



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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DA 23-681

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON EXTENDING WAIVER OF LETTER OF CREDIT RULES FOR CONNECT AMERICA FUND PHASE II AUCTION (AUCTION 903)

WC Docket Nos. 10-90, 14-58
AU Docket No. 17-182

Comments Due: September 11, 2023

Reply Comments Due: September 26, 2023

Recognizing the impact of the coronavirus (COVID-19) pandemic on financial markets and on the ability of providers to successfully conduct their operations, the Wireline Competition Bureau (Bureau) waived the Commission's letter of credit (LOC) rules for Connect America Fund Phase II auction (Auction 903) and Rural Broadband Experiments (RBE) support recipients in 2020 and 2021.¹ Recipients of support from both programs were permitted to comply with the less extensive letter of credit rules established by the Commission for the Rural Digital Opportunity Fund (RDOF).² In December 2022, the Bureau, while acknowledging the improving financial conditions that existed throughout the Nation, extended that waiver, on a limited basis, until the end of 2023.³

From June 2020 through December 2022, all Auction 903 support recipients were permitted to comply with the RDOF LOC rules.⁴ In 2023, however, because of the improvement in financial conditions, the Bureau concluded that a waiver of the Auction 903 LOC rules was only appropriate for Auction 903 support recipients that had met each of their previous program deadlines.⁵

¹ See *Connect America Fund, et al.*, Order, 35 FCC Rcd 6556, 6556, para. 1 (WCB 2020) (*2020 Letter of Credit Waiver Order*); *Connect America Fund, et al.*, Order, 36 FCC Rcd 16633, 16633, para. 1 (WCB 2021) (*2021 LOC Credit Waiver Extension*).

² *2020 Letter of Credit Waiver Order*, 35 FCC Rcd at 6556, para. 1; *2021 LOC Credit Waiver Extension*, 36 FCC Rcd at 16633, para. 1.

³ See *Connect America Fund, et al.*, Order, DA 22-1304 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*) (extending the limited waiver of the Commission's CAF II letter of credit rules until December 31, 2023 for CAF II support recipients that have met their deployment and reporting obligations).

⁴ *2020 Letter of Credit Waiver Order*, 35 FCC Rcd at 6556, para. 1; *2021 LOC Credit Waiver Extension*, 36 FCC Rcd at 16635-6, para. 8.

⁵ *2022 Letter of Credit Waiver Extension Order* at 3-4, paras. 8-11; *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*, Public Notice, DA 22-879, at 3-4, paras. 8-11 (WCB 2022) (*2022 Letter of Credit Waiver Public Notice*).

With this Public Notice, the Bureau seeks comment on the merits of extending beyond December 31, 2023 the waiver of the letter of credit rules for Auction 903 support recipients that have met each of their deadlines and whether, and to what extent, the pandemic or other factors continue to affect the operations of telecommunications services providers and the condition of financial markets and supply chains. Are there still unique financial challenges that providers are facing that interfere with their ability to obtain the letters of credit required under the Auction 903 rules? Are there additional dynamics now that may not have been present when we first granted the letter of credit waiver? If so, we encourage commenters to provide specific details about the experiences they face and how these have or have not changed since the original waiver was granted.

All Auction 903 recipients were required to submit their first annual location report by March 1, 2021 and are required to file updated location information by March 1 each year thereafter. These carriers are also required to have built out to 60% of their locations in a state by December 31, 2023. We seek comment on whether a tailored approach to extending the LOC waiver is still justified. Based on the Bureau's experience in the past year and commitment to program integrity, we believe our approach must distinguish between those recipients that have deployed and reported as required and those that have not. Therefore, if we extend the waiver, we propose to do so only for Auction 903 support recipients that have met each of their previous deployment and certification deadlines, along with meeting the next mandatory build out deadline, as demonstrated by reporting in the HUBB by March 1, 2024, of deployment to at least 60% of their locations as of December 31, 2023. Put differently, any Auction 903 recipient that has missed a single deadline would remain ineligible for this waiver, as would any Auction 903 recipients that miss deadlines in the coming year.

We propose requiring those carriers that do not meet the 60% milestone to have a letter of credit meeting the original Auction 903 requirements when their current LOCs expire.⁶ Similarly, we propose that Auction 903 support recipients that did not timely file their first location report or that fail to timely file a subsequent location report be automatically excluded from any waiver of the Auction 903 letter of credit requirements. Further, we propose that Auction 903 support recipients who maintain a reduced (e.g., at one year of support) letter of credit in accordance with the RDOF rules be required to increase the letter of credit's value to comply with the Auction 903 rules if they do not pass a USAC verification.⁷ We seek comment on this approach and any other related issues regarding balancing the risk of lessening the Auction 903 letter of credit requirements while protecting the integrity of the Universal Service Fund.

Additionally, we note that the progress that Auction 903 recipients have made in their deployment obligations may be an indication that economic conditions throughout the Nation are rebounding. While we seek comment on extending the waiver until December 31, 2024, we caution that the LOC waiver relief is temporary and providers should not expect additional waivers after the end of conditions adversely impacting the operations of telecommunications services providers and the condition of financial markets and supply chains. After the end of such conditions and LOC waivers, the LOC requirements will then comport with the rules in place at the time of bidding and with awardees' expectations.⁸

⁶ 2022 *Letter of Credit Waiver Extension Order* at 4-5, para. 13.

⁷ Consistent with our 2022 waiver order, we note that "verification 'involves an iterative process in which USAC and recipients engage in an ongoing process that leads to verification,' and that a final determination from USAC is necessary before a recipient is determined not to have met its deployment obligations." 2022 *Letter of Credit Waiver Extension Order* at 4, n.32.

⁸ 47 CFR § 54.315(c); See *Connect America Fund, ETC Annual Reports and Certifications, 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, 5998, para. 139 (2016) ("While we understand that the [LOC] requirement will impose costs on participants, we expect that all entities will factor the cost of letters of credit into their bids.").

Finally, because the deployment terms for all RBE support recipients have passed, we propose limiting this waiver only to Auction 903 support recipients that have met each of their previous deployment obligations. We seek comment on this proposal.

Filing Requirements. Interested parties may file comments on or before **September 11, 2023** and reply comments on or before **September 26, 2023**.⁹ All filings should refer to **WC Docket Nos. 10-90, 14-58, and AU Docket No. 17-182**. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically using the internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. Filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁰

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

Ex Parte Rules. Proceedings in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission

⁹ See 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

¹⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020). In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law.

¹¹ See 47 CFR §§ 1.1200(a), 1.1206.

staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Nathan Eagan, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or by email at Nathan.Eagan@fcc.gov.

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