

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Rural Broadband Experiments)	WC Docket No. 14-259
)	
Connect America Fund Phase II Auction)	AU Docket No. 17-182

ORDER

Adopted: June 26, 2020

Released: June 26, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau, in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, resolves petitions filed by the Connect America Fund (CAF) Phase II Coalition and Skybeam, LLC (Skybeam) seeking waiver of the letter of credit rules for the CAF Phase II auction (Auction 903) and Rural Broadband Experiments.¹ Specifically, petitioners request that the Commission allow them to instead comply with the recently adopted letter of credit rules for the Rural Digital Opportunity Fund,² rather than the letter of credit rules for their respective programs. Because of the unprecedented public health crisis we are currently facing, which has simultaneously increased consumer demand for robust broadband services and imposed severe financial hardship on the companies poised to fulfill such demand, we find good cause to grant a limited waiver to all Auction 903 and Rural Broadband Experiments funding recipients until December 31, 2021.

II. BACKGROUND

2. To further the goal of closing the digital divide for all Americans, including those in rural areas, the Commission has successfully implemented several programs intended to fund the deployment of robust broadband services across the country. In 2014, the Commission adopted rules for the Rural Broadband Experiments, a limited program to test different aspects of a competitive bidding process, and, as part of the experiment, establish an objective methodology for selecting projects among formal

¹ Request for Waiver of the CAF Phase II Coalition, WC Docket No. 10-90 (Mar. 10, 2020); Request for Expedited Waiver of Skybeam, LLC, WC Docket Nos. 10-90, 14-58 (Mar. 17, 2020). We note that the CAF Phase II Coalition also filed a concurrent Petition for Rulemaking “for the purpose of refining the letter of credit requirements for recipients of Connect America Fund Phase II support consistent with recent reforms adopted in connection with the establishment of the similar, but much larger, Rural Digital Opportunity Fund.” *See* Petition for Rulemaking of the CAF Phase II Coalition, RM 11-853 (Mar. 10, 2020). Because the instant waiver provides the relief requested by the CAF Phase II Coalition, we dismiss the Petition for Rulemaking as moot. *See* 47 CFR § 1.401(e).

² 47 CFR § 54.804(c).

applications from those carriers that would provide robust broadband to consumers in price cap areas.³ The Commission subsequently authorized 16 carriers to receive over \$41 million dollars to deploy broadband service to approximately 6700 census blocks in 15 states. Rural Broadband Experiments support recipients currently are required to provide a letter of credit from a financial institution equaling the “amount of money to be disbursed in the coming year plus the total disbursements it has received so far.”⁴ Thus, if the recipient receives \$2 million in support each year, entering its third year of support it would be required to obtain a letter of credit for \$6 million—\$4 million representing the support already received and an additional \$2 million covering the support to be distributed in the upcoming year. To date, nine Rural Broadband Experiments support recipients have completed buildouts and closed their letters of credit.

3. Auction 903 built on the lessons learned by the Commission through the Rural Broadband Experiments and made available up to \$1.98 billion over 10 years to service providers that committed to offer voice and broadband services meeting certain requirements to fixed locations in unserved high-cost areas.⁵ On August 28, 2018, the Commission announced that there were 103 winning bidders in the auction, with the 10-year support amount totaling \$1.488 billion.⁶ Consistent with the framework the Commission established for the Rural Broadband Experiments, Auction 903 support recipients must submit a letter of credit each year valued “at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.”⁷

4. *CAF Phase II Coalition’s Petition.* The CAF Phase II Coalition consists of 21 members that participated in Auction 903 and, collectively, were assigned almost \$900 million in total support over 10 years to serve more than 300,000 locations in 26 states.⁸ In its petition, the CAF Phase II Coalition notes the disparity between the letter of credit rules for Auction 903—which allow for “modest reductions in the amounts of letters of credit as the 60 percent and 80 percent buildout milestones are achieved and verified by USAC”⁹—and the same rules established for the Rural Digital Opportunity Fund, which permit recipients to reduce their letter of credit burden sooner in their buildout term.¹⁰ The CAF Phase II Coalition argues that allowing Auction 903 support recipients to instead comply with the Rural Digital Opportunity Fund letter of credit rules would “free up recipients’ capital and make more funds available for near-term deployment of supported voice and broadband service.”¹¹ Moreover, the CAF Phase II Coalition contends that “reducing the disparity in treatment between existing CAF II support recipients

³ See *Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (*Rural Broadband Experiments Order*).

