

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: August 9, 2022

Released: August 9, 2022

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 (RBATF) and the Office of Economics and Analytics (OEA), partially grants Northern Arapaho Tribal Industries' (NATI) petition requesting a temporary waiver of the requirement to increase the value of its letter of credit (LOC) for the Connect America Fund Phase II auction (Auction 903).1 We allow NATI to maintain the value of its current LOC, until the Universal Service Administrative Company (USAC) completes its verification process for the locations to which NATI has certified deployment.

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 903, an applicant must obtain a LOC issued by a qualified bank to protect the public's funds.2 The LOC must increase in value until USAC verifies that the support recipient has met certain service milestones.3 In response to the COVID-19 pandemic, in the summer of 2020 the Bureau, in conjunction with the RBATF and OEA, waived the Commission's LOC rules for Auction 903 support recipients;4 last summer, the Bureau extended that waiver until the end of 2022.5 Auction 903 support recipients were directed to comply with the less financially burdensome LOC rules established by the Commission for Auction 904, the Rural Digital Opportunity Fund (RDOF).6

3. Under the RDOF LOC rules, which are still being applied to Auction 903 recipients, a support recipient's LOC must increase in value for each of the first four years of a recipient's support

1 Petition for Temporary Waiver of August 1, 2022 Amended Letter of Credit Deadline, WC Docket No. 10-90, AU Docket No. 17-182 (filed July 28, 2022) (NATI Petition).

2 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).

3 47 CFR § 54.315(c)(1).

4 See Connect America Fund, et al., Order, 35 FCC Rcd 6556 (WCB 2020) (2020 Letter of Credit Waiver Order).

5 See Connect America Fund, et al., Order, DA 21-1502 (WCB 2021) (2021 Letter of Credit Waiver Extension Order).

6 2020 Letter of Credit Waiver Order, 35 FCC Rcd at 6558, para. 7.

term.⁷ However, a support recipient can reduce the value of its LOC by certifying, and having USAC verify, that it has met its deployment milestones.⁸

4. *NATI's Petition.* In its petition, NATI states that its current LOC is twice its amount of annual support, in accordance with RDOF rules.⁹ Consistent with those rules, NATI would need to increase the value of its LOC to three times its annual support by August 9, 2022, i.e. the beginning of its fourth year of Auction 903 support.¹⁰ NATI asserts that it would be unable to obtain an LOC for that amount by the deadline.¹¹ Additionally, NATI states that it has met the optional 20% deployment milestone by the end of the second deployment year, which would allow NATI to reduce its LOC to one year of its annual support.¹² While reduction of an LOC amount is normally contingent upon USAC's verification of deployment, NATI states that it was unable to begin the verification process in a timely manner due to "financial and administrative challenges"¹³ but has since begun the verification process with USAC.

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁴ 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.¹⁵ We find good cause to partially grant NATI's petition for waiver and temporarily waive section 54.804(c)(iv) of our letter of credit requirement until the conclusion of USAC's verification of the locations NATI has certified.

6. Specifically, NATI may maintain its LOC at its current value until USAC has completed the verification process for the locations NATI had certified as of March 2022. Upon completion of the verification process, if USAC verifies that NATI provides service to at least 20% of its eligible locations, NATI may reduce its LOC amount to the amount of one year of support.¹⁶ If USAC is unable to make that verification, however, NATI shall obtain an LOC valued at the required amount for Auction 903 support recipients within one month of USAC notifying NATI that the verification process is complete. Failure to timely increase the LOC will result in all Auction 903 support being withheld until NATI complies.

7. We find that the adoption of these measures supports a finding of good cause to partially grant NATI's Petition. Because NATI has already certified to meeting the 20% optional milestone and because it has begun the verification process with USAC, we believe that the limited duration of this waiver will minimize any potential harm to the Universal Service Fund; additionally, because NATI must maintain its current LOC which is worth two years of its annual support, the Commission will be able to efficiently recover funds, should the need arise.

⁷ 47 CFR § 54.804(c)(1)(i)-(iv).

⁸ 47 CFR § 54.804(c)(1)(v).

⁹ NATI Petition at 1.

¹⁰ *Id.*; 47 CFR § 54.804(c)(1)(iv).

¹¹ NATI Petition at 5-6.

¹² *Id.* at 2. NATI states that it has deployed to over 27% of its locations and submitted and certified this data with USAC. *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.3.

¹⁵ 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*).

¹⁶ 47 CFR § 54.804(c)(1)(v).

8. We also find that this limited waiver will serve the public interest. Allowing NATI to continue receiving support during the limited duration of USAC's verification will facilitate the deployment of broadband in the Tribal areas NATI serves, while pausing support during USAC's verification process could hinder the deployment of much-needed broadband services, which would be contrary to the public interest.

9. We emphasize, however, that it is incumbent on Auction recipients to initiate the verification process expeditiously. USAC provides detailed instructions on the verification process,¹⁷ and we expect support recipients to familiarize themselves with these materials in order to meet future deadlines. We also note that NATI is a winning bidder in Auction 904.¹⁸ Nothing in this order affects the requirement that NATI obtain and maintain a separate LOC for that auction in accordance with RDOF rules.

IV. ORDERING CLAUSES

10. 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.

11. IT IS FURTHER ORDERED that the petition for waiver filed by Northern Arapaho Tribal Industries IS PARTIALLY GRANTED as described herein.

12. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau

¹⁷ USAC, High Cost, Resources, Fund Verification Reviews, <https://www.usac.org/high-cost/resources/fund-verification-reviews/> (last visited Aug. 9, 2022).

¹⁸ See *Auction 904 ETC Designation Order*, Order, 36 FCC Rcd 9384 (WCB 2021) (designating NATI as an ETC in the areas where it was the winning bidder in Auction 904).