

**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
)	
To: Chief, Wireline Competition Bureau		

PETITION FOR WAIVER

**ALLIANCE OF RURAL BROADBAND
APPLICANTS**

January 27, 2015

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SUMMARY

The Alliance of Rural Broadband applicants (“Alliance”) hereby respectfully requests limited waiver of certain letter of credit (“LOC”) requirements for provisionally selected rural broadband experiment applicants. There is good cause for grant of a waiver in light of the hardships and inequities that such winning bidders face in meeting the Commission’s stringent LOC requirements, and grant of a waiver also will advance policy objectives designed to support the provision of fixed broadband services in unserved rural areas of the country.

In adopting requirements for the rural broadband experiment program, the Commission required applicants to maintain an LOC for 100 percent of the funding over the course of the 10-year funding period. The Alliance members – whose applications collectively comprise almost 40 percent of the money available for rural broadband experiment funding and about 60 percent of the census blocks – have found the *duration* and *amount* of the LOC to be extremely burdensome. LOCs of 10 years are too long for banks, and the ability to move the LOC obligation to different banks over time creates uncertainty that will not overcome the burden. In addition, banks require LOCs to provide *cash* collateral equal to 100 percent of the LOC value, meaning that recipients must tie up much-needed capital to accommodate the Commission’s default rights and cannot use the funds for network build-out, equipment, maintenance, acquisitions or other assets to enhance and expand broadband deployment. The Alliance also observes that, in previous Commission auctions where an LOC was required, the LOC value was substantially less than 100 percent, and the Commission did not justify a higher amount in adopting rural broadband experiment requirements.

The Alliance does not seek reconsideration of the LOC requirement generally, but rather requests limited relief from those aspects of the LOC requirement that impose hardship, are

inequitable and contravene the Commission's overall policy of extending broadband to unserved rural areas. The Alliance proposes the following alternative solutions:

- The Bureau should reduce the amount of the LOC by 50 percent to significantly reduce the amount of cash collateral that winning bidders will need to pledge.
- The Bureau should reduce the duration of the LOC requirement to the shorter of five years (for those applying for the "standard" deployment) and three years (for those applying for the "accelerated" deployment), so long as the deployment benchmarks are satisfied.
- The recipient should be released from its LOC obligations upon certification by the recipient that it has satisfied its deployment obligations.
- To reduce the initial amount of the LOC obligation the Bureau should permit those applicants selecting the "accelerated" deployment option to amend their applications to propose the "standard" deployment time period.

In addition, the Bureau should briefly suspend its upcoming filing deadlines so it may consider and act on waiver requests and CAF Phase II challenges, all of which could affect the rights and obligations of provisionally selected winning bidders. Allowing time for these matters to be resolved would add certainty to the process in terms of financial requirements and the areas deemed to be "served," thereby improving the prospects for a successful program that advances the Commission's broadband deployment policies.

The Alliance respectfully requests expeditious grant of this Petition for Waiver.

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To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER¹

The Alliance of Rural Broadband Applicants (“Alliance”), by counsel and pursuant to Sections 1.3 and 1.41 of the Commission’s Rules, hereby respectfully petitions for a limited and expeditious waiver of certain letter of credit (“LOC”) requirements applicable to the rural broadband experiment program.² The Alliance members, all of which were provisionally selected for rural broadband experiment support, have found the Commission’s requirements with respect to LOCs to be overly burdensome, counterproductive to the design and intent of the program and contrary to the public interest. In lieu of a 10-year term in which the LOC value increases even after deployment milestones have been satisfied, the Alliance herein proposes an alternative plan that lowers the amount of the LOC obligation and shortens the LOC period, while still protecting the Commission’s investment and the integrity of the rural broadband experiment program. The Alliance also asks that provisionally selected applicants that have accepted the “accelerated” deployment option be afforded the opportunity to amend their

¹ The Commission has designated an additional docket, WC Docket No. 14-259, for the rural broadband experiment program. This Petition will be submitted in all three dockets via ECFS.

² A list of the Alliance members is attached hereto.

applications to specify the “standard” deployment schedule in order to decrease the amount of their initial LOC obligation.

To the extent necessary for this Petition and other waiver requests to be considered, the Alliance believes the Wireline Competition Bureau (“Bureau”) should briefly suspend upcoming application deadlines so that provisionally selected applicants can adapt to any changes to program requirements resulting from its consideration of and action on multiple pending requests for waiver.

