

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182
	)	
The Rural Digital Opportunity Fund Auction (Auction 904)	)	AU Docket No. 20-34
	)	

**ORDER**

**Adopted: September 13, 2022**

**Released: September 13, 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), partially grants Point Broadband’s petition<sup>1</sup> requesting a waiver of the Commission’s requirement that Connect America Fund Phase II auction (Auction 903) and Rural Digital Opportunity Fund auction (Auction 904) recipients obtain letters of credit (LOCs) from banks that maintain a Weiss bank safety rating of B- or better.<sup>2</sup> Although we do not grant a permanent waiver of bank requirements, we allow Point Broadband to maintain letters of credit with its current bank until June 15, 2023.

**II. BACKGROUND**

2. The Commission requires that before being authorized to receive support awarded by Auction 903 or Auction 904, an applicant must obtain a LOC issued by a qualified bank to protect the public’s funds.<sup>3</sup> In order to insure the availability of funds should the Commission need to draw against an LOC, the Commission has several eligibility criteria for banks issuing LOCs.<sup>4</sup> One of these requirements is that the issuing bank must maintain a Weiss bank safety rating of at least a B-. The Commission determined that Weiss provides “an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes,” and that banks with a rating of B- or higher had shown that they “offer[] good financial security and ha[ve] the resources to deal with a variety of adverse economic conditions.”<sup>5</sup>

3. *Point Broadband’s Petition.* In its petition, Point Broadband explains that it entered into its current LOC arrangement with Ally Bank in October 2021, and LOCs issued by Ally Bank were

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<sup>1</sup> Petition for Waiver, WC Docket No. 10-90, AU Docket Not. 17-182, AU Docket No. 20-34 (filed Aug. 5, 2022) (*Point Broadband Petition*).

<sup>2</sup> 47 CFR §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B).

<sup>3</sup> 47 CFR §§ 54.315(c); 54.804(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*).

<sup>4</sup> 47 CFR §§ 54.315(c); 54.804(c).

<sup>5</sup> *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

accepted by the Universal Service Administrative Company (USAC).<sup>6</sup> When Point Broadband sought to renew its LOCs for the coming year on July 27, 2022, however, USAC was unable to accept them because Ally Bank's Weiss bank safety rating had fallen to a C+.<sup>7</sup> If Point Broadband does not obtain new LOCs from an eligible bank by the middle of September 2022, its universal service support for most of its Auction 903 and all of its Auction 904 awards will cease.<sup>8</sup> Point Broadband seeks a waiver of the requirement that LOC issuing banks maintain a Weiss bank safety rating of at least a B-. In support of its petition, Point Broadband states that Ally Bank has demonstrated sufficient financial stability to ensure the Commission of the reliability of its LOCs, and that requiring Point Broadband to obtain new LOCs would impose significant costs that would impair Point Broadband's ability to expeditiously deploy broadband service.

### III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>9</sup> 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.<sup>10</sup> We find good cause to partially grant Point Broadband's petition and temporarily waive sections 54.315(c)(2)(i)(B) and 54.804(c)(2)(i)(B) of our rules until June 15, 2023, when Point Broadband's final existing LOC expires and requires renewal. At that time, if Ally Bank still has a Weiss rating below B-, Point Broadband will need to obtain new LOCs for all of its Auction 903 and 904 awards with a bank that meets the Commission's requirements.

5. We find that circumstances support a finding of good cause to partially grant the Petition. Because seven of Point Broadband's eight LOCs expire within a short time period, Point Broadband could incur substantial expense to replace all of these LOCs with a new bank. Permitting Point Broadband to continue to use its existing bank will allow it to focus its resources on deploying broadband to its Auction 903 areas and will also provide additional time for Point Broadband to obtain future LOCs from banks that meet our eligibility criteria. In further support of this waiver, we rely on Point Broadband's substantial deployment in its Auction 903 areas and that it has already deployed service to over 40 percent of the eligible locations in each of the states in which it was authorized to receive CAF II auction support.<sup>11</sup> Thus, the Commission is unlikely to need to draw on these LOCs in the near future. Moreover, we note that Weiss states that Ally Bank has an "Excellent" overall stability index despite its "C+" safety rating.<sup>12</sup>

6. We emphasize, however, that Auction support recipients must ensure that banks issuing LOCs comply with all of our eligibility rules. While Point Broadband's petition argues that Ally Bank's

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<sup>6</sup> Point Broadband Petition at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3. One of Point Broadband's Auction 903 LOCs does not expire until June 15, 2023.

<sup>9</sup> 47 CFR § 1.3.

<sup>10</sup> 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*).

<sup>11</sup> See *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, Public Notice, 34 FCC Rcd 5966 (WCB 2019) (authorizing Crystal Automation Systems' to provide service to 17,610 locations in Michigan). See also *Notice of Domestic Section 214 Authorization Granted*, 35 FCC Rcd 10494 (WCB 2020) (authorizing Point Broadband Fiber's acquisition of the CAF II obligations and support of Crystal Automation Systems, Inc.); *Connect America Fund Phase II Auction Support Authorized for 387 Winning Bids*, Public Notice, 34 FCC Rcd 9406 (WCB 2019) (authorizing Point Broadband to provide service to 6,998 locations in Virginia and 2,095 locations in Tennessee). Point Broadband has deployed service to over 40% of those locations in each of the three states. See <https://data.usac.org/publicreports/caf-map/>.

<sup>12</sup> See Weiss Ratings for Ally Bank available at <https://weissratings.com/en/bank/57803> (last visited Sept. 12, 2022).

financial stability warrants a wholesale waiver of our eligibility rules,<sup>13</sup> we note that the Commission adopted an independent standard to assess the financial stability of financial institutions because the Commission does not have the expertise to evaluate banks' financial health.<sup>14</sup> The limited relief granted herein allows Point Broadband additional time to obtain new LOCs from an issuing bank that meets our requirements but does not require the Commission to conduct an independent evaluation of Ally Bank's long-term financial health.

#### IV. ORDERING CLAUSES

7. 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.

8. IT IS FURTHER ORDERED that the petition for waiver filed by Point Broadband IS PARTIALLY GRANTED as described herein.

9. 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

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<sup>13</sup> Point Broadband Petition at 4-5.

<sup>14</sup> See *CAF Phase II Auction Order*, 31 FCC Rcd at 5992-93, para. 126 (noting the importance of "maintaining objective criteria that will provide sufficient assurance that letters of credit issued [to Auction support recipients] will be honored").