

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: December 2, 2021

Released: December 2, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) extends the limited waiver of the letter of credit rules for the CAF Phase II Auction (Auction 903) and Rural Broadband Experiments (RBE) funding recipients until December 31, 2022. We find good cause exists to grant these waivers due to the ongoing economic and financial hardships that recipients face as a result of the coronavirus (COVID-19) pandemic.

II. BACKGROUND

2. The Commission has implemented several programs intended to fund the deployment of broadband services in high-cost regions of the country. In 2014, the Commission adopted rules for the RBE, 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 applications from those carriers that would provide robust broadband to consumers in price cap areas.¹ In 2018, CAF Phase II Auction built on the lessons learned by the Commission through the RBE 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.²

3. RBEs 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.”³ CAF Phase II Auction support recipients must submit a letter of credit each year valued “at the total

¹ 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*).

² 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*).

³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8791, para. 62.

amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.”⁴

4. In June 2020, the Bureau granted two petitions for waiver of the letter of credit rules for recipients of these programs.⁵ The Bureau waived section 54.315(c) of the Commission’s rules and instead directed petitioners and all CAF Phase II Auction and RBE funding recipients to comply with section 54.804(c) of the Commission’s rules regarding the Rural Digital Opportunity Fund (RDOF) auction letter of credit obligations.⁶ The RDOF letter of credit requirements are generally for less support and permit recipients to reduce their letter of credit burden sooner in their buildout term than the RBE or CAF Phase II Auction rules.⁷ The Bureau found that special circumstances warranted deviation from the Commission’s rules due to the disruptive impacts of the pandemic on businesses, including funding recipients.⁸ Further, the Bureau held that waiver was in the public interest because it would result in more rapid deployment of broadband services.⁹ In doing so, the Bureau forecasted that “current market conditions will continue for the foreseeable future,” and it stated that it would reevaluate at the end of the two-year period to determine whether the relief should be extended.¹⁰

5. On July 6, 2021, the Bureau released the *Letter of Credit Public Notice* seeking comment on issues related to the letter of credit requirements, including extending the limited waiver of the letter of credit rules for all CAF Phase II Auction and RBE recipients.¹¹ Specifically, the Bureau asked whether previous negative impacts on financial and market conditions remain, whether there have been any improvements, and whether carriers are facing any new issues or concerns that are impeding business operations and broadband deployment.¹² The Bureau also asked whether small rural carriers are still experiencing a disproportionately difficult time accessing financial resources.¹³ The Bureau requested commenters provide specific examples of any issues they are facing warranting an extension of the waiver.¹⁴

6. We received three comments, all supporting extending the waiver.¹⁵ USTelecom supports an extension of the letter of credit waiver, stating that its members are still experiencing the

⁴ 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).

⁵ *Connect America Fund; ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (2020) (*Letter of Credit Waiver Order*).

⁶ *Letter of Credit Waiver Order*, 35 FCC Rcd at 6558, para. 6.

⁷ 47 CFR § 54.804(c)(1)(v).

⁸ *Letter of Credit Waiver Order*, 35 FCC Rcd at 6558, para. 7.

⁹ *Id.* at 6560, para. 10.

¹⁰ *Id.* at 6560, para. 12.

¹¹ *Wireline Competition Bureau Seeks Comment on Waiver of Letter of Credit Rules for Connect America Fund Phase II* (Auction 903) and Rural Broadband Experiments Support Recipients, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Public Notice, DA 21-794 (July 6, 2021) (*Letter of Credit Public Notice*).

