Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
	)	
	)	

PETITION FOR LIMITED WAIVER

Allen's T. V. Cable Service, Inc., d/b/a Allens Communications ("Allens"), by and through undersigned counsel, respectfully submits this Petition for Limited Waiver of Section 54.315(c)(1) of the Commission's rules.[1] As a winning bidder in the Connect America Fund Phase II ("CAF Phase II") auction ("Auction 903"), Allens is required to obtain a standby letter of credit "in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year."[2] At the time that it decided to participate in Auction 903, Allens understood this rule to require that the total amount of the letter of credit would only be for the funding amount for the single "coming year." Allens only recently learned that its lender interprets the rule to require the letter of credit to cover the cumulative funding provided to date plus the anticipated funding for the coming year.

Lenders will only extend a limited amount of credit to rural cable operators, and the limitations are even more constricting upon a company such as Allens that operates in a high-risk area for major hurricanes. As demonstrated below, the letter of credit requirements for the later

[1] 47 C.F.R. § 54.315(c)(1).

[2] *Id.*

years of the project would exceed Allens' available credit. Allens would therefore be financially unable to secure sufficient credit to fund both the construction of its project and meet the value requirements of the standby letter of credit in the later funding years when the cumulative funding would be highest, even taking account the reductions in value in the standby letter of credit afforded in Section 54.315(c)(1)(i) and Section 54.315(c)(1)(ii) of the Commission's rules.[3] Therefore, pursuant to Section 1.3 of the Commission's rules,[4] Allens requests that the Commission grant a limited waiver of Section 54.315(c)(1) of its rules, such that Allens only needs to obtain a standby letter of credit that covers the amount of support that will be disbursed in the coming year. Grant of the requested waiver will help to achieve the Commission's objectives without undermining the Commission's policies described through the CAF Phase II proceeding.

I. GOOD CAUSE EXISTS TO GRANT THE REQUESTED LIMITED WAIVER PURSUANT TO SECTION 1.3 OF THE COMMISSION'S RULES

A. Allens' Access to Capital is Limited by the Economic Challenges of Serving a Rural Area Prone to Major Hurricanes

Allens' CAF Phase II project would extend wireline broadband for the first time to 794 residences in a sparsely-populated rural area in coastal south central Louisiana, as described in its Auction 903 short form and long form applications (the "project"). There is a significant reason that these areas still lack access to wireline broadband service, and that the incumbent local exchange carrier declined to accept the Commission's offer of CAF Phase II support: these areas are uneconomical to service because the country's financial institutions deem them a risky

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[3] The Commission's rules permit a reduction in the total value of the standby letter of credit at the 60 percent and 80 percent service milestones respectively. *See* 47 C.F.R. §§ 54.315(c)(1)(i), 54.315(c)(1)(ii).

[4] 47 C.F.R. § 1.3.

investment. Banks know that southern Louisiana has not been devastated by hurricanes for the last time. Allens has faced destruction from hurricanes from the earliest days of the company. In the 1960s, Hurricanes Hilda and Betsy caused extensive damage to Allens' network in Morgan City and Berwick. A string of hurricanes throughout the 1970s and 1980s struck the central Louisiana coast each causing $100,000 to $200,000 worth of damage to the Allens system. In 1992, Hurricane Andrew destroyed the vast majority of Allens' network, and it took more than six weeks to restore service. In 2005, Hurricanes Katrina and Rita ravaged much of Louisiana, causing widespread destruction and significant loss of infrastructure. Since 2005, Hurricanes Gustav and Ike caused significant devastation of their own.[5] With each storm, Allens not only financed substantial reconstruction and repair costs, but it also lost significant revenue from the outage and issued credits to customers for the outage of service.

All small, rural cable companies are limited in the amount of capital banks are willing to lend to them, but Allens is additionally constrained because of the calculated risk of serving this hurricane-prone region.[6] Allens has strong financials and disciplined management, and thus has been able to establish credit that it has used in the past to upgrade and expand its network and recover from storms. But the prospect of future destruction, reconstruction costs, and loss of revenues for sustained outage periods understandably limits the tolerance of private banks to be overexposed to risk.

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[5] *See A brief history of Louisiana hurricanes*, Rachel Steffan, Beauregard Daily News (Mar 24, 2017), http://www.beauregarddailynews.net/news/20170524/brief-history-of-louisiana-hurricanes.