⁴ *Id.* at 8791, para. 62.

⁵ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*).

⁶ *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, Public Notice, 33 FCC Rcd 8257 (WTB/WCB 2018) (*Auction 903 Closing Public Notice*).

⁷ See *Connect America Fund; ETC Annual Reports and Certification, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5997, para. 135 (2016) (*Auction 903 Order*).

⁸ *Auction 903 Closing Public Notice*, 33 FCC Rcd 8257, Attach. A.

⁹ CAF Phase II Coalition Petition at 2.

¹⁰ 47 CFR § 54.804(c)(1)(v).

¹¹ CAF Phase II Coalition Petition at 5.

and RDOF applicants will promote the public interest by giving CAF II auction winners more purchasing power to participate in the RDOF auction.”¹²

5. *Skybeam’s Petition.* Skybeam participated in the Rural Broadband Experiments and was assigned almost \$17 million in total support to serve over 16,000 locations in five states.¹³ Since being authorized to receive Rural Broadband Experiments support, Skybeam has successfully met each of its deployment milestones. However, Skybeam explains that the over \$3 million in support it has paid to obtain and maintain letters of credit “has inhibited Skybeam from maximizing its network investments because the funds used to pay letter of credit fees could be used to invest in RBE deployment.”¹⁴ Skybeam also notes that the letters of credit have “penalized the company in terms of other debt covenant provisions” and that this issue has been “exacerbated as the value of the letters of credit increases over time, even as Skybeam has continued to build out and the risk of default that would trigger a draw on the letters of credit declines significantly.”¹⁵ Allowing Skybeam to instead comply with the Rural Digital Opportunity Fund letter of credit rules would ensure that it “does not continue to bear the disproportionate burden of onerous and increasing letter of credit fees that have diverted funds away from deployment and into the pockets of Skybeam’s lender.”¹⁶

III. DISCUSSION

6. Generally, the Commission’s rules may be waived for good cause shown.¹⁷ 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.¹⁸

7. We find good cause to grant the petitions for waiver filed by the CAF Phase II Coalition and Skybeam, respectively. Therefore, we waive section 54.315(c) of the Commission’s rules for CAF Phase II Coalition members and direct them to instead comply with section 54.804(c) of the Commission’s rules with regard to their letter of credit obligations. We similarly direct Skybeam to comply with section 54.804(c) of the Commission’s rules, rather than the letter of credit requirements adopted for the Rural Broadband Experiments. Additionally, on our own motion and for the reasons discussed below, we extend this relief to all Auction 903 and Rural Broadband Experiments support recipients that seek to reduce their letter of credit burdens.

8. First, we find that special circumstances warrant deviation from the Commission’s rules. Skybeam acknowledges the impact of the coronavirus pandemic on its businesses,¹⁹ while CAF Phase II Coalition members highlight the importance of “freeing up additional financial resources” during this time.²⁰ The public health crisis has increased consumer demand for robust broadband services, while at the same time directly impeded the ability of companies to conduct their business, negatively impacting their financials and affecting their long-term creditworthiness. Lockdown measures are disrupting and slowing broadband network deployment and, in some cases, completely stopping companies from undertaking

¹² *Id.* at 7.

¹³ See FCC, Rural Broadband Experiments, *Summary of Authorized Rural Broadband Experiment Projects (as of 12/12/16)*, available at https://transition.fcc.gov/wcb/RBEOverview12_12.xlsx (last visited June 23, 2020).

¹⁴ Skybeam Petition at 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 CFR § 1.3.

¹⁸ 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*).

¹⁹ Reply Comments of Skybeam LLC to Request for Expedited Waiver, at 2 (Apr. 15, 2020).

