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

COMMENTS OF THE
NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION

The National Rural Utilities Cooperative Finance Corporation ("CFC") and its affiliate, the Rural Telephone Finance Cooperative ("RTFC"), submit these comments in response to the Public Notice seeking comment on letter of credit ("LOC") proposals for the Connect America Fund ("CAF") Phase II competitive bidding process.[1]

CFC applauds the Federal Communication Commission's effort to expand broadband Internet access to consumers in rural communities across America. As the largest non-governmental lender to rural utilities in the United States, CFC has operated as a non-profit, member-owned entity for over forty-five years. Its members collectively provide electricity to forty-two million consumers across forty-seven states. CFC also manages and funds the loans issued by the RTFC, a non-profit cooperative owned by its approximately 500 members in forty-two states that helps finance small rural telecommunications companies. CFC's primary mission

[1] *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*, Public Notice, DA 15-140, 30 FCC Rcd. 779 (2015).

is to provide cost-based credit and other financial products to support its members, who supply the essential services to communities in these underserved and hardest-to-reach areas of the country. CFC is acutely aware of the challenges its members must overcome to upgrade the infrastructure increasingly necessary for economic prosperity in areas where, notwithstanding the Commission's "actions to lower barriers to [broadband] investment nationwide, [the] private sector economics still do not add up."[2]

To help CAF Phase II competitive participants meet this challenge, the Commission should adopt LOC rules that ensure that a CAF Phase II support recipient can have access to letters of credit at the lowest possible cost, while still providing the Commission with an assurance that it can recapture support if the recipient fails to meet applicable requirements. One way or the other, as LOC costs rise, fewer funds are available to support network deployment, operation and maintenance in these hardest-to-serve areas, and CAF Phase II becomes a less efficient support mechanism. As CFC explained in its waiver petition with respect to the CAF Rural Broadband Experiments ("RBE") rules,[3] the requirement that financial institutions eligible to issue stand-by LOCs for RBE participants must be insured by either the Federal Deposit Insurance Corporation ("FDIC") or the Farm Credit System Insurance Corporation ("FCSIC") can significantly increase the costs for CFC's members and similar rural entities that do not have preexisting relationships with large commercial banks that meet the two other requirements of the RBE eligibility rules.[4]

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[2] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17663, 17668 ¶ 5 (2011).

[3] Petition for Waiver of the National Rural Utilities Cooperative Finance Corporation, WC Docket Nos. 10-90, 14-58, at 1-2 (filed Jan 21, 2015) ("CFC Petition").

[4] *See Connect America Fund, ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98, 29 FCC Rcd. 8769 ¶¶ 59-60 (2014)

With its strong financial history and impeccable record of participation in federal credit programs, its access to both government and market sources for capital, and its commitment to governance, CFC submits that it functionally meets the security requirements of the bank eligibility criteria.[5] Since its first loan to an electric cooperative in 1971, CFC has provided more than $100 billion in loans and credit facilities to rural electric cooperatives. Over that span, CFC has experienced six loan losses with write-offs net of recovery totaling approximately $86 million. This is an extraordinarily low default rate for a financial institution of CFC's size and it is unlikely that another financial entity has a similar default rate. In addition, CFC currently has no nonperforming loans to electric cooperatives.

As a lender specifically enumerated in the Rural Electrification Act of 1936, as amended (the "RE Act")[6], and eligible to receive federal guarantees on bonds and notes under the RE Act[7], CFC is continually reviewed and vetted by the Department of Treasury, through the Federal Financing Bank, and by the Department of Agriculture as a lender that receives loans from the United States government. Since its inception, CFC has maintained an A rating or better from S&P – far exceeding the minimum investment grade requirement of BBB- for FDIC and FCSIC-regulated banks that can issue LOCs under the RBE rules. CFC also is routinely subject to private lender review each time it seeks to refinance, renew, or amend its private credit facilities. Over the past decade, CFC has either entered into a new facility or amended an existing facility at least once each year.

("*RBE Order*") (requiring eligible issuing banks to be both among the 100 largest banks in the U.S. by assets and to have an Standard & Poor's credit rating of BBB- or better).

[5] CFC Petition at 6.

[6] *See* 7 U.S.C. §936.

[7] *See* 7 U.S.C. §940c-1.

Further, as a public company registered with the Securities and Exchange Commission ("SEC"), CFC is compliant with all applicable rules and regulations promulgated by the SEC. SEC oversight provides a framework for CFC with respect to its corporate governance, internal controls over financial reporting, and accounting standards. SEC oversight also provides accountability for CFC, as failure to comply with certain rules and regulations can result in fines, sanctions and criminal penalties for CFC's officers and directors. As CFC derives a significant amount of its funding through issuances in the public markets, the SEC serves as an essential gatekeeper with respect to CFC's continued business operations.

