Filer: @Link Services, LLC
Filing Date: 19 SEP 2019

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

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

To: The Commission

COMMENTS OF @LINK SERVICES, LLC

@Link Services, LLC[1], ("AtLink") an Oklahoma limited liability company, hereby presents its Comments in response to the Notice of Proposed Rulemaking.[2]

The Commission seeks comment on proposed rules for the Rural Digital Opportunity Fund ("RDOF"), a $20.4 billion program intended to provide financial support for rural areas that lack access to adequate fixed broadband service. AtLink supports the overall framework for RDOF, including the proposal to adopt most of the Connect America Fund ("CAF") Phase II policies and procedures. Above all, we applaud the Commission's progress and speed in prioritizing funding in areas most in need of support.

TABLE OF CONTENTS

---

[1] FRN 0016085920; AtLink is a current recipient of the FCC's high-cost universal service support made available by the Connect America Fund, Phase II program for, among others, rural areas in Oklahoma.
[2] *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90 (rel. Aug. 2, 2019) ("*NPRM*"). The *NPRM* was published in the Federal Register on August 21, 2019.

SUMMARY OF COMMENTS

We offer but three Comments to the FCC's current RDOF plan, namely, (i) eliminating letter of credit requirements for certain RDOF Applicants; (ii) harmonizing USDA/RUS lending covenants with FCC security requirements for their respective rural broadband development and support programs in order to avoid conflicts between the terms and conditions of USDA Loan/Grant Agreements and those of the FCC's RDOF policies/procedures; and, (iii) requiring network design plans to be certified by "Licensed Professional Engineers".

COMMENTS

I. The FCC Should Waive Letter of Credit Requirements for Audited, Financially Sound RDOF Applicants With Unblemished, Successful CAF II Participation Histories and/or USDA Loan/Grant Program Histories

AtLink found complying with the Letter of Credit requirement of the CAF II program excessively time-demanding, at times impossible, at other times impractical, and ultimately expensive. We entered into the CAF II process as a successful Oklahoma wireless internet and VOIP service company with over 14 years of experience and 15,000 paying customers. We were sound financially and profitable with many years of audited financial statements to prove it. We also had over a decade of successful, unblemished participation in United States Department of Agriculture ("USDA") programs for the development of high speed internet in rural Oklahoma areas under Community Grant programs and general Loan/Grant programs totaling some $9 Million in Grants, and $2.6 Million in Loans. We thought AtLink would find a Letter of Credit issuer with relative ease. We were wrong.

We began the hunt for a Letter of Credit issuer by approaching local and national lenders with a B- Weiss rating or better. We looked at ten banks and interviewed three with care. Each of the three interviewed required a great deal of education as to USDA and FCC policies and procedures (remember we had outstanding USDA loans and grants), and in particular, the unique requirements of CAF II participation, including the rules of the impending reverse auction, the uncertain, but broad range of possible auction outcomes, the letter of credit requirements as they increased each subsidy year, and the tight time deadlines following the auction. We estimated that we spent between $100,000 and $150,000 internally just getting to the meat of conversations with the banks respecting how big a letter of credit we would need, when we would need it, why we were a safe credit risk, financial projections for network build out, etc. Imagine the difficulty we had answering sensible questions such as:

Q: How much letter of credit coverage will you need for year one?

Answer: 10% of the entire support award ultimately won at auction.

Q: What then is the "entire support award" you will ultimately win at auction?

Answer: We don't know. The total amount of support available for the entire US is just under $2 Billion over 10 years, and Oklahoma has earmarked – potentially - around $400 Million of that. Oklahoma has over 900 census block groups being auctioned. We've analyzed all 900+ but plan on bidding on roughly 300 CBGs.

Q: Okay, so you will bid on about a third of the Oklahoma CBGs, meaning around $125-$135 Million of support will be ultimately available to you, yes?

Answer: No. The amount of support available for a particular CBG will depend on the number of locations to be served, on the signal latency and upload/download speeds we commit to, and on how low the reverse auction drives down the financial support for the CBG. Finally, the amount of support depends on how many of those 300 CBGs we actually end up winning.

Q: How low can the support number go for a CBG?

Answer: As little as 5% of the original available support amount.

Q: So you won't know how much letter of credit coverage you will need until the auction is over, and the more auction rounds it takes for you to win a CBG, the lower your FCC support will be? If so, doesn't that mean the lower your FCC support, the greater the letter of credit risk for our bank due to a corresponding increase in your <u>un</u>supported build out costs?

Answer: Yes.

Q: What collateral do you have to secure a letter of credit?

Answer: We have over $15 Million of fixed assets, plus 15,000 customers paying every month. But, we have an original $2.6 Million USDA loan on which we still owe about $2.2 Million and the USDA has a first lien on assets, and a negative loan covenant that prohibits our further pledging assets.

Q: How then do you propose to collateralize the letter of credit?

Answer: The FCC says that together we will have to negotiate an "intercreditor agreement" with USDA (Rural Utilities Service).[3]

While the above Q&A has been shortened for the sake of brevity, it captures the Twilight Zone we faced with banks otherwise willing to issue us a letter of credit. The cost of the letter of credit ranged from a low of 1.55% of the required letter of credit amount, to 2.75% of the required letter of credit amount. Inasmuch as the required letter of credit amount increases each subsidy year (subject, we acknowledge, to discounts as 90% and 80% build out milestones are achieved), the fees are costly, and detract from a participant's financial ability to perform.