Introduction

By the *Selection Notice*, the Bureau provisionally selected each member of the Alliance for rural broadband experiment funding.³ Collectively, the Alliance members were provisionally selected for more than \$39.6 million of the \$99.5 million allocated for program funding, with deployment proposed for 15,271 census blocks in 10 states.⁴ The Alliance includes established Internet service providers, including the largest fixed wireless broadband company in the country,⁵ as well as start-up companies with management experienced in the operation of broadband networks in rural areas.⁶

Each Alliance member timely filed technical and financial information in accordance with the *Selection Notice* instructions. Each has diligently worked to meet the additional obligations of support recipients, including by filing for eligible telecommunications carrier

³ See *Public Notice*, “Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information,” DA 14-1772 (rel. Dec. 5, 2014) (“*Selection Notice*”) at Attachment A.

⁴ The states are Colorado, Illinois, Iowa, Kansas, Minnesota, Nebraska, Ohio, South Dakota, Texas and Virginia. The Alliance members’ winning bids include 57 percent of the total number of census blocks represented by all winning bids.

⁵ Skybeam, LLC is a wholly owned subsidiary of JAB Wireless, Inc., which provides fixed wireless broadband service to approximately 175,000 customers in 15 states.

⁶ For example, Declaration Networks Group, Inc. is a pioneer in the development of TV white space deployment.

(“ETC”) status in the states where its project was selected and by engaging with banking institutions to obtain the LOC commitment letter and, ultimately, the irrevocable stand-by LOC.

In the course of meeting with banks, the Alliance members have determined that the LOC requirement imposes severe hardships on applicants that they may not be able to overcome. First, banks have informed the Alliance members that they are unwilling to consider a 10-year LOC because the term is simply too long and does not conform to banking practices. Second, the Commission’s requirement that the LOC cover every dollar of an applicant’s funding contravenes banking practices, unfairly compromises the ability of applicants, particularly those that are small businesses, to obtain the LOC, and is contrary to precedent. Issuing banks require 100 percent cash collateral, meaning that a recipient must tie up increasing amounts of cash over the 10-year term that it cannot use for other purposes (*e.g.*, network expansion) on a dollar-for-dollar basis or must borrow funds from third parties just to fund the potential that the recipient may default and the Commission may exercise its LOC rights. Such collateralization requirement also will inhibit a broadband provider’s ability to raise outside financing because the LOC will make cash unavailable for additional collateral. The combination of these hardships seriously threatens the ability of Alliance members to obtain the LOC, undermines the success of the rural broadband experiment program and contravenes the public interest benefits of deploying fixed broadband service to unserved rural areas of the country.

In this Petition, the Alliance seeks limited relief from certain of the LOC requirements in order to limit the number of defaults and to ensure greater success of the program. First, the Bureau should reduce the required value of the LOC to 50 percent of the total amount and reduce the 10-year time period for the LOC to a maximum of five years, with full release of any remaining LOC obligations upon certification by the recipient that it has completed all of its

deployment obligations. Second, because the “accelerated” deployment option creates a greater upfront financial obligation in the first LOC, the Alliance requests that any applicant that proposed the “accelerated” deployment option be permitted to amend its application to specify the “standard” deployment option. Third, in light of the need to consider this Petition, the Petition for Waiver filed by the National Rural Utilities Cooperative Finance Corporation and the Rural Telephone Finance Cooperative (collectively, “CFC”)⁷ and other requests for waiver of program requirements,⁸ the Bureau should briefly extend the February 3, 2015 LOC commitment letter deadline and the deadline for submitting the first LOC. The outcome of these proceedings will affect the rights and obligations of intended recipients, and they will need a short amount of time following resolution to meet any changes in program requirements.

With these modest changes, the Alliance strongly believes that its members – and all provisionally selected bidders – will be able to obtain LOC commitment letters and LOCs, and will be able to successfully meet deployment, reporting and service obligations, results that are consistent with the public interest. Accordingly, the Alliance respectfully requests expeditious grant of this Petition.