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Comments of USTelecom – The Broadband Association, WC Docket Nos. 10-90, 14-58 (filed Aug. 6, 2021) (USTelecom Comments); Comments of the Connect America Fund Phase II Coalition (filed Aug. 6, 2021) (Coalition Comments); Reply Comments of the Wireless Internet Service Providers Association (filed Aug. 23, 2021) (WISPA Reply Comments).

negative effects of the pandemic, including supply chain delays and workforce shortages.¹⁶ USTelecom contends that reduced letter of credit obligations will allow carriers to use their funding more directly for the provision of service.¹⁷ The Connect America Fund Phase II Coalition (Coalition) also supports the extension.¹⁸ The Coalition states that its members have experienced increased deployment costs and delays and that market conditions have not improved and remain challenging.¹⁹ The Coalition provides an example of delays, showing the lead time on certain equipment increased to over 65 weeks.²⁰ Additionally, the Coalition shares the experience of one of its members who has seen an 85 percent increase in the price-per-foot of its fiber since 2019.²¹ The Coalition also cites continuing permitting delays, diversion of resources to accommodate changing customer use, increased demand and lost revenue as issues that still create business barriers for carriers.²² The Coalition argues that extending the waiver will help free up capital and help offset increased costs.²³ Lastly, the Wireless Internet Service Providers Association (WISPA) also supports an extension of the waiver.²⁴ WISPA agrees that the extension will help further broadband deployment and that the lesser burden helps establish parity among the various support recipients.²⁵

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.²⁶ 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.²⁷

8. Based on the record, commenters make clear that letter of credit conditions have not substantially improved and carriers are still facing difficulties with financial markets and operational capacity due to the pandemic. We find that extending the waiver of letter of credit requirements would allow recipients to free up additional capital to operate successfully and fulfill their obligations. Further, extending the waiver will provide certainty for CAF Phase II Auction carriers as they commence their deployments. We expect that extending the waiver will also result in operational efficiencies for both the Commission and USAC by aligning letter of credit rules across Universal Service Fund programs. Finally, extending the waiver for a limited period of time will allow the Commission to reevaluate the condition of financial markets and supply chains and determine whether the waiver should be extended further. Thus, we will continue to extend the RDOF letter of credit rules to CAF Phase II Auction and RBE support recipients, permitting any CAF Phase II Auction or RBE support recipient to reduce its letter of credit to one year of support upon verification by USAC that the recipient has met its buildout milestones.²⁸ We conclude that it will serve the public interest to continue requiring these providers to

¹⁶ USTelecom Comments at 2; *see also* Comments of USTelecom – The Broadband Association, WT Docket No. 21-195 (June 10, 2021).

¹⁷ USTelecom Comments at 2.

¹⁸ *See generally* Coalition Comments.

¹⁹ *Id.* at 2, 4-6.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

²² *Id.* at 6.

²³ *Id.* at 2, 6.

²⁴ *See generally* WISPA Reply Comments.

²⁵ *Id.*

²⁶ 47 CFR § 1.3.

²⁷ *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*).

comply with the RDOF letter of credit rules until the end of 2022, allowing them to more efficiently deploy broadband across the country. We will reevaluate the scope and impact of this waiver prior to that time to determine whether this relief should be extended again, taking into account market conditions at that time, as well as whether the waiver has had the intended benefits on providers and broadband deployment.

9. The *Letter of Credit Public Notice* asked whether it was necessary to extend the waiver beyond 2021 for RBE support recipients given that December 31, 2021 may be their final service milestone.²⁹ Although no party filed comments on this issue, we affirmatively extend the waiver for RBE support recipients. The letter of credit rules require that a support recipient maintain its letter of credit until USAC “has verified that the recipient has served 100 percent of the Connect America Cost Model-determined location total.”³⁰ Because RBE recipients have a one-year cure period, they are required to maintain a letter of credit for that period since USAC needs additional time to verify that they completed their deployment. Requiring these carriers to revert to the old letter of credit rules and obtain a significantly larger letter of credit for this one-year cure period would be a disproportionate hardship for a carrier that has substantially completed its buildout. RBE carriers that have availed themselves of the letter of credit waiver over the past year have been able to substantially reduce their letter of credit burden. As commenters observed, letters of credit are treated as contingent liabilities, which limit the recipient’s borrowing power by the corresponding amount.³¹ Significantly increasing the value of the letter of credit these carriers must carry could result in further financial burdens that may prevent RBE recipients from completing their buildout. Extending the waiver for an additional year will allow RBE support recipients to complete their deployments with the benefit of the waiver.

