areas not presently covered by such networks.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 54.1007(a)(1).

<sup>2</sup> Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>3</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17773 ¶¶ 299-300.

<sup>4</sup> *Id.* at 17773 ¶ 299.

3. Auction 901, the Mobility Fund Phase I reverse auction, took place on September 27, 2012.<sup>5</sup> The Bureaus released the results of Auction 901 on October 3, 2012.<sup>6</sup> Winning bids were placed by 33 bidders, each of which must submit a post-auction long-form application by 6:00 pm on November 5, 2012.<sup>7</sup>

4. In the *USF-ICC Transformation Order*, the Commission decided that winning bidders in the Phase I reverse auction should be required to post LOCs as financial security prior to being authorized to receive Mobility Fund support.<sup>8</sup> The Commission stated that such an instrument would protect the government's interest in the funds it disburses in Mobility Fund Phase I and would ensure that the winning bidders have committed sufficient financial resources to meet the program obligations associated with such support.<sup>9</sup> The Commission decided that an irrevocable stand-by LOC would be the best financial instrument to minimize the possibility that Mobility Fund support would become property of a recipient's bankruptcy estate, thereby preventing the funds from being used promptly to accomplish the Mobility Fund's goals.<sup>10</sup> Accordingly, the rules require that winning bidders acquire an LOC in an amount equal to the amount of support as it is disbursed, plus an additional percentage of the amount of support authorized, which will serve as a default payment.<sup>11</sup> In the event that a recipient of Mobility Fund Phase I support fails to comply with the terms and conditions upon which support was granted, the Commission would draw upon the LOC.<sup>12</sup> The Commission further stated that the LOC must be issued "by a bank that is acceptable to the Commission."<sup>13</sup> Section 54.1007(a)(1) of the rules defines as an acceptable U.S. bank one that: (i) is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issue of the LOC, (ii) has deposits that are insured by the Federal Deposit Insurance Corporation ("FDIC"), and (iii) has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency).<sup>14</sup>

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<sup>5</sup> "Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901," AU Docket No. 12-25, *Public Notice*, DA 12-641, 27 FCC Rcd 4725 (WTB/WCB 2012) ("*Auction 901 Procedures Public Notice*").

<sup>6</sup> "Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901; FCC Form 680 Due November 1, 2012," AU Docket No. 12-25, *Public Notice*, DA 12-1566 (rel. Oct. 3, 2012) ("*Auction 901 Winning Bidders Public Notice*").

<sup>7</sup> Long-form applications were initially due on November 1, 2012, but on October 31, 2012, the Bureaus postponed the deadline to November 5, 2012. "Mobility Fund Phase I Auction Long-Form Application Deadline Extended," AU Docket No. 12-25, *Public Notice*, DA 12-1736 (rel. Oct. 31, 2012).

<sup>8</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶¶ 443-447.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 17810-11 ¶ 446. The Commission also recognized that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for USF. Therefore, it also adopted a default payment obligation for performance defaults, the specific amount to be determined by the Bureaus in the process of establishing the auction procedures. *Id.* at 17811 ¶ 446.

<sup>11</sup> 47 C.F.R. § 54.1007; *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 ¶ 446; *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4771 ¶ 170 ("An LOC must be submitted for each winning bid in an amount equal to one-third of the winning bid amount, plus an additional 10 percent of the winning bid amount which shall serve as a performance default payment.")

<sup>12</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17811 ¶ 448.

<sup>13</sup> *Id.* at 17810 ¶ 444.

<sup>14</sup> 47 C.F.R. § 54.1007(a)(1).

5. As part of the long-form application, a winning bidder must include a commitment letter from an acceptable bank willing to issue the LOC to cover each of the filer's winning bids.<sup>15</sup> Once Commission staff have reviewed the long-form applications and received any additional information requested as a follow-up to initial filings, the Commission will release a public notice indicating that it is ready to authorize support for specified applications and winning bids.<sup>16</sup> At that point, each of those applicants must submit the irrevocable stand-by LOC for each bid within 10 business days.<sup>17</sup> If the LOC meets the requirements of the rules, the Commission will release a second public notice authorizing support, which will allow the winning bidder to obtain its first disbursement of Phase I support from the Universal Service Administrative Company (USAC).<sup>18</sup>

