

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

In the Matter of	)	
	)	
Wireline Competition Bureau Seeks Comment on the Alliance of Rural Broadband Applicants’ Petition for Limited Waiver of Certain Rural Broadband Experiment Letter of Credit Requirements; Also Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process	)	WC Docket No. 10-90  WC Docket No. 14-259

To: Chief, Wireline Competition Bureau

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to the *Public Notice* released by the Wireline Competition Bureau (“Bureau”) on January 30, 2015,<sup>1</sup> hereby submits these Comments regarding the applicability of proposals made by the Alliance of Rural Broadband Applicants (the “Alliance”)<sup>2</sup> to the Connect America Fund (“CAF”) Phase II competitive bidding process. Based on the Alliance’s explanations and the submissions by other parties, WISPA agrees that the stringent letter of credit (“LOC”) requirements adopted by the Commission with respect to the rural broadband experiment (“RBE”) program should not be applied to CAF Phase II competitive bidding. To the contrary, the Commission should adopt financial requirements that will encourage, not inhibit, small business participation in CAF Phase II.

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<sup>1</sup> *Public Notice*, “Wireline Competition Bureau Seeks Comment on the Alliance of Rural Broadband Applicants’ Petition for Limited Waiver of Certain Rural Broadband Experiment Letter of Credit Requirements; Also Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process,” DA 15-140 (rel. Jan. 30, 2015) (“*Public Notice*”).

<sup>2</sup> Alliance Petition for Waiver, WC Docket Nos. 10-90 and 14-58 (filed Jan. 27, 2015) (“*Petition*”).

## Introduction

WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPs use unlicensed spectrum that lowers barriers to entry so that they can provide high-quality and affordable service in unserved, underserved and competitive areas. WISPA’s members include more than 850 WISPs, equipment manufacturers, distributors and others committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural, unserved and underserved areas where wired technologies like FTTH, DSL and cable Internet access services may not be available. The vast majority of WISPs are small businesses.

A number of WISPs participated in the RBE program and were provisionally selected to receive support. For this one-time program, the Commission required applicants to maintain an LOC for 100 percent of the funding over the course of the 10-year funding period.<sup>3</sup> As the Alliance noted in the Petition, banking practices place significant limitations on the ability of applicants to maintain an LOC for an increasing amount for a 10-year period. The Alliance explained that banks typically require cash collateral equal to 100 percent of the amount of the LOC, requiring applicants to tie up cash – which they may need to borrow – merely to cover the collateral for a potential default.<sup>4</sup> Further, allocating cash for LOC collateral prevents such funds from being used for other purposes, such as network expansion, equipment replacement and acquisitions.

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<sup>3</sup> *Connect America Fund (Rural Broadband Experiments)*, 29 FCC Rcd 8769, 8788-93 (2014) (“CAF RBE Order”).

<sup>4</sup> Petition at iii.

The Alliance asked the Commission to waive certain LOC requirements for the RBE program. The Alliance requested that the Bureau reduce the amount of the LOC by 50 percent and reduce the duration of the LOC from 10 years to the date build-out obligations were met. The Bureau issued the *Public Notice* to seek comment on the Petition for the RBE program and on whether to apply the Alliance’s proposals more generally to the CAF Phase II competitive bidding process.<sup>5</sup>

## Discussion

### I. THE COMMISSION SHOULD ADOPT LESS ONEROUS FINANCIAL REQUIREMENTS FOR CAF PHASE II COMPETITIVE BIDDERS.

In 2011, the Commission sought comment on the documentation and requirements that would be required to ensure financial accountability for CAF recipients seeking Phase II funding.<sup>6</sup> The record is replete with comments suggesting that the Commission should not require LOCs because such a requirement would be unnecessary or overly burdensome, and would especially have a harmful impact on small businesses.<sup>7</sup> Many commenters suggested then that the expense of LOCs would tie up funds that could be better used for capital expenditures and operating expenses.<sup>8</sup> Commenters also suggested that LOCs would reduce a company’s

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<sup>5</sup> There is no opposition to the Alliance Petition, which remains pending.

<sup>6</sup> See *Connect America Fund, et al.*, 26 FCC Rcd 17663, 18066-67 (2011), *aff’d* 753 F.3d 1015 (10th Cir. 2014).