10. As explained in the *Letter of Credit Waiver Order*, we note that support recipients are not required to wait until the end of a specific support year to meet their deployment milestones and may request that USAC complete their verification process at any time.³² We encourage reporting of deployment data on an ongoing basis.³³ 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 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.

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²⁸ 47 CFR § 54.804(c)(1)(v). See *Letter of Credit Waiver Order*, 35 FCC Rcd at 6558-59, paras 8-11. See also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 99.

²⁹ *Letter of Credit Public Notice* at 2-3.

³⁰ 47 CFR § 54.804(c)(1). See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 8799-8800, paras. 92-93 (2014).

³¹ See USTelecom Comments at 3.

³² See *Letter of Credit Waiver Order*, 35 FCC Rcd at 6561, para. 13; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 100.

³³ 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, 6011 (2016), para. 173 n.156 (“[I]t would be a ‘best practice’ to submit location information ‘no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations.’”); see also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56 n.156 (encouraging filing deployment data on a rolling basis).

³⁴ *Id.*

³⁵ See USAC, *Fund Verification Reviews*, available at <https://www.usac.org/high-cost/resources/fund-verification-reviews/> (last visited Dec. 2, 2021).

11. Additionally, the *Letter of Credit Public Notice* asked how we should square the requirement that USAC draw on a carrier's letter of credit for the recovery of all support that has been authorized should an RBE support recipient failing to meet its final milestone not come into compliance during the year cure period with the fact that an RBE support recipient may not be carrying a letter of credit that covers all support it has received at the time of default if we now extend this waiver relief.³⁶ While we recognize that letters of credit can better secure funding in circumstances where recovery might otherwise be challenging, such as bankruptcy, a draw on the letter of credit is not the sole means of support recovery.³⁷ Moreover, there are only a limited number of RBE support recipients that have yet to demonstrate full satisfaction of their defined deployment obligation, most of which are working diligently with the Bureau to do so. Extending this temporary waiver relief to these RBE support recipients does not significantly increase risks that support will not be recoverable in accordance with default rules.³⁸

12. Accordingly, for the reasons discussed above, we find that special circumstances exist to extend the limited waiver for an additional year, until December 31, 2022.

IV. ORDERING CLAUSES

13. 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.

14. 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

³⁶ *Letter of Credit Public Notice* at 2-3.

³⁷ *Rural Broadband Experiments Order*, 29 FCC Rcd at 731, para. 104; *id.* at 729-30 n.279 (explaining that in circumstances where a draw on the letter of credit fails to satisfy the amount owed, such deficiency will be a debt due to the Commission and, if not paid, will be collected pursuant to the Commission's rules) (citing 47 CFR § 1.1901 *et seq.*).

³⁸ The *Letter of Credit Public Notice* also asked whether the letter of credit requirements for CAF Phase II support recipients should be modified to account for deployment issues, e.g., missed reporting or buildout deadlines. *Letter of Credit Public Notice* at 3. No party filed comments on this issue. We decline to alter the letter of credit requirements for this purpose. We find that there is not sufficient evidence or reason at this time to indicate that a change like this would be in the public interest. We will continue to rely on the established non-compliance framework to govern the required deployment of support recipients, which already imposes consequences for missing milestones or reporting requirements. See 47 CFR §§ 54.804(c)(4); 54.320(d)(2), (d)(3); see also 47 CFR § 54.806 (Universal Service Support for High Cost Areas non-compliance rules). We note, however, that the Commission will not hesitate to use the letter of credit in the way it was intended in the event that this framework fails.