[6] The American Shore & Beach Preservation Association noted that difficult in obtaining private funding in hurricane-prone areas and stated that "since the public and our national economy benefit from sound and substantial coastal infrastructure, the federal government must provide that funding." *Congress, fund our nation's coastal infrastructure*, American Shore & Beach Preservation Association (Feb. 28, 2017), http://asbpa.org/2017/02/28/congress-fund-our-nations-coastal-infrastructure/.

The challenge of obtaining sufficient capital to extend networks to low-yield or otherwise risky unserved areas is the fundamental problem that programs such as Rural Utility Service loans and the CAF are supposed to be designed to address. Unfortunately, as demonstrated below, the letter of credit requirement as designed by the Commission would consume too much of the limited capital available to Allens to leave sufficient funds for construction of the project – thus preventing the accomplishment of the Commission's universal service goal by undermining the core remedy (access to capital) that the CAF is intended to deliver.

B. The Cumulative Letter of Credit Requirement Would Starve Allens of Access to Capital Needed to Construct the Project and Maintain Adequate Emergency Reserves

Allens' existing revolving line of credit financial is capped at a maximum debt of [redacted] by its lender, [redacted] (the "Bank"). At present, Allens has drawn down [redacted] of the total line of credit to finance an earlier network extension, leaving [redacted] in remaining credit.

Allens will need to use much of this available credit to fund the construction of the project in the first year of the project. Given that the CAF Phase II support only provides funding for costs above the high-cost funding benchmark,[7] which represents the point "where the cost of service is likely to be higher than can be supported through reasonable end-user rates,"[8] the Commission expects CAF Phase II funding recipients to use a portion of their own money to deploy broadband infrastructure. Accordingly, Allens planned to, and indeed needs to, use a significant portion of its remaining revolving line of credit to construct and deploy broadband to the 794 locations where it has won CAF Phase II support. While Allens will receive end-user

[7] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964, 4033, para. 164 (Wireline Comp. Bur. 2014) ("*CAM Inputs Order*").

[8] *Id.* at 165.

fees from the portion of newly-served homes that decide to subscribe, Allens also needs to draw from its line of credit on an interim basis to cover the portion to be funded by CAF Phase II funding, since receipt of much of the funding is scheduled to occur long after it has been spent. Allens also desires to maintain approximately [redacted] credit in reserve to be able to respond rapidly to storm outages. Rapid restoration of communications is critically important to public safety, and as a member of these local communities for generations, Allens is not willing to jeopardize its responsibility to its neighbors by leaving itself unable to recover quickly from a storm.

Allens had carefully calculated that it would be able to complete the proposed project within these financial parameters, assuming that the letter of credit need only cover one year of CAF Phase II support disbursements. Allen's construction matrix, which addresses the capital needs to deploy broadband to the CAF Phase II funded locations, reasonably estimated the need for additional funding requirements from cash on hand, revenue generated from end users, and loans available from the Bank. However, these calculations did not take into account a standby letter of credit that cumulatively covers all CAF Phase II support disbursed to date.

The reason that this cumulative letter of credit requirement is not viable is that Bank's would treat each dollar of the letter of credit as loaned, such that Allens would have to pay interest on the full amount but would be unable to actually borrow the funds to use for its project. For example, after the fourth year of support disbursements, when Allens had projected to have deployed to 60% of its required locations, it would be required to obtain a standby letter of credit to cover 90% of the first five years of support, or approximately $800,000.[9] In order to obtain an $800,000 letter of credit, the Bank would encumber $800,000 worth of Allens' revolving credit

[9] 47 C.F.R. § 54.315(c)(1)(i).

line. As stated above, at present Allens only has [redacted] in remaining credit, but it needs to use that credit to construct the project. Allens expects to be able to secure some additional credit in the future to complete the project construction, but does not expect to be able to increase its credit limit enough to be able to cover both that construction and the full amount of the cumulative letter of requirement in later years. Therefore, Allens cannot guarantee that it would be able to meet the letter of credit requirement for the full term and still build the project and reserve adequate emergency credit needed to protect public safety.

C. The Public Interest is Surely Served by Granting Allens a Limited Waiver of 47 C.F.R. § 54.315(c)(1)

Allens has committed to serving 794 unserved locations that will not have broadband service unless this limited waiver is granted, and its project will also deliver broadband for the first time to additional homes in between the funded census areas. While Allens appreciates the Commission's interest in being able to recover CAF Phase II funds in the event that the recipient fails to perform as required,[10] such security should not come at the expense of financially starving CAF Phase II winning bidders of the capital needed to actually extend its plant to the unserved consumers.