<sup>7</sup> See, e.g., Comments of WISPA, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“WISPA Comments”) at 10-11; Comments of National Exchange Carriers Association, *et al.*, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“NECA Comments”) at 42-43; Comments of ADTRAN, Inc. WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“ADTRAN Comments”) at 16; Comments of Frontier Communications Corporation, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“Frontier Comments”) at 12; Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“ITTA Comments”) at 10-11; Comments of United States Cellular Corporation, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) at 50-51; Comments of the United States Telecom Association, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“USTA Comments”) at 21-22; Reply Comments of the Satellite Broadband Providers, WC Docket No. 10-90, *et al.* (filed Feb. 17, 2012) at 18.

<sup>8</sup> See, e.g., NECA Comments at 42-43; Frontier Comments at 12.

liquidity.<sup>9</sup> As ADTRAN correctly predicted, “requiring all recipients to obtain a [LOC] will impose a not insignificant cost – both in terms of fees assessed (typically an annual fee from 1-8% of the amount of the credit), as well as the opportunity cost, because the bank normally requires that the client also maintain funds on deposit to cover the amount of the LOC.”<sup>10</sup>

As the Petition confirms, these concerns are well-founded and real. In the course of meeting with banks, Alliance members determined that many banks are unwilling to consider a 10-year LOC because the term is simply too long and does not conform to banking practices.<sup>11</sup> Furthermore, the Commission, at least with respect to the RBE program, is requiring that the LOC cover every dollar of an applicant’s funding. As the Alliance explained in the Petition, and its members, which include WISPA members, have seen in practice, 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.

The reality of these concerns is illustrated in the record. In a recent *ex parte* letter, Skybeam stated that “the LOC is considered to be funded debt, which means that it is treated as if the amount was funded by a third party and spent such that it counts against [its parent’s] borrowing capacity.”<sup>12</sup> Skybeam further explained that “[i]n each year that the LOC accumulates, the funded debt is offset by only a single year of the company’s cash flow. This creates significant debt leverage and constrains the company’s borrowing capability well beyond

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<sup>9</sup> *See, e.g.*, USTA Comments at 21-22; ITTA Comments at 10-11.

<sup>10</sup> ADTRAN Comments at 16.

<sup>11</sup> *See* Petition at 3.

<sup>12</sup> Letter from Stephen E. Coran, Counsel to Skybeam, LLC, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 and 14-259 (filed March 19, 2015) at 2.

the amount of the LOC and the funding itself.”<sup>13</sup> Skybeam added that, based on these lessons, the Commission should adopt less burdensome requirements for CAF Phase II competitive bidding.<sup>14</sup>

In its Comments, CoBank, a prominent bank for rural businesses, explained that it has “concerns about the structure and conditions of the Letter of Credit (“LOC”) that recipients of RBE funding will be required to post.”<sup>15</sup> CoBank confirmed that the requirement that LOCs be renewed and increased for each year of the 10-year funding term

has the potential of putting the award recipient into default under the program if the recipient were unable to replace the original LOC with one from a new issuing bank. This could cause financial distress and potentially trigger ancillary defaults under the carrier’s other loan agreements, exposing the original issuing bank to lender liability risk. This means that the LOC, as currently structured, effectively has a 10-year tenor [*sic*] with an increasing exposure amount to the life of the program. *This is inconsistent with commercially prudent lending practices*, as it is impossible to assess the various risks facing operators in the rapidly changing telecommunications industry over a 10-year horizon.<sup>16</sup>

The foregoing reinforces the need for less restrictive financial requirements for CAF Phase II. This is no longer a hypothetical bubble of what *could* happen to a relatively small number of support recipients, but a real-world problem that will have dire consequences for CAF Phase II, a program that is likely to attract a large number of potential bidders. Simply put, although the Commission professed its “confiden[ce] that [RBE] winning bidders [would] be able to secure LOCs,”<sup>17</sup> the facts have shown this confidence to be misplaced.

Many WISPs are considering participating in CAF Phase II. WISPA appreciates that

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<sup>13</sup> *Id.*

<sup>14</sup> *See id.*

<sup>15</sup> Comments of CoBank, ACB, WC Docket No. 10-90, *et al.* (filed March 20, 2015) at 2.

<sup>16</sup> *Id.* at 2-3 (emphasis added).

<sup>17</sup> *CAF RBE Order* at 8971.

recipients of Connect America Fund support must be financially accountable. However, if the LOC requirements remain as burdensome as they are for RBE applicants, they will act as a bar to participation, especially by small businesses. Therefore, the Commission should ensure that any method used for securing a recipient's performance is not so burdensome that it detrimentally impacts participation in CAF Phase II.

