

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259
	)	

**REPLY COMMENTS OF JOHN STAURULAKIS, INC.**

John Staurulakis, Inc. (“JSI”) hereby submits these reply comments in response to the Wireline Competition Bureau’s February 4, 2015 Public Notice<sup>1</sup> seeking comment more generally on bank eligibility requirements for the Connect America Fund (“CAF”) Phase II competitive bidding process (“Public Notice”).<sup>2</sup> JSI welcomes the opportunity to provide input on policies for the CAF Phase II competitive bidding process, which many small rural communications providers eye optimistically as a means to deploy broadband in unserved and underserved price cap areas nationwide. Optimism aside, one of the more concerning and daunting elements of the CAF Phase II competitive bidding process for small providers, as proposed, is the irrevocable Letter of Credit (“LOC”) requirements if they are similar to those in the Rural Broadband Experiments (“RBE”). JSI is well-situated to provide input on the CAF

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on NTCA’s Emergency