⁷ See *Public Notice*, “Wireline Competition Bureau Seeks Comment on the National Rural Utilities Cooperative Finance Corporation and the Rural Telephone Finance Cooperative’s Petition for Waiver of the Rural Broadband Experiments Letter of Credit Bank Eligibility Requirements,” WC Docket Nos. 10-90 and 14-259, DA 15-106 (rel. Jan. 23, 2015).

⁸ See *Public Notice*, “Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders,” WC Docket Nos. 10-90 and 14-259, DA 14-1889 (rel. Dec. 23, 2015).

Discussion

I. THERE IS GOOD CAUSE FOR GRANT OF THE REQUESTED WAIVER.

Section 1.3 of the Commission's Rules permits the Commission to waive a rule for "good cause shown."⁹ As the District Court held in *Northeast Cellular*, "[t]he Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest."¹⁰ The Commission may grant a waiver where both application of the rule would be contrary to the public interest and special circumstances warrant a deviation from the rule."¹¹ The Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy."¹²

In its *Report and Order* initiating the rural broadband experiment program,¹³ the Commission adopted a requirement that all support recipients must obtain an LOC. The Commission stated that:

LOCs are an effective means of securing our financial commitment to provide Connect America support. LOCs permit the Commission to protect the integrity of universal service funds that have been disbursed and immediately reclaim support that has been provided in the event that the recipient is not using those funds in accordance with the Commission's rules and requirements to further the objectives of universal service. Moreover, LOCs have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals.¹⁴

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹¹ *Id.*

¹² *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹³ See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769 (2014) ("*Report and Order*").

¹⁴ *Id.* at ¶ 56 (citation omitted).

The Alliance supports the use of LOCs generally and does not seek reconsideration of the Commission’s decision to require them. However, the Alliance seeks a limited waiver of the *amount* of the LOC and the 10-year *duration* for which an LOC must be in effect. This result would reflect the Commission’s acknowledgment that “a number of smaller entities will be winning bidders and may not have established relationships with some of the largest banks,” which was the basis for the Commission to make the top 100 banks eligible to issue LOCs.¹⁵ Moreover, granting a limited waiver would be consistent with the “greater flexibility” the Commission afforded to Tribally-owned or –controlled bidders that, like the Alliance members, lack the ability “to levy taxes on their citizenry and to collateralize their lands.”¹⁶

The Alliance respectfully submits that the Commission did not appreciate the burdens associated with obtaining LOCs with an aggregate term of 10 years that include an increasing amount of exposure to the recipient. The Commission stated that its decision to require LOCs “is consistent with the requirements we have adopted for other competitive bidding processes we have conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain LOCs.”¹⁷ But this is not the case. In implementing both the Mobility Fund Phase I (Auction 901) and the Tribal Mobility Fund Phase I (Auction 902), upon which the *Report and Order* relies, the Bureau and the Wireless Telecommunications Bureau required only that the LOC “be submitted for each winning bid in an amount equal to one-third of the winning bid amount, plus an additional 10 percent of the winning bid amount which shall

¹⁵ *Id.* at ¶ 59.

¹⁶ *Id.* at ¶ 67 (citation omitted).

¹⁷ *Id.* at ¶ 55 (citation omitted).

serve as a performance default payment.”¹⁸ There is a significant difference between an LOC commitment of one-third plus 10 percent of the support level and an LOC commitment of 100 percent of the support level.

In requiring rural broadband experiment applicants to obtain LOCs that cover the *entire* amount of the funding for the *entire* 10-year funding term, the Commission greatly increased the requirements of the program and imposed substantial hardships on winning bidders. First, Alliance members have learned that banking institutions require parties seeking an LOC to provide *cash* collateral equal to the entire amount of the LOC. Parties cannot meet the banking institutions’ LOC requirements by, for example, providing collateral in the form of equipment, receivables, real estate or other assets – only cash. This creates a significant problem.

Applicants must post an ever-increasing amount of capital for the sole purpose of ensuring that the Commission can draw on the LOC in the event of a default. The cash cannot be used for other purposes, such as deployment of broadband facilities, expansion of networks, replacement of equipment and security for outside investment. Moreover, some applicants may need to borrow money from other sources just to fund the LOC, which requires the expenditure of additional capital and pledging of assets other than the cash that will be used to collateralize the LOC.

