

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

In the Matter of
Connect America Fund
Connect America Fund Phase II Auction
WC Docket No. 10-90
AU Docket No. 17-182

ORDER

Adopted: June 12, 2020

Released: June 12, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau), in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, partially grants Redwire Inc.'s (Redwire) petition for waiver of the letter of credit requirement for the Connect America Fund Phase II auction (Auction 903), limited to the first twelve months of its support term. Redwire, an Auction 903 winning bidder formed for the purpose of participating in Auction 903 to provide services to its members in North Central Oklahoma, is a corporation wholly owned by the Otoe-Missouria Tribe of Oklahoma (Tribe). In addition, we grant Fond Du Lac Communications, Inc.'s (Fond Du Lac) petition for waiver of the letter of credit deadline for Auction 903. Fond du Lac, another Auction 903 winner, is owned by the Fond du Lac Band of Lake Superior Chippewa. Both petitioners will be authorized to receive Auction 903 support in separate public notices.

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 903, an applicant must obtain a letter of credit issued by a qualified bank to protect the public's funds. Once Commission staff announces that an auction winner's long-form application is complete and the applicant is ready to be authorized, the applicant then has 10 business days to submit a letter of credit meeting the Commission's requirements that covers the first year of support and an attorney bankruptcy opinion letter.

3. Redwire's Petition. Redwire, a Tribally owned provider, participated in Auction 903 and was found ready to authorize on March 5, 2020 for \$4,766,845.60 in total to serve 8,041 locations in Oklahoma for ten years. Redwire initially requested a 30-day extension of the March 19, 2020 deadline to submit its letter of credit and bankruptcy opinion letter to the Universal Service Administrative

1 Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90 (filed Apr. 20, 2020) (Redwire April Petition).

2 Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90 (filed May 20, 2020) (Fond du Lac Petition).

3 47 CFR §§ 54.315(c); Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (CAF Phase II Auction Order).

4 47 CFR § 54.315(b)(6)(v); Auction 903 Closing Public Notice, 34 FCC Rcd at 8264, paras. 17-18.

5 Ninth Ready to Authorize Public Notice, Public Notice, DA 20-230, at Attach. A (WCB Mar. 5, 2020).

Company.⁶ Redwire explained that it would not be able to meet the March 19, 2020 deadline due to “[focusing] on the urgent needs of the Tribe’s members during the coronavirus pandemic.”⁷ However, on April 20, 2020, Redwire filed another petition for waiver requesting a permanent waiver of the letter of credit requirement for Auction 903, stating that since the filing of the earlier waiver request the “conditions [of] the Tribe and Redwire have deteriorated rapidly and precipitously.”⁸

4. *Fond du Lac’s Petition.* Fond du Lac, a Tribally owned provider, was found ready to authorize on May 4, 2020, for \$55,010.80 in total to serve 13 locations in Minnesota for ten years.⁹ Fond du Lac was then required to submit its letter of credit prior to 6:00 p.m. ET on Monday, May 18, 2020.¹⁰ Fond du Lac claims that its bank, Wells Fargo, had processing issues due to the pandemic, causing the bank to not provide the letter of credit to Fond du Lac until May 19, 2020.¹¹ Once Fond Du Lac obtained its letter of credit, it submitted the letter of credit and bankruptcy opinion letter to the Commission on May 19, 2020, and to USAC on May 20, 2020, respectively.¹² Fond du Lac now seeks waiver of the May 18th deadline.

III. DISCUSSION

5. Generally, the Commission’s rules may be waived for good cause shown.¹³ Waiver of the Commission’s rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁴

6. *Redwire’s Petition.* We find good cause to partially grant Redwire’s petition for waiver. Therefore, we waive the section 54.315(c) letter of credit requirement for the first year of Redwire’s support term. On our own motion, we then require Redwire either to file a letter of credit prior to its second-year support term or request a further waiver of the letter of credit requirement for good cause shown.