6. During the filing window for the long-form applications, Commission staff received a number of requests from Auction 901 winning bidders wishing to use letters of credit issued by CoBank. Formed under the Farm Credit Act, CoBank is an agricultural credit bank serving cooperatives, including farm credit associations, agricultural businesses, and rural utilities, and is a member of the U.S. Farm Credit System, created by Congress in 1916 to meet the lending needs in rural America.<sup>19</sup> Since CoBank is not a depository institution, it does not have deposits that would be insured by the FDIC, and thus, does not meet the specific requirements of section 54.1007(a)(1)(i)(B) for United States banks considered acceptable to issue LOCs for Mobility Fund Phase I support.<sup>20</sup> Therefore, without a waiver of the rule, a winning bidder submitting LOCs issued by CoBank would not become authorized to receive Mobility Fund Phase I support.

### III. DISCUSSION

7. Based on our review of information regarding CoBank's size, authority, credit rating, and experience, as well as the existence of special circumstances relating to CoBank, we find that CoBank is an acceptable financial institution for purposes of issuing LOCs to Mobility Fund Phase I auction winning bidders and that accepting LOCs issued by CoBank will better serve the public interest than would strict adherence to the rule. Therefore, we waive section 54.1007(a)(1) on our own motion to allow Auction 901 winning bidders to submit LOCs issued by CoBank to meet the Mobility Fund Phase I LOC requirements.

8. The Bureaus have the authority to waive rules related to Mobility Fund Phase I "for good cause shown."<sup>21</sup> A waiver is appropriate only if "special circumstances warrant a deviation from the

<sup>15</sup> 47 C.F.R. § 54.1005(b)(2); *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4770-72 ¶¶ 169-172. In lieu of providing the commitment letter, a winning bidder can provide its LOC when submitting its long-form application.

<sup>16</sup> *Auction 901 Winning Bidders Public Notice* at ¶ 37.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ¶ 38.

<sup>19</sup> CoBank is authorized under Section 3.7 of the Farm Credit Act of 1971 to "make loans and commitments" to its borrowers, and to extend them "other technical and financial assistance at any time." 12 U.S.C. § 2128(a). According to CoBank, it, along with its regulator, the Farm Credit Administration, has construed this authority to include issuance of standby and commercial LOCs. For more information on CoBank, see <http://www.cobank.com/About-CoBank.aspx> (last visited Nov. 1, 2012).

<sup>20</sup> 47 C.F.R. § 54.1007(a)(1)(i)(B).

<sup>21</sup> See 47 C.F.R. §§ 1.3, 0.91(b), 0.131(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17783 ¶ 329 (delegating to the Bureaus "all authority necessary to conduct a Mobility Fund Phase I auction and conduct program administration and oversight consistent with the policies and rules we adopt in this Order"). Section 1.3 of the Commission's rules is the appropriate section under which to consider waiver of section 54.1007(a), although we note that the waiver standard applied under section 1.3 and the waiver standard applied in the context of wireless

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general rule and such deviation will serve the public interest.”<sup>22</sup> Moreover, in certain cases, a rule waiver may serve the public interest where we find that the waiver would not conflict with the policy underlying the rule.<sup>23</sup>

9. We find that grant of a waiver of section 54.1007(a)(1) to accept CoBank-issued LOCs would not conflict with the policy underlying the rule. As noted above, the Commission established specific criteria to ensure that the LOC is issued from a reputable financial institution. It defined a bank to be acceptable if it is among the 50 largest United States banks, determined on the basis of total assets, has deposits that are insured by the FDIC, and has a long-term unsecured credit rating issued by Standard & Poor’s of A- or better (or an equivalent rating from another nationally recognized credit rating agency).<sup>24</sup> We find that CoBank meets two of these criteria and provides protections equivalent to the protections afforded by the third. As of June 30, 2012, CoBank’s total assets exceeded \$90 billion.<sup>25</sup> While rankings of U.S. banks commonly list depository institutions, we note that CoBank’s assets make it comparable to banks in the top 50 based on total assets.<sup>26</sup> According to CoBank, its permanent capital, total surplus, core surplus and net collateral ratios exceeded the regulatory minimums.<sup>27</sup> In addition, CoBank is rated AA-/Stable by Standard & Poor’s, thus exceeding the minimum credit-rating requirement of our rule.<sup>28</sup> Finally, while CoBank is not FDIC insured, it is insured through the Farm Credit System Insurance Corporation (“FCSIC”), which was modeled after the FDIC.<sup>29</sup> Based on these

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radio services licenses, 47 C.F.R. § 1.925, have been found to be substantially the same. *See* Delta Radio, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 16889, 16891 ¶ 7 & n.19 (2003) (citing *Bellsouth Corporation v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999)).