Second, although the Commission limited the amount of the LOC to one-third plus 10 percent for the Mobility Fund and the Tribal Mobility Fund, the Commission decided to value the LOC for the rural broadband program at 100 percent of the funding. The Commission made this decision without any explanation of why more stringent requirements for the rural

¹⁸ *Public Notice*, Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901,” 27 FCC Rcd 4725, 4771 (2012); *Public Notice*, “Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902,” 28 FCC Rcd 11628, 11681 (2013).

broadband program were appropriate or why the risk to the Commission would be greater in the rural broadband program. This decision greatly increases the amount of cash collateral that an applicant must pledge to obtain the LOC. And given that the amount of the LOC obligation increases over the course of the 10-year funding term, the financial burdens will tend to increase over time, even as the recipient successfully deploys and meets its reporting and service obligations.

The Alliance understands that a single LOC does not need to cover the entire 10-year period and that recipients can renew their LOCs periodically and engage with different banking institutions.¹⁹ The Bureau’s recent summary of existing requirements based on “informal discussions with a number of provisionally selected bidders,” however, does not change the collateral requirements employed by banking institutions and does not change the fact that the LOC commitment extends for the 10-year duration of the program with an increasing amount of value, even after all deployment obligations have been met.²⁰ In addition, there can be no certainty that a recipient will be able to change the issuer of its LOC during the 10-year support period, as the Bureau suggests.²¹

The circumstances facing the Alliance members meet the *Northeast Cellular* standards for limited waiver of the LOC requirements. Banking practices and regulatory requirements create substantial “hardship” on rural broadband experiment applicants. It may not be possible for them to meet requirements that will tie up cash on a dollar-for-dollar basis to address a potential default, and it would certainly be imprudent to pledge that amount of cash when it

¹⁹ See *Public Notice*, “Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements,” DA 15-99 (rel. Jan. 23, 2015).

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

could be used for capital and operational expenses. In the absence of any record, it is contrary to principles of “equity” for the Commission to impose more stringent LOC value requirements on rural broadband experiment recipients than winning bidders in other Commission reverse auctions. As the Commission seeks to “implement overall policy” of “advanc[ing] the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from historic technology transitions that are transforming our nation’s communications services,”²² its LOC requirements will have the opposite effect in the absence of a waiver. Applicants provisionally selected for funding will dismiss their applications or default even before they can have the opportunity to deploy, knowing full well that “next-in-line” applicants face the same challenges. Implementation of the program will be delayed, fewer dollars will be committed to the program, and consumers in rural areas will continue to wait for broadband service.

Grant of the Alliance’s waiver request also would be consistent with previous cases in which the Bureau waived LOC requirements. In *Copper Valley Wireless*, the Bureau permitted a Tribal Mobility Fund Phase I winning bidder to submit one LOC instead of multiple LOCs for each of its 11 winning bids.²³ The Bureau concluded “that grant of the waiver request would not conflict with the policies underlying the LOC requirement, which are to ensure that winning bidders have committed sufficient financial resources to meet the program obligations associated with Tribal Mobility Fund Phase I support and to protect the government’s interest in any disbursements of support.”²⁴ Although the factual circumstances differ, the policy reasons for a

²² *Report and Order* at ¶ 1.

²³ See *Copper Valley Wireless, LLC*, DA 14-1469 (rel. Oct. 9, 2014) (“*Copper Valley Wireless*”). See also *GCI Communication Corp.*, DA 13-2222 (rel. Nov. 21, 2013).

²⁴ *Copper Valley* at ¶ 12.

waiver here are the same. In fact, granting the waiver will make it more likely, not less, that winning bidders will have financial resources to meet program obligations because less cash will be tied up for a shorter amount of time, and the integrity of the disbursements should not be negatively affected.

Moreover, the Commission has an obligation under Section 257 of the Communications Act of 1934, as amended, to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services,”²⁵ Granting the limited relief requested here will promote this Congressional and Commission objective, reverse the unintended consequences of its LOC requirements and enable small businesses to provide service to rural areas.

II. IN GRANTING THE WAIVER, THE BUREAU SHOULD ADOPT THE ALLIANCE’S ALTERNATIVE PROPOSAL.

The Alliance appreciates the Commission’s rationale behind requiring LOCs generally, and does not seek here to eliminate that requirement. As described above, however, the amount and duration of the LOC requirement impose significant hardships, are inequitable when compared to similarly-situated reverse auction winning bidders and contravenes the Commission’s policy objectives, to the detriment of the public.