Accordingly, CFC urges the Commission to adopt a modified version of the bank eligibility requirements for Phase II to permit a financial institution that meets the size and credit rating criteria but that is not eligible for FDIC or FCSIC insurance to issue LOCs as long as such institution also satisfies the following criteria: (1) it is an SEC-regulated issuer; (2) it is a participant in good standing in a federal loan program to receive federally guaranteed debt under the RE Act or to issue LOCs for the benefit of federal agencies, and (3) it has maintained an A- or better S&P rating (or an equivalent rating from a nationally recognized credit rating agency) for at least the preceding five years.

I. COMMENTERS AGREE THAT LOC REQUIREMENTS IN THE RBE IMPOSE UNDUE COSTS ON PARTICIPATING PROVIDERS

There has been near-unanimous support among commenters in the RBE for more flexible LOC requirements that strike a better balance of cost and accountability.[8] Only one commenter

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[8] *See* Petition for Waiver of the Alliance of Rural Broadband Applicants at 6, WC Docket Nos. 10-90, 14-58 (filed Jan. 27, 2015) ("ARBA Petition"); Comments of CoBank, ACB at 4, WC Docket No. 10-80, WT Docket No. 10-208 (filed Mar. 20, 2015); Comments of Computer 5, Inc., WC Docket Nos. 10-90, 14-259, at 1-2 (filed Feb. 2015, 2015); Reply Comments of Mescalero Apache Telecom, Inc. at 2, WC Docket Nos. 10-90, 14-259 (filed Feb. 9, 2015); Letter from Kirk Johnson, National Rural Electric Cooperative Association, to Marlene Dortch, Secretary, Federal Communications Commission, at 2, WC Docket Nos. 10-90, 14-58 (filed Feb.

opposed CFC's waiver petition, and that commenter failed to identify any substantive deficiencies in CFC's request.[9] On the other hand, rural broadband providers that are on the forefront of expanding rural broadband access have voiced support for CFC's request, noting that absent a waiver many rural providers "may not be in a position to secure an LOC of the kind demanded by the Commission's rules."[10] NTCA agrees that permitting CFC to support its members "helps to increase the options available to our members and thus, encourages their participation in FCC programs."[11] The Utilities Telecom Council ("UTC") likewise "submits that CFC and RTFC are uniquely situated, such that the requested limited waiver of the LOC requirement is warranted," and that permitting CFC to issue LOCs for its members "would provide rural electric cooperatives with additional options and flexibility . . . so that they could be able to access RBE funding, which will in turn promote rural broadband access and competition."[12]

12, 2015); Letter from Michael R. Romano, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1, WC Docket Nos. 14-90, 14-58 (filed Jan. 23, 2015); Letter from Stephen E. Coran, Skybeam, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket Nos. 10-90, 14-259 (filed Mar. 19, 2015) ("Skybeam Ex Parte"); Letter from Brett Kilbourne, Utilities Telecom Council, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket Nos. 10-90, 14-58 (filed Feb. 2, 2015).

[9] *See* Comments of the United States Telecom Association at 3, WC Docket Nos. 10-90, 14-259 (filed Feb. 2, 2015).

[10] Reply Comments of Mescalero Apache Telecom at 3, WC Docket Nos. 10-90, 14-259 (filed Feb. 9, 2015).

[11] Letter from Michael R. Romano, Senior Vice President – Policy, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 & 14-58 (filed Jan. 23, 2015).

[12] Letter from Brett Kilbourne, Utilities Telecom Council, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket Nos. 10-90, 14-58 (filed Feb. 2, 2015).

The situation facing one rural broadband provider, which has to pay a 3.75 percent annual fee just to obtain an LOC,[13] illustrates the real financial costs imposed on participating broadband providers by restrictive LOC rules. Such fees come directly out of funds that could otherwise be spent on expanding broadband access. As a non-profit cooperative, CFC is able to offer LOC rates that are significantly lower than the rates its members would be able to obtain from commercial lenders, particularly the large lenders whose ancillary services and products CFC's members typically do not purchase. In CFC's experience, its smaller rural cooperative members that do not have existing relationships with large banks—those that would meet the Commission's criteria under the *RBE Order*—are likely to encounter significant difficulty in obtaining LOCs at all. Even when larger banks are willing to issue LOCs to smaller, one-time customers, it would likely be conditioned on CFC providing a backstop to the bank's LOC, and would result in an additional, annually recurring charge at rates of between 120 and 150 basis points higher than the rates charged by CFC for its members for the same LOC. As the total disbursements increase over the term of the program, the additional LOC charge will likewise significantly add to the cost of capital for these participating providers. Rules that prohibit a CAF Phase II competitive bidding winner from using a more cost effective LOC issuer will drive up borrowing costs and, as another rural broadband provider noted, "be a negative deciding factor for small companies nationwide who might otherwise participate in the Phase II bid, and consequently may adversely impact the general success of broader CAF goals, especially in rural areas."[14]

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13 Skybeam Ex Parte at 2.