The letter of credit requirement is arguably unnecessary for all winning bidders because CAF II also required a winning bidder to "certify" in its long form application that they have available funds for all project costs that "*will exceed the amount of support that will be received from the Phase II auction authorization for the first two years of their support term and that they will comply with program requirements, including service milestones*."[4] In so requiring, the FCC acknowledged, "*We anticipate that many bidders will need to obtain a loan or rely upon other sources of funding to cover the cost of building the network, with the ongoing support used to repay those construction loans. It therefore is imperative that winning bidders have a well-developed plan regarding financing for construction upon which they are ready to execute once the auction closes*."[5]

Thus, for CAF II the FCC required both letters of credit **and** "well-developed" loans/capital plans to cover most of the build-out costs. Please pick one or the other. Both efforts require a B-minus-or-better Weiss-rated bank to be persuaded the winning bidder is financially and technically capable of completing the project. But to require both, based on the

[3] See, paragraph 121, FCC Public Notice 16-64A1 (WC Docket Nos. 10-90, 14-58, and 14-259)
[4] Id. at paragraph 116.
[5] Id.

same fundamental banking analysis, simply increases bank reserve requirements, which in turn increases lending costs, documentary burdens, legal costs, and time demands while a winning bidder is rushing to complete all parts of the long form application (in CAF II, all in about 75 days following the closing of the auction.)

A letter of credit requirement certainly offers additional security for the FCC and may well be necessary for winning bidders new to the industry, or winning bidders with either unproven USDA/FCC track records, questionable financial conditions, or technical inexperience. However, for successful USDA/FCC program participants with demonstrated financial and technical capability, the letter of credit requirement poses a needless complication and expense, especially in view of the requirement of certifying internal or third party funding of build out costs in excess of the first two years of support.

We note that the FCC does not require its A-CAM program participants to provide letters of credit despite (a) the requirement for a 25/3 internet network build out; and, (b) financial risk to the FCC of $65 Million annually for 10 years.[6] Presumably, the reason is that the FCC knows it is providing support to well-established, financially sound telecommunications companies with histories of successful FCC program compliance. We understand the purpose behind the requiring a letter of credit, and do not disagree with the intent behind it. The concern of awarding funds to applicants who haven't either the balance sheets or the experience to ever cover their obligations is a huge risk that must be avoided through carefully planned policy requirements. However, the current requirements, as illustrated in the above Q&A, reflect that far too much risk has been shifted on financially healthy and experienced applicants, which, in turn, unduly increases the risk of the FCC meeting its overall objective.

[6] FCC Public Notice DA 19-115 (WC Docket No. 10-90). See also, FCC Public Notice DA 19-349, "Wireline Competition Bureau Authorizes 186 Rate-Of-Return Companies To Receive An Additional $65.7 Million Annually In Alternative Connect America Cost Model Support To Expand Rural Broadband."

II. The FCC and USDA Should Harmonize USDA/RUS Lending Covenants with FCC Financial Security Requirements for Rural Broadband Development & Support Programs

As with AtLink, and as anticipated by the FCC[7], it was a fact of life for many CAF II participants that they had existing USDA/RUS loan and grant obligations that conflicted with the CAF II financial security requirements (Letter of Credit and Loan Funds/Capital in Excess of first two years of CAF II support). Standard USDA/RUS lending and grant agreements contain further borrowing prohibitions and further asset pledging prohibitions that, if applied literally, made CAF II compliance for a winning bidder impossible. In AtLink's case, after much delay and negotiation, our lender had to pay off the outstanding principal balance of AtLink's RUS loan ($2.2 Million) before the RUS would allow the bank even a junior lien position to secure its loan. We hasten to note that the USDA/RUS was not being arbitrarily difficult. They were simply following established policies.

In addition, AtLink's existing RUS Grant Agreement contained a continuing internet service obligation through 2034. The RUS insisted on retaining a first lien position just to secure that service obligation – all as its regulations require. Happily, our bank and the RUS were able to negotiate an intercreditor agreement, but it was difficult and we almost ran out of time.

Obviously, it would be very helpful if the USDA and the FCC were to develop coordinated policies or agreements that would make the borrowers' and lenders' efforts to obtain an intercreditor agreement faster and more predictable, especially for worthy, overlapping programs aimed at bringing high speed internet to rural areas as quickly as possible.

III. The FCC Should Clarify that the Requirement of Network Design Certification by a "Professional Engineer" Means a "Licensed Professional Engineer"

AtLink has noted that there is some uncertainty in the industry as to the meaning of the FCC's use of the term "professional engineer" as used in the requirement that a professional

---

[7] See, footnote 3 above.

engineer certify that an applicant's network design network "*is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements*."[8]

Although the licensing requirements vary from state to state, every state of the Union does require licensing before a person qualifies as a professional engineer. Generally speaking, a professional engineer is "licensed" by a state in order that the engineer may hold himself or herself out as, and conduct a practice as, a professional engineer in that state. Requirements for licensing normally include (i) graduation from an accredited engineering college; (ii) passing a written engineering examination; (iii) satisfying a certain number of years of actual experience under the supervision of a licensed engineer; (iv) membership in good standing with the state's Society of Professional Engineers; and, (v) continuing adherence to written ethical and professional standards imposed by the state's licensing board.[9]

AtLink believes that the FCC intends the term "professional engineer" to mean an engineer who at the time of certification is (a) licensed by the state in which he or she practices, and (b) a member in good standing with the society of professional engineers of that state. We ask only that the FCC clarify that requirement of "licensing" to remove any lingering ambiguity.

Thank you for the opportunity to be heard.

Respectfully submitted,

@LINK SERVICES, LLC

By: ______________________________
Samual T. Curtis, Manager/CEO

[8] See e.g., paragraph 114, FCC Public Notice 16-64A1 (WC Docket Nos. 10-90, 14-58, and 14-259)
[99] See, e.g., Title 58 Oklahoma Statutes, Section 475.1 et seq.