7. First, we find that special circumstances warrant deviation from the Commission’s letter of credit requirement for Redwire’s first-year support term. The Tribe’s principal livelihood encompasses the hospitality industry, including restaurants, casinos, and a hotel, which has severely suffered due to the pandemic.¹⁵ The Tribe also owns an event center “which hosts top-name entertainment throughout the year” as well as a water park.¹⁶ Oklahoma was under a state of emergency beginning March 22, 2020, requiring all non-essential citizens to stay home, harming the hospitality industry that provides a

⁶ Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90, at 2 (filed Mar. 5, 2020) (Redwire March Petition).

⁷ Redwire March Petition at 2.

⁸ Redwire April Petition at 2.

⁹ *Tenth Ready to Authorize Public Notice*, Public Notice, DA 20-483, at Attach. A (WCB May 4, 2020).

¹⁰ *Id.*

¹¹ Fond du Lac Petition at 1-2.

¹² *Id.* at 1-2.

¹³ 47 CFR § 1.3.

¹⁴ *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

¹⁵ *See* Redwire April Petition at 3-4 (stating that Redwire operates five casinos, six restaurants, and one hotel). The Tribe and Redwire (which is wholly owned by the Tribe) share the same staff and leadership and are simultaneously experiencing the same economic consequences of the pandemic. *See id.* at 1-3.

¹⁶ Redwire April Petition at 4.

substantial source of revenue to the Tribe.¹⁷ Redwire explains that “the unprecedented and destructive financial impacts of the COVID-19 pandemic . . . have been devastating to the Tribe’s hospitality-based economy” resulting in its long-standing bank’s decision not to issue a letter of credit.¹⁸ The Bank of Oklahoma stated that “[at this time] [the Tribe] does not have [enough] available on its revolving line of credit to fund an irrevocable stand-by letter of credit . . . due to the tribe’s financial hardship resulting from the closing of its casinos, hotels, and other public businesses.”¹⁹ Moreover, the Tribe’s covenants with the Bank of Oklahoma prevent it from seeking a letter of credit from another bank.²⁰

8. Here, Redwire engaged in good faith efforts to obtain a letter of credit for its first-year term of support for Auction 903. However, the unprecedented pandemic’s impact on the hospitality industry, which uniquely impacts the Tribe and Redwire, unlike other winning bidders, has resulted in Redwire’s inability to secure a letter of credit at this time.²¹ Accordingly, the unparalleled economic crisis diminishing the Tribe’s livelihood presents special circumstances for this Tribe, making it impossible for Redwire to obtain a letter of credit for the first year of its term of support.

9. Second, we find that it serves the public interest to partially grant Redwire’s waiver petition. Tribal communities are having to adjust to the burdens and restrictions imposed by the coronavirus pandemic while also facing challenges caused by the digital divide. In light of the uncertainty surrounding the spread and impacts of the coronavirus, we conclude that it will serve the public interest to waive the letter of credit requirement for the first year of support for a Tribal applicant that has otherwise substantially complied with application requirements and has expressed a willingness to serve the consumers in its winning bid areas.²² Had we found Redwire in default for not securing a letter of credit despite its efforts to do so prior to the onset of the pandemic, we may have precluded an otherwise qualified Tribal applicant from being authorized to receive support, delaying the provision of voice and broadband service in these areas.²³

¹⁷ *Id.*

¹⁸ See Redwire April Petition at 3-6, 9. (explaining that Redwire’s long-standing bank, Bank of Oklahoma, declined to issue it a letter of credit).

¹⁹ *Id.* at 5; see also *id.* at Exhibit 1.

²⁰ *Id.* at 5 (explaining that Redwire contacted MidFirst Bank in December 2019 when the Bank of Oklahoma’s Weiss bank safety rating dropped below a B-; however, once the Bank of Oklahoma’s Weiss rating increased, Redwire was forced to terminate its inquiry with MidFirst Bank due to its covenants with the Bank of Oklahoma).