²⁰ CAF Phase II Coalition Petition at 7.

deployment.²¹ Some companies are experiencing “higher instances of backorders and product unavailability for electronics, fiber, and other equipment needed for broadband deployment,” further delaying their ability to increase deployment.²² In many localities, permitting agencies have shut down or scaled back operations, further impeding the ability of companies to obtain the necessary approvals to deploy their services.²³ Some analysts have observed that the lockdown measures instituted by governments across the world to combat COVID-19 have resulted in “more-restrictive lending conditions amid the material contraction in economic activity” and that some companies “may not have the resources to navigate through the downturn.”²⁴ Thus, we agree with USTelecom and WISPA that a lightening of the letter of credit obligations is appropriate given the current market conditions related to the COVID-19 pandemic.²⁵

9. Multiple commenters support the view that waiving the letter of credit requirements for Auction 903 and Rural Broadband Experiments support recipients would enable rural providers to free up financial resources, permitting these providers to maintain more robust operations during the COVID-19 pandemic or reallocate resources to broadband network deployment at no cost.²⁶ Additionally, reducing the financial burden of letters of credit could allow Auction 903 and Rural Broadband Experiments support recipients to participate in the Rural Digital Opportunity Fund auction, resulting in greater deployment to the areas in most need of broadband service.²⁷ Because the COVID-19 pandemic’s impact on the markets and company financials will impede access to credit and increase the already difficult financial challenges companies currently are experiencing, we determine that special circumstances exist to extend the Rural Digital Opportunity Fund letter of credit rules to Auction 903 and Rural Broadband Experiments support recipients. Such an approach would allow these providers to reduce their letter of credit burdens upon demonstrating concrete progress in building their networks earlier than existing milestones, while at the same time accounting for the Commission’s interests in ensuring that universal service dollars are being used efficiently and protecting against the potential for carriers that may fail to fulfill their broadband deployment obligations.²⁸

10. Second, we find that it serves the public interest to grant the CAF Phase II Coalition’s and Skybeam’s waiver petitions and extend this same relief to all Auction 903 and Rural Broadband Experiments support recipients. We determine that doing so is necessary in light of the impact of the COVID-19 pandemic on financial markets and economic conditions that has resulted in the tightening of credit availability. We further note that for at least some Auction 903 and Rural Broadband Experiments support recipients, it is very likely that the economic disruption caused by COVID-19 has decreased the

²¹ Letter from Jeffrey S. Lanning, Vice President-Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (Apr. 29, 2020).

²² *Id.*

²³ *Id.*

²⁴ S&P Global, *Global Credit Conditions: April 2020: Rising Credit Pressures Amid Deeper Recession, Uncertain Recovery Path*, <https://www.spglobal.com/en/research-insights/featured/credit-conditions-april-2020>.

²⁵ USTelecom Comments at 5; WISPA Comments at 8. *See also* Letter from Jonathan Spalter, President and Chief Executive Officer, USTelecom, to Chairman Ajit Pai and Commissioners Michael O’Rielly, Brendan Carr, Jessica Rosenworcel, and Geoffrey Starks, FCC, WC Docket No. 10-90 et al., at 6 (Mar 27, 2020) (encouraging the Commission to grant relief on letter of credit obligations).

²⁶ Comments of NCTA—The Internet & Television Association, at 1-3 (Apr. 13, 2020); Comments of NTCA—The Rural Broadband Association, at 9 (Apr. 13, 2020) (NTCA Comments); Comments of The Wireless Internet Service Providers Association, at 7-8 (Apr. 13, 2020) (WISPA Comments); Comments of USTelecom—The Broadband Association, at 3-4 (Apr. 13, 2020) (USTelecom Comments).

²⁷ *Id.*

²⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 731, para. 105.

amount of funds that might have otherwise been available to invest in the deployment of broadband services. A temporary waiver to these companies would alleviate the economic effects on these companies' investment in broadband both during the current public health crisis and through the period of economic disruption that is likely to continue after the crisis has passed. Moreover, the COVID-19 pandemic has highlighted the importance of robust broadband service for all Americans, particularly those living in rural communities. We conclude that extending this relief to all Auction 903 and Rural Broadband Experiments support recipients serves the public interest and will result in more rapid deployment of broadband services across the country by freeing up financial resources for providers to reallocate to broadband deployment and potential participation in the upcoming Rural Digital Opportunity Fund Phase I auction. In addition, we note that this limited waiver is consistent with the President's recent Executive Order directing agencies, in the wake of the COVID-19 pandemic, to identify regulatory standards that may inhibit economic recovery and to consider waivers for the purpose of promoting economic growth.²⁹