14 Comments of Computer 5 at 1, WC Docket Nos. 10-90, 14-259 (filed Feb. 2015, 2015).

II. ALLOWING CREDITWORTHY, SEC-REGULATED FINANCIAL INSTITUTIONS THAT HAVE BEEN APPROVED FOR FEDERAL GUARANTEED LOAN PROGRAMS UNDER THE RE ACT TO SERVE AS ELIGIBLE LOC ISSUERS ADVANCES THE PURPOSE OF THE FUND

As CFC explained in its petition to waive, for Rural Broadband Experiment support, the requirement that eligible banks must be FDIC or FCSIC insured, the Commission could achieve the same functional result without this formal restriction, which would better serve its objectives of ensuring that technology transitions benefit rural Americans, ensuring accountability for winning bidders, and allowing flexibility in satisfying the core LOC requirement.[15] CFC recognizes that the Commission established this categorical requirement in order to assure itself that eligible institutions receive regulatory oversight appropriate for the contingent credit risk that the Commission would bear in accepting LOCs issued by such institutions. CFC also appreciates the resource and expertise limitations on the Commission's ability to conduct a case-by-case determination with respect to each financial institution seeking to become an eligible LOC issuer, and that relying on the assessment and oversight provided by the FDIC and FCSIC is prudent policy.

As the Commission explained in the *RBE Order*, the LOC requirement serves the important function of enabling 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" does not comply with the conditions of the program.[16] At the same time, FDIC or FCSIC-insured status is not a unique indicator of a financial institution's ability to serve this important—albeit limited—function. Other federal agencies that guarantee or purchase debt as part of federal loan and development programs also bear the credit risk of

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15 RBE ¶¶ 1, 55-57, 60.

16 *Id.* ¶ 55.

participating institutions, and CFC submits that the Commission should also have confidence in the determinations of these other agencies as to whether an LOC-issuer is "a reputable financial institution."[17]

CFC is a recognized LOC provider to USDA in connection with its members' participation in the Rural Economic Development Loan and Grant Program ("REDLG"), demonstrating that other governmental agencies have determined that CFC is an approved provider of LOCs in connection with their programs. USDA's experience with the unique challenges facing rural providers—and the financial institutions that support them—should give the Commission further comfort in that agency's judgment about the creditworthiness of those institutions.

To the extent the Commission seeks further assurance of the issuer's stability, the Commission could require that an LOC issuer that is not FDIC or FCSIC-regulated, but which is an institution that is a participant in good standing in a federal loan program to issue federally guaranteed debt under the RE Act or to issue LOCs for the benefit of federal agencies, to have maintained an A- or better S&P rating (or the equivalent rating from another nationally recognized rating agency). This would be a substantially higher rating that for FDIC or FCSIC-regulated lenders – which are only required to maintain the lowest investment grade rating of BBB- and thus are more likely to fall into junk status during the term of the LOC. And to the extent the Commission wanted to ensure that such an A- or better rating was not transitory, it could require it to have been sustained for a period years, such as the prior five to ten years. Given the financial market stresses experienced during that period, such historical performance

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[17] *Mobility Fund Phase I, et al.*, Order, DA 12-1747, 27 FCC Rcd. 13457, 13460 ¶ 9 (2012).

would provide a strong indication of the issuer's resiliency. In addition, requiring such an institution to also be an SEC-registered issuer brings to bear the additional oversight and discipline provided by the SEC and the capital markets. Therefore, the Commission should adopt bank eligibility requirements for Phase II that would permit a financial institution that meets the size and credit rating criteria from the *RBE Order*, but which are not eligible for FDIC or FCSIC insurance, to issue LOCs as long as such an institution also: (1) is an SEC-regulated issuer; (2) is a participant in good standing in a federal loan program to receive federally guaranteed debt under the RE Act or to issue LOCs for the benefit of federal agencies, and (3) has maintained an A- or better S&P rating for at least the preceding five years.

CONCLUSION

CFC supports the Commission's efforts to "close the digital divide" and to expand the economic opportunities made possible by broadband access, and will continue to help its members bring these opportunities to rural and underserved parts of the country. As the Commission designs the LOC rules for the Phase II auction, it should look to existing federal guaranteed loan programs and enable financial institutions that have records of successful participation in those programs, are subject to the regulatory oversight of the SEC, and have a strong credit rating history to extend cost-effective credit to rural broadband providers.

Respectfully submitted,

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