²¹ Cf. *Connect America Fund*, WC Docket No. 10-90, *Connect America Fund Phase II Auction*, AU Docket No. 17-182, Order, 34 FCC Rcd 3239 (WCB 2019) (finding that auction winner’s misunderstanding of letter of credit rules did not constitute special circumstances).

²² Redwire April Petition at 9-10 (stating that Redwire’s current situation “demonstrates a more urgent need to support the provision of broadband services to unserved locations.”). The Commission has recognized the historic challenges of serving Tribal lands and the challenges related to broadband service deployment on Tribal lands. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 5949, 6026, para. 225 (2016) (*CAF Phase II Auction Order*); see also *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12212-15, paras. 4-11 (*2000 Tribal Order*); see generally *Improving Communications for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (*Native Nations NOI*) (reviewing Commission actions regarding Native Nations).

²³ Redwire April Petition at 10 (claiming that “Redwire remains committed to meeting the high demand for fixed broadband service in unserved rural areas of Oklahoma”).

10. Redwire has also requested a permanent waiver of the letter of credit deadline as it “is not optimistic that it can obtain a letter of credit in the near or long term.”²⁴ Redwire claims it will take “several months or longer to establish [the Tribe’s] revenue base, and even then, banks are likely to provide credit for other projects.”²⁵ At this time, during the ongoing pandemic, we find it is in the public interest to allow Redwire to begin receiving support to deploy to the more than 8,000 unserved Tribal locations in its awarded area without the security of a letter of credit.²⁶ Given the uncertainty about the timing of an economic recovery, however, we do not find it prudent to relieve Redwire of its letter of credit requirement for the entirety of its deployment term. Thus, we direct Redwire to keep the Bureau apprised quarterly of its situation and to make every effort to secure a letter of credit going forward..

11. *Fond du Lac’s Petition.* We find good cause to grant Fond du Lac’s petition for waiver and we waive the May 18, 2020 deadline for letter of credit and accept Fond du Lac’s May 20, 2020 letter of credit as timely filed.

12. First, we find that special circumstances warrant deviation from the Commission’s letter of credit deadline. For Auction 903 and in the context of other auctions, Commission bureaus have granted waivers of post-auction long-form application filing deadlines “when minor, inadvertent, post-auction delinquencies did not disrupt the auction process, nor undermine the Commission’s policy of facilitating rapid implementation of service to the public.”²⁷ Here, Fond du Lac’s letter of credit had been delayed due to the bank encountering processing issues because of the pandemic.²⁸ Even though Fond du Lac missed the May 18, 2020 deadline by two business days, the bank’s delay did not postpone the Commission’s auction process or the provision of voice and broadband service to consumers living in the areas where Fond du Lac was awarded support.²⁹ Indeed, we expect to authorize Fond du Lac in the first authorization public notice since its letter of credit deadline.

²⁴ *Id.* at 2.

²⁵ Redwire April Petition at 6-7.

²⁶ *Id.* at 8-9; see also *CAF Phase II Auction Order*, 31 FCC Rcd at 5979, para. 87 (seeking to adopt mechanisms to advance broadband deployment on Tribal lands).