11. Thus, we will now permit any Auction 903 or Rural Broadband Experiments support recipient to reduce its letter of credit to one year of support upon verification by the Universal Service Administrative Company (USAC) that the recipient has met an optional 20% buildout milestone by the end of its second year of support.³⁰ Because many Auction 903 support recipients have only recently been authorized to receive support and are just beginning the process of network deployment,³¹ allowing them to instead comply with the Rural Digital Opportunity Fund letter of credit rules may result in faster broadband deployment. For providers like Skybeam and other Rural Broadband Experiments support recipients that have already met and exceeded the optional 20% buildout threshold, complying with the Rural Digital Opportunity Fund letter of credit rules will allow them to reduce their letter of credit obligations, freeing up financial resources that also can be dedicated to increasing broadband deployment and benefitting customers. Additionally, as explained above, the cumulative nature of the current letter of credit rules applicable to Auction 903 and Rural Broadband Experiments support recipients are more financially burdensome and may impede their ability to participate in the Rural Digital Opportunity Fund auction. We conclude that it will serve the public interest to instead require these providers to comply with the Rural Digital Opportunity Fund letter of credit rules for the duration of this waiver, allowing them to more efficiently bid in the auction and potentially resulting in even more broadband deployment across the country.³²

12. We take this step to ensure that our letter of credit rules do not cause undue financial stress to Auction 903 and Rural Broadband Experiments support recipients during the COVID-19 pandemic or adversely impact their ability to continue to deploy broadband services. Though we anticipate that current market conditions will continue for the foreseeable future, we determine that a limited waiver until the end of 2021 is appropriate at this time. We will reevaluate the scope and impact of this waiver prior to that time to determine whether this relief should be extended, taking into account current market conditions, as well as whether the waiver has had the intended benefits on providers and broadband deployment.

²⁹ Exec. Order on Regulatory Relief to Support Economic Recovery (May 19, 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>.

³⁰ 47 C.F.R. § 54.804(c)(1)(v). See also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 99.

³¹ See e.g., *Connect America Fund Phase II Auction Support Authorized for 21 Winnings Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 20-409 (Apr. 14, 2020); *Connect America Fund Phase II Auction Support Authorized for Tribal Provider in Idaho*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 20-276 (Mar. 16, 2020); *Connect America Fund Phase II Auction Support Authorized for 1060 Winnings Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 20-153 (Feb. 13, 2020).

³² WISPA Comments at 8.

13. Finally, we note that support recipients are not required to wait to the end of a specific support year to meet their deployment milestones and may request that USAC complete their verification process at any time.³³ Thus, extending this relief to all Auction 903 and Rural Broadband Experiments support recipients may result in an additional burden on USAC's verification process. Though this possibility does not undermine the significant public interest benefits resulting from granting the waivers, we remind any provider seeking to reduce its letter of credit obligations that it must "be able to immediately produce the necessary documentation to minimize the time required for USAC to verify its milestone."³⁴ Failure to produce this documentation may delay the verification process and result in providers incurring additional letter of credit fees. We also strongly encourage providers seeking to reduce their letter of credit burden to familiarize themselves with USAC's verification review procedures before requesting that USAC undertake such a review.³⁵ By understanding the documentation they must provide for their specific buildout and the steps USAC must take to successfully verify that buildout, providers can help to streamline the process and potentially reduce their letters of credit sooner.

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 the CAF Phase II Coalition IS GRANTED as described herein.

16. IT IS FURTHER ORDERED that the petition for waiver filed by Skybeam, LLC IS GRANTED as described herein.

17. IT IS FURTHER ORDERED that the petition for rulemaking filed by the CAF Phase II Coalition IS DISMISSED as described herein.

18. 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

³³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 100.

³⁴ *Id.*

³⁵ See USAC, *Fund Verification Reviews*, available at <https://www.usac.org/high-cost/resources/fund-verification-reviews/> (last visited June 23, 2020).