If the waiver is not granted, it would be the second time that unnecessarily demanding federal government financing conditions had prevented the same residents of rural south central Louisiana from receiving access to broadband. Allens has long been eager to extend broadband to its neighbors in these communities. In 2009, Allens was awarded a loan/grant combination by the Rural Utilities Service as part of its Broadband Infrastructure Program. However, RUS required as a condition of its loan that it have primary collateral rights in the project assets, but

[10] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, para. 123 (2016) (*CAF Phase II Auction Order*).

the terms were unacceptable to the Bank and Allens had to decline the award. Allens hoped that the CAF program would lead to a different outcome since it is styled as a grant rather than a loan. However, the requirement to freeze a significant portion of the total amount of support for up to six years would have a similar effect on Allens' liquidity as a loan, since Allens would also have to take out an additional loan to actually fund the broadband infrastructure. This *double hit* on the company's limited access to credit is, unfortunately, not sustainable once the burden of the letter of credit starts to build in successive funding years. And even if Allens' could secure sufficient credit, it would have to pay double interest – once on the unused letter of credit funds and again on the funds actually borrowed to build the project.

Furthermore, given Allen's location in hurricane-prone coastal Louisiana, financial institutions have limited the credit available for facilities deployment in Louisiana. Consequently, Allens does not have access to credit lines outside of its relationship with the Bank.[11] The Commission has established precedent in the Uniendo a Puerto Rico Fund and the Connect USVI Fund that vulnerability to hurricanes can justify different treatment for Universal Service purposes.[12] In the case of Puerto Rico, the Commission decided to authorize an additional $105 million in support to assist with the "long-term rebuilding, improvement, and hardening of fixed voice and broadband service…"[13] The requested waiver, by contrast, at most

[11] Even if there are other banks that would extend a letter of credit to a generic CAF auction winner without drawing down the borrower's limited available credit, that bank would presumably require collateral in Allens' system, which is not possible unless the bank could entirely take out the Bank by financing all of Allens' debt. Allens is not aware of any qualified bank willing and able to assume that position on viable terms.

[12] *In Re The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications,* Order and Notice of Proposed Rulemaking, FCC 18-57, WC Docket Nos. 18-143 *et al.*, (FCC rel. May 29, 2018).

[13] *Id*. at para. 34.

slightly increases the Commission's possible financial exposure by a few hundred thousand dollars – and in reality the Commission would not be exposed at all since the company is valued at [redacted].

Section 1.3 of the Commission's rules states that, "[a]ny provision of the rules may be waived by the Commission . . . on petition if good cause therefor is shown." The D.C. Circuit has explained that waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[14] Consequently, the Commission "has authority . . . to waive requirements not mandated by statute where strict compliance would not be in the public interest[.]"[15] Furthermore, "the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis."[16]

Good cause exists to grant the requested waiver. Without waiver of the requirement to obtain a standby letter of credit "in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year,"[17] Allens could not meet all of its obligations as an Auction 903 winner; a waiver is therefore necessary to avoid undermining the Commission's goals of extending broadband to unserved and underserved areas throughout the United States.[18] To avert being forced into declining its CAF Phase II award of support, Allens seeks a limited waiver of waiver with Section 54.315(c)(1) of the

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[14] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[15] *Nat'l Ass'n of Broad. v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009).

[16] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[17] *Id.*

[18] *See generally Connect America Fund et al.;* WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

Commission's rules and allow Allens to obtain a standby letter of credit that only covers the amount of support that will be disbursed in the coming year.

Allens is exactly the type of company the Commission was hoping would participate in CAF Phase II. Allens is a small family-owned and operated telecommunications company serving rural areas in south central Louisiana. Allens has been in operation for sixty years, beginning as a community antenna system, and has since grown into a facilities-based provider of terrestrial telecommunications, broadband, and video services. Allens takes pride in providing broadband services to its rural customers when no one else will. Allens has been a committed participant in the CAF Phase II, fully engaged in the rulemaking process through the auction. Allens successfully submitted both its short-form and long-form applications in a timely fashion. With the CAF Phase II support awarded by the Commission, Allens looks forward to providing critical broadband services to even more residents of rural Louisiana.

CONCLUSION

In the *USF/ICC Transformation Order* the Commission concluded that the Connect America Fund "will expand broadband…significantly, providing access to critical employment, public safety, educational, and health care opportunities to millions of Americans for the first time."[19] To better serve the public interest, the Commission can and should choose a more effective implementation of this policy by taking into account the hardship of serving a region prone to major hurricanes by granting this Petition and permitting Allens to obtain a standby letter of credit that only covers the amount of support that will be disbursed in the coming year.

[19] *USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 14.

Respectfully Submitted,

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