WISPA continues to support its earlier position that the Commission should use means other than LOCs, such as performance bonds, to ensure the financial accountability of Connect America Fund recipients.<sup>18</sup> The characteristics of performance bonds compared to LOCs are much more favorable for small businesses like WISPs. Unlike LOCs where the financial obligation and bank risk increase over time, the financial obligation and bank risk will decrease over time if performance bonds are required. Furthermore, costs associated with obtaining performance bonds are significantly less than those associated with LOCs and performance bonds will not tie up capital to the same extent that LOCs will.

However, to the extent the Commission insists on using LOCs going forward, WISPA supports application of the Alliance's proposal to CAF Phase II competitive bidding. The Alliance has proposed reducing the required value of the LOC to 50 percent of the total amount received and reducing 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.<sup>19</sup> The above discussion demonstrates why this proposal would promote the public interest through greater participation in CAF Phase II competitive bidding.

Adopting less onerous LOC requirements also would be consistent with other

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<sup>18</sup> See WISPA Comments at 10-11.

<sup>19</sup> Petition at 10-11.

Commission subsidy programs. Specifically, in both the Mobility Fund Phase I (Auction 901) and the Tribal Mobility Fund Phase I (Auction 902), LOCs only had to “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 serve as a performance default payment.”<sup>20</sup> 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. Significantly, the Commission stated that “no winning bidders defaulted in Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions because they were unable to secure a LOC.”<sup>21</sup> By contrast, the Commission is faced with the Petition filed by eight provisionally selected applicants.

From these differing experiences, it can be concluded that less onerous LOC requirements will not harm the integrity of the Commission’s rules, build-out will still occur and there will be fewer waiver requests and defaults. There is no public policy reason for such a broad discrepancy in the LOC requirements among the various CAF programs.

## **II. THE COMMISSION SHOULD EXPAND BANK ELIGIBILITY.**

To alleviate some of the LOC burdens, WISPA also agrees with petitioners urging the Commission to expand lender eligibility to include banks that are not top-100<sup>22</sup> and banks that are not insured by the Federal Deposit Insurance Corporation (“FDIC”) or the Farm Credit

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<sup>20</sup> *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).

<sup>21</sup> *CAF RBE Order* at 8791.

<sup>22</sup> *See Public Notice*, “Emergency Petition of NTCA-The Rural Broadband Association for Limited Waiver of Rural Broadband Experiment Letter of Credit Requirements,” WC Docket No. 10-90, *et al.* (filed Feb. 3, 2015) (“NTCA Petition”); *see also Public Notice*, “Wireline Competition Bureau Seeks Comment on NTCA’s Emergency Petition for Limited Waiver of Certain Rural Broadband Experiment Letter of Credit Bank Eligibility Requirements; Also Seeks Comment More Generally on Bank Eligibility Requirements for Connect America Phase II Competitive Bidding Process,” DA 15-158 (rel. Feb. 4, 2015).

System Insurance Corporation (“FCSIC”).<sup>23</sup> As NTCA points out, it may be prohibitive for a small entity to obtain an LOC from a top-100 bank, which would “all but defeat the rationale for obtaining support.”<sup>24</sup> Furthermore, small businesses do not have the same kinds of relationships that larger businesses have with top-100 commercial banks.<sup>25</sup> WISPA agrees with NTCA that “[t]here are many reliable independent community banks, credit unions, and other financial institutions that can provide a sound level backing.”<sup>26</sup> For these same reasons, and to the extent the Commission will require LOCs for CAF Phase II competitive bidding, WISPA supports CFC’s request for waiver of the FDIC/FCSIC requirements so that other credible lenders may issue LOCs to those receiving CAF support.<sup>27</sup>

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<sup>23</sup> See Petition for Waiver filed by National Rural Utilities Cooperative Finance Corporation and Rural Telephone Finance Cooperative, WC Docket No. 10-90, *et al.* (filed Jan. 21, 2015) (“CFC Petition”).

<sup>24</sup> NTCA Petition at 2-3.

<sup>25</sup> See *id.* at 3.

<sup>26</sup> *Id.* at 3-4.

<sup>27</sup> See generally CFC Petition.

## **Conclusion**

To ensure robust participation and ensure that WISPs and other small businesses are not effectively prevented from receiving Connect America funds, WISPA urges the Commission to adopt financial requirements for CAF Phase II competitive bidding that reduce burdens on small businesses.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

March 30, 2015

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