

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) AU Docket No. 20-34

ORDER

Adopted: March 12, 2024

Released: March 12, 2024

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) partially waives, sua sponte, the requirement that a bank issuing a letter of credit (LOC) to a support recipient for either the CAF Phase II Auction (Auction 903) or the Rural Digital Opportunity Fund Auction (Auction 904) maintain a Weiss bank safety rating of B- or better.

II. BACKGROUND

2. In establishing Auctions 903 and 904, the Commission required that, before being authorized to receive support awarded by Auction 903 or Auction 904, an applicant had to obtain an LOC issued by a qualified bank.

1 47 CFR §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B).

2 Because this waiver applies to all Auction 903 and Auction 904 support recipients whose LOCs were issued by banks that previously had a Weiss bank safety rating of B- or better, we dismiss as moot the Petitions for Waiver filed by Declaration Networks Group and the Reedsburg Utility Commission.

3 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).

4 Id. at 5990, para. 120.

5 47 CFR §§ 54.315(c); 54.804(c).

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.”⁶

3. After obtaining LOCs from qualifying banks, multiple auction support recipients have had their respective bank’s Weiss safety ratings fall below a B-. The Commission’s rules require that the carrier obtain a new LOC from a different bank with a sufficient Weiss safety rating. Until the carrier obtains a new LOC, its support is withheld. In recognition of the time needed to obtain a new LOC and the burdens on carriers whose support would otherwise be withheld, we have granted several temporary waivers of the rule that requires banks that issue LOCs to maintain a Weiss safety rating of B- or better,⁷ thereby allowing auction support recipients to maintain an existing LOC and continue to receive support while they go through the process of obtaining a new one.⁸

4. Several interested parties have submitted filings about the issue. Bank of America submitted comments proposing an alternative standard that could be used to evaluate a bank’s reliability and highlighting the fact that a majority of United States banks are now ineligible to issue LOCs to auction support recipients.⁹ Wisconsin Bankers Association (WBA) has also explained that, due to the unreliability of the Weiss ratings, the Commission should eliminate its bank safety rule in its entirety.¹⁰ The Coalition of RDOF Winners also noted the significant cost that support winners must incur to obtain a new LOC from a bank with the requisite Weiss safety rating.¹¹

III. DISCUSSION

5. Generally, the Commission’s rules may be waived for good cause shown.¹² Waiver of the Commission’s rules is appropriate only if both: (1) special circumstances warrant a deviation from the

⁶ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

⁷ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 37 FCC Rcd 10271 (WCB 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*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-513 (WCB June 14, 2023) (*DoCoMo Order*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-756, at 22 & n.52 (WCB Aug. 31, 2023) (*August 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 23-1104, at 12 & n.39 (WCB Dec. 1, 2023) (*December 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-1, at 8 & n.25 (WCB Jan. 2, 2024) (*January 2024 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-85, at 7 & n.24 (WCB Feb. 1, 2024) (*February 2024 Streamlined Public Notice*).

⁸ We clarify that this order applies to all Auction 903 and 904 support recipients, including those who previously received waivers of the Weiss safety rating requirement. Accordingly, those previous waiver recipients may maintain LOCs with their issuing bank until this waiver ends.

⁹ Letter from James Carlisle, Senior Vice President, Federal Government Relations, Bank of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 8, 2023) (*BOA Ex Parte*).

¹⁰ See E-mail from Rose Oswald Poels, President and CEO, the Wisconsin Bankers Association, at 2, submitted as an attachment to the Petition of Reedsburg Utility Commission for Waiver, AU Docket No. 20-34 (filed Feb. 22, 2024), available at <https://www.fcc.gov/ecfs/document/102221094523933/5>

¹¹ Petition for Emergency Relief of RDOF Coalition Winners, WC Docket No. 10-90 et al., at 11 (filed Aug. 16, 2023).

¹² 47 CFR § 1.3.

general rule, and (2) such deviation will serve the public interest.¹³ We believe that both circumstances are present here.