<sup>22</sup> *See, e.g., Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *Cf.* 47 C.F.R. § 1.925(b)(3).

<sup>23</sup> *See WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). *See also Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983). *Cf.* 47 C.F.R. § 1.925(b)(3)(i).

<sup>24</sup> *See* 47 C.F.R. § 54.1007(a)(1)(i).

<sup>25</sup> *See* CoBank’s 2012 *Quarterly Report*, Second Quarter 2012, ending June 30, 2012, at 3 (“*CoBank 2012-Q2 Report*”). Figures from CoBank’s financial statements include the accounts of CoBank, ACB and its wholly-owned subsidiaries, CoBank, FCB and Farm Credit Leasing Services Corporation. *Id.* at 22.

<sup>26</sup> Based upon the Federal Financial Institutions Examination Council’s list of the Top 50 Bank Holding Companies as of June 30, 2012 (see <http://www.ffiec.gov/nicpubweb/nicweb/Top50Form.aspx> (last visited Nov. 1, 2012)), CoBank’s total assets would put CoBank at position number 28 if it were a bank holding company. CoBank was also recently named one of the 50 safest banks in the world, for the second year in a row, by Global Finance Magazine. *See* <http://www.gfmag.com/tools/best-banks/11661-worlds-50-safest-banks-april-2012.html#axzz284XiEq7q> (last visited Nov. 1, 2012). The ranking was based on a methodology that included total assets and an evaluation of long-term ratings from major credit agencies. CoBank was one of only five U.S. banks to be included on that list.

<sup>27</sup> *CoBank 2012-Q2 Report* at 13.

<sup>28</sup> *See* <http://www.standardandpoors.com/prot/ratings/entity-ratings/en/us/?entityID=274224&sectorCode=FI> (last visited Nov. 1, 2012). In addition, CoBank and the Federal Farm Credit Banks are rated by Fitch Ratings, a nationally recognized rating agency. On September 11, 2012, Fitch confirmed the ratings of the Federal Farm Credit Banks’ senior unsecured bonds at “AAA” and senior unsecured notes at “AAA.” With respect to CoBank specifically, Fitch rates CoBank’s long-term Issuer Default Rating (“IDR”) at “AA-” and its short-term IDR at “F1+” and its subordinated debt at “A+.”

<sup>29</sup> For information on the FCSIC, see <http://www.fcsic.gov/General%20Information.html> (last visited Nov. 1, 2012). *See also* CoBank’s 2011 *Annual Report* at 31, 83.

facts, we find that we can accept LOCs issued by CoBank on behalf of Auction 901 winning bidders without compromising the policy underlying our LOC rule. We find that our conclusion that FCSIC insurance provides protections equivalent to those indicated by holding FDIC-insured deposits is a special circumstance that justifies this waiver.

10. Furthermore, other special circumstances exist to warrant grant of a waiver here. Some Auction 901 winning bidders, particularly rural telecom cooperatives, claim to have more transactional experience with CoBank than with other banks that specifically meet the criteria of section 54.1007(a)(1). While these entities could petition to amend section 54.1007(a)(1) to expand the criteria to include institutions like CoBank, or seek individual waiver, we find that considering such individual petitions could unduly delay the distribution of Mobility Fund Phase I support. Therefore, we believe that under these circumstances, we should waive the rule on our own motion to allow winning bidders to use LOCs issued by CoBank.

11. Based on the foregoing reasons, on our own motion we waive section 54.1007(a)(1) to allow Auction 901 winning bidders to submit stand-by LOCs issued by CoBank to meet the Mobility Fund Phase I LOC requirements.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, 303(r), and sections 0.91, 0.131, 0.291, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, 0.331, and 1.3, section 54.1007(a)(1) of the Commission's rules is waived to the extent described herein.

13. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted by the Office of the Secretary to the Universal Service Administrative Company; and

14. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

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