

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

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

ORDER

Adopted: June 14, 2023

Released: June 14, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants Docomo Pacific, Inc.’s (DPAC) petition1 requesting a six-month waiver of the Commission’s requirement that 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.2 This waiver will allow DPAC, which provides service in Guam and the Northern Mariana Islands, to maintain its letter of credit with its current bank until December 6, 2023.

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 904, an applicant must obtain an LOC issued by a qualified bank to protect the public’s funds.3 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.4 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.”5

1 Docomo Pacific, Inc. Petition for Waiver, WC Docket No. 10-90, AU Docket No. 20-34 (filed June 6, 2023) (DPAC Petition).

2 47 CFR § 54.804(c)(2)(i)(B).

3 47 CFR § 54.804(c); 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, 5989-99, paras. 119-40 (2016) (CAF Phase II Auction Order); Rural Digital Opportunity Fund et al., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 729-35, paras. 96-112 (2020) (Rural Digital Opportunity Fund Order).

4 47 CFR § 54.804(c).

5 CAF Phase II Auction Order, 31 FCC Rcd at 5993, para. 127.

3. *DPAC's Petition.* In its petition, DPAC explains that it initially obtained an LOC from the Bank of Hawaii, which met the Commission's requirements at the time the LOCs were issued.<sup>6</sup> On May 5, 2023, DPAC received notice that its amended LOC from the Bank of Hawaii was no longer acceptable, because the Bank of Hawaii's Weiss bank safety rating had fallen below a B-.<sup>7</sup> DPAC moved to obtain a new LOC from a bank that meets Commission requirements. On May 24, 2023, Super-Typhoon Mawar made landfall in both Guam and the Northern Mariana Islands and caused significant destruction.<sup>8</sup>

4. In its petition, DPAC seeks a six-month waiver of the requirement that LOC issuing banks maintain a Weiss bank safety rating of at least a B- in order to obtain new LOCs from a bank that meets the Commission's requirements.<sup>9</sup> DPAC explains that, in the aftermath of the typhoon, it does "not have the resources to collaborate on creating a new letter of credit relationship at this time" with any other bank that provides services in Guam and the Northern Mariana Islands; moreover, any such bank is likely facing similar issues dealing with the aftermath of Super-Typhoon Mawar.<sup>10</sup> A six-month waiver would allow DPAC to maintain its existing LOC with the Bank of Hawaii while it obtains a new LOC from a bank that meets the Commission's requirements, and would allow DPAC to continue to receive Auction 904 support during the duration of the waiver.<sup>11</sup> In support of its petition, DPAC states that it has "maintained compliance with all RDOF rules and requirements" that are within its control,<sup>12</sup> and that, without a waiver, DPAC would face suspended support payments as it struggled to recover from a natural disaster.<sup>13</sup> DPAC also notes that a waiver would be consistent with our earlier, temporary waivers of the LOC rules to allow support recipients to obtain new LOCs from banks that met the Commission's requirements.<sup>14</sup>

### III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.<sup>15</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>16</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>17</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>18</sup> We find good cause to grant DPAC's petition and temporarily waive section 54.804(c)(2)(i)(B) of our rules until December 6, 2023. If at that time DPAC has not

---

<sup>6</sup> *DPAC Petition* at 2-3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 5 (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 22-951 (WCB Sept. 13, 2022) (Point Broadband Order); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-419 (WCB May 17, 2023) (ECFiber Order)).

<sup>15</sup> 47 CFR § 1.3.

<sup>16</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) (*WAIT Radio*)) (*Northeast Cellular*).

<sup>17</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> *WAIT Radio*, 418 F.2d at 1157.

obtained LOCs for all of its Auction 904 awards from a bank that meets the Commission's requirements, we will suspend DPAC's monthly support payments and DPAC may be subject to additional non-compliance measures.<sup>19</sup>

6. We find that circumstances support a finding of good cause to grant the petition. DPAC states that it has complied with all Auction 904 rules, except for maintaining an LOC with a bank with an acceptable Weiss bank safety rating. Once DPAC was notified that it needed to obtain a new LOC from a different bank, it took steps to do so.<sup>20</sup> DPAC's ability to obtain a new LOC from an acceptable bank has been impeded by the destruction caused by Super-Typhoon Mawar,<sup>21</sup> and providing a temporary waiver will allow DPAC to continue to receive Auction 904 support as it, along with all of Guam and the Northern Mariana Islands, recovers from the Super-Typhoon's damage.

7. Granting DPAC a temporary waiver is also consistent with our precedent. We previously issued temporary waivers to allow Point Broadband and ECFiber to continue using their existing LOCs from banks with a Weiss safety rating of C+ in order to allow both providers to obtain new LOCs from a bank with an acceptable Weiss safety rating.<sup>22</sup> For the same reasons, and additionally because of the strain on resources caused by Super-Typhoon Mawar, we grant DPAC's request for a temporary waiver.

8. We emphasize, however, that auction support recipients must ensure that banks issuing LOCs comply with all of our eligibility rules. We rely on an independent standard to assess the stability of financial institutions because the Commission does not have the expertise to evaluate banks' financial health.<sup>23</sup> Additionally, we note that the bank that ultimately provides DPAC with its updated LOC must have a Weiss bank safety rating of B- or better.<sup>24</sup>

#### IV. ORDERING CLAUSES

9. 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.

10. IT IS FURTHER ORDERED that the petition for temporary waiver filed by Docomo Pacific, Inc. IS GRANTED.

---

<sup>19</sup> See, e.g., 47 CFR §§ 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

<sup>20</sup> *DPAC Petition* at 3.

<sup>21</sup> *Id.* at 6 (noting that “no businesses on the island [] are in a position to resume daily activities”).

<sup>22</sup> See generally *Point Broadband Order*; *ECFiber Order*.

<sup>23</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”).

<sup>24</sup> See *DPAC Petition* at 3, n.14 (noting that the bank from which DPAC planned to obtain its new LOC, after the Bank of Hawaii's Weiss bank safety rating fell below B-, also had its Weiss bank safety rating fall below a B-).

11. 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