6. Recent submissions from banking institutions indicate that a majority of United States banks are no longer eligible to issue LOCs to auction recipients because they have a safety rating less than a B-.¹⁴ This is in stark contrast to the circumstances that existed when the Commission first adopted the rule requiring an issuing bank to maintain a Weiss bank safety rating of B- or higher. When the Commission initially adopted the Weiss bank safety rating requirement, it specifically noted the large amount of banks that would be able to issue LOCs for support recipients.¹⁵ Even two years ago, almost 75% of United States banks had a Weiss bank safety rating of B- or higher.¹⁶ However, this figure has dropped to less than 41 %.¹⁷ Put differently, there are now more than 1,600 banks across the United States that are no longer able to issue LOCs to auction support recipients despite being eligible to do so two years ago. This significant and unanticipated change in the availability of banks qualified to issue LOCs, including banks that had issued LOCs to program participants and can no longer do so, amounts to special circumstances.

7. This change has resulted in significant additional administrative and resource burdens for auction support recipients and frustrates their ability to comply with program requirements. In order to obtain new LOCs from a different bank, auction participants must expend time and resources, and in some cases maintain two LOCs until the expiration of their already-existing LOC.¹⁸ In addition, for some recipients, this requirement has resulted in withholding of support, which ultimately impacts deployment schedules. We therefore conclude that the public interest will be better served by allowing participants to maintain their existing LOCs and to focus their resources on deploying broadband to and serving consumers in the areas where they won support.

8. Our decision is also consistent with our existing precedent. As noted above,¹⁹ we have thus far granted individual waivers of the relevant LOC rules. We have repeatedly stated that we believe these waivers are in the public interest, because they allow auction support recipients to maintain their existing LOCs with their preferred banks that issued the LOCs when their Weiss safety ratings were at or above a B-. For the same reasons, we now believe a temporary waiver for all auction support recipients is in the public interest.

9. This temporary waiver extends only to auction support recipients that wish to retain, renew, or reestablish their LOCs with banks that previously had Weiss ratings at or above a B- but have since seen that rating fall below B-. This waiver does not allow an auction support recipient to obtain an LOC from a new bank that did not previously provide it with an LOC if that bank has a Weiss safety

¹³ 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*).

¹⁴ *BOA Ex Parte* at 1 (noting that 58% of the banks Weiss rates have a safety rating below a B-, and are therefore ineligible to issue LOCs).

¹⁵ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127 (noting that adopting this requirement will “expand the number of eligible U.S. banks from fewer than 70 banks to approximately 3,600 banks”).

¹⁶ Weiss Bank Safety Ratings (Feb. 1, 2022) archived at Wayback Machine <https://web.archive.org/web/20220201144141/https://weissratings.com/en/banking> (Showing the Weiss bank safety ratings from February 1, 2022).

¹⁷ See Weiss Bank Safety Ratings <https://weissratings.com/en/banking> (Showing that as March 12, 2024, 1,851 banks, of the 4,533 banks Weiss rates, had a bank safety rating of B- or higher) (last visited March 12, 2024).

¹⁸ See, e.g. *Petition of ECFiber for Temporary Waiver*, WC Docket No. 10-90, AU Docket No. 20-34, at 6 (filed Apr. 17, 2023) (detailing how ECFiber has been forced to tie up significant resources in obtaining LOCs that are no longer eligible to be used) (*ECFiber Petition*).

¹⁹ See *supra* FN 7.

rating below a B-. This waiver will also allow auction support recipients whose support was suspended solely because their bank's Weiss safety rating fell below a B-, and who have not yet obtained a new LOC from a bank with a sufficient Weiss safety rating, to resume receiving support. During this temporary waiver period, we anticipate an evaluation of potential long-term solutions to the bank eligibility issue.

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 section 47 CFR § 54.315(c)(2)(i)(B) and 47 CFR § 54.804(c)(2)(i)(B) of the Commission's rules ARE WAIVED to the limited extent provided herein.

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