As an alternative to the established rules, the Alliance proposes the following solution. **First, the Bureau should reduce the amount of the LOC by 50 percent.** This would significantly reduce the amount of cash collateral that winning bidders will need to pledge and would put alliance members in the same position as similarly situated Tribal entities that do not

²⁵ 47 U.S.C. 257. The Commission cited Section 257, and other statutory authorities, in proposing the rural broadband experiment program. *See Technology Transitions, et al.*, 29 FCC Rcd 1433, 1460 n.130 (2014).

collect taxes or have the ability to pledge real estate as collateral. Even at 50 percent, the value of the LOC would exceed the amount that the Commission established for Phase I of the Mobility Fund and the Tribal Mobility Fund.

Second, the Bureau should reduce the duration of the LOC requirement to the shorter of five years (for those applying for the “standard” deployment) and three years (for those applying for the “accelerated” deployment), so long as the deployment benchmarks are satisfied. This change will free up the recipient’s collateral and facilitate its ability to obtain outside financing for network expansion, equipment replacement, acquisitions and other business purposes that promote the provision of broadband services to rural Americans.

Third, the recipient should be released from its LOC obligations upon certification by the recipient that it has satisfied its deployment obligations. At that point, the recipient will have deployed a sustainable fixed broadband network with a successful track record. If the recipient is unable to certify deployment, the Commission will have the right to draw on the LOC. The recipient will be incented to accelerate deployment and continue to provide service if it can be released from the LOC obligation at an earlier time. The recipient will continue to have ongoing reporting obligations and the Commission can suspend future funding without jeopardizing the services that have been deployed.

Fourth, the Bureau should permit those applicants selecting the “accelerated” deployment option to amend their applications to propose the “standard” deployment time period. Pursuant to the *Report and Order*, applicants selecting the “accelerated” deployment option will need to obtain an initial LOC that covers 30 percent of the total and thus requires a

dollar-for-dollar cash pledge.²⁶ This amount can be reduced if applicants are afforded the flexibility to reduce the amount of the collateral for the LOC, if they choose.

Fifth, the Bureau should suspend its upcoming filing deadlines until such time as it has considered and acted on all pending waiver requests – those filed by 15 winning bidders regarding audited financial statements, the CFC waiver request regarding bank eligibility and this Petition. Further, a short delay may also afford Commission staff to act on pending CAF Phase II challenges to determine whether any census blocks proposed in the rural broadband experiment applications are deemed to be “served” and thus ineligible for rural broadband experiment funding. This will add certainty to the amount of the LOC and, in some cases, could reduce the amount of the LOC and the cash collateral required to obtain it.

The Alliance’s proposal protects the Commission’s investment and the integrity of the rural broadband experiment process while making it substantially more likely that winning bidders will succeed. The Commission will retain its default rights and the other enforcement rights contained in the *Report and Order* and its rules. Most importantly, however, the Commission will create further incentive and opportunity for broadband providers to deploy service to rural Americans that lack service today, a result that is fully consistent with Congressional and Commission policies.

²⁶ See *Report and Order* at ¶ 75.

Conclusion

Good cause having been demonstrated, the Alliance of Rural Broadband Applicants respectfully requests grant of this limited waiver request to reduce the amount and duration of LOCs so that they can overcome the negative effects of banking practices and regulatory requirements that severely threaten the ability of rural broadband experiment applicants to go forward. Grant of this request would be consistent with Congressional objectives, the Commission's standards and the public interest in obtaining access to fixed broadband service.

Respectfully submitted,

**ALLIANCE OF RURAL BROADBAND
APPLICANTS**

January 27, 2015

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**Alliance of Rural Broadband Applicants
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Winning Bidder Name	State(s)	Amount of Winning Bid(s)	Number of Census Blocks
Brainstorm Internet, Inc.	CO	\$1,737,648	332
LTD Broadband LLC	IA, MN	\$20,000,000	10,122
Skybeam, LLC	IA, NE, IL, KS, TX	\$8,839,194	2,839
Agile Network Builders, LLC	OH	\$3,224,400	687
Chaffee County Telecom, LLC	CO	\$2,586,882	563
Declaration Networks Group, Inc.	VA	\$1,246,052	470
Northern Valley Communications, LLC`	SD	\$2,022,120	258
TOTAL		\$39,656,296	15,271