²⁷ *Connect America Fund et al.*, Order, 34 FCC Rcd 7060 (WCB 2019) (*LTD Broadband Waiver Order*) (granting a petition for waiver of the Auction 903 Feb. 25, 2019 deadline for submitting audited financial statements for an applicant that had difficulty retaining and engaging an accountant), *Connect America Fund et al.*, Order, 34 FCC Rcd 3239 (WCB 2019) (*Casey Mutual Waiver Order*) (granting a petition for waiver of the Auction 903 letter of credit commitment letter deadline for an applicant that mistakenly believed it did not need a letter of credit). See also *Request of Tallie Colville for Waiver of Auction 91 Form 301 Filing Deadline for Construction Permit for New FM Station, Diamond Lake, Oregon*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14216 (AD-MB 2011) (*Tallie Colville Order*) (granting a waiver of the long-form application filing deadline where the applicant explained that it ‘was not ready to submit the application by the filing deadline’); *Request of BKM Enterprises for Waiver of Auction No. 68 Form 301 Filing Deadline Application for Construction Permit for New FM Station, Perry, Florida*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 15221 (AD-MB 2007) (*BKM Enterprises Order*) (granting the petition for waiver of an applicant that submitted its long-form application late because the applicant did not understand that it was required to file a long-form application); *Silver Palm Communications, Inc.*, Order, 17 FCC Rcd 6606 (CWD-WTB 2002) (*Silver Palm Communications Order*) (granting the petition for waiver of an applicant that missed the deadline “due to inadvertence and unawareness that the long-form application was due”); *City Page & Cellular Services, Inc. d/b/a City Beepers et al.*, Order, 17 FCC Rcd 26109 (CWD-WTB 2002) (granted the petitions for waiver of seven applicants that claimed to miss the deadline “due to inadvertence and/or unawareness that the long-form applications were due”).

²⁸ See Fond du Lac Petition at 1-3 (explaining that “bank delays were caused by reasons beyond [Fond du Lac’s] control and issuance of the [letter of credit] did not come until one day after the . . . deadline.”).

²⁹ Cf. *Connect America Fund et al.*, Memorandum Opinion and Order, 30 FCC Rcd 8967, 8968, para. 4 (2015) (finding that for the rural broadband experiments “[s]trict enforcement by the Bureau of the filing requirements

(continued....)

13. Second, we find that it serves the public interest to grant Fond du Lac's waiver petition. The Commission adopted the requirement for a standby irrevocable letter of credit due within 10 business days after the Bureau announced that it was ready to authorize a provisionally selected bidder to receive support, in order to "[accomplish] our role as stewards of the public's funds by securing our financial commitment to provide Connect America support in the auction context."³⁰ Notwithstanding the brief delay in submitting the letter of credit to the Commission and USAC, Commission staff and USAC were able to fully evaluate Fond du Lac's qualifications in a timely fashion. We conclude that it will serve the public interest as Fond du Lac has otherwise substantially complied with the application deadlines, has expressed a willingness to serve consumers in its winning bid areas, and has provided the required assurance through its letter of credit that will protect the public's funds. Had we found Fond du Lac in default for missing the deadline, we may have precluded an otherwise qualified applicant from being authorized to receive support, delaying the provision of voice and broadband service in these Tribal areas.³¹

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

15. IT IS FURTHER ORDERED that the petition for waiver filed by Redwire, Inc. IS GRANTED as described herein.

16. IT IS FURTHER ORDERED that the petition for waiver filed by Fond Du Lac Communications, Inc. IS GRANTED as described herein.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

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adopted by the Commission was appropriate given the purpose of the rural broadband experiments and [the Commission's] commitment not to allow the rural broadband experiments to delay the offer of model-based support to price cap carriers"); *Connect America Fund et al.*, Order, 30 FCC Rcd 772, 774, para. 5 (WCB 2015) ("Denying the [rural broadband experiment] waiver requests and proceeding to identify next-in-line bidders fulfills the Commission's objective for the rural broadband experiments to inform key decisions that the Commission would be making regarding the design of the competitive bidding process that will occur in Phase II of the Connect America Fund, while not delaying implementation of Phase II").

³⁰ *Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120 (finding that "[l]etters of credit permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements)." See also *LTD Broadband Waiver Order*, 34 FCC Rcd at 7063, para. 10; *Casey Mutual Waiver Order*, 34 FCC Rcd at 3242-43, para. 11.

³¹ Fond du Lac Petition at 3 (stating that the CAF Phase II funding will help close the digital divide on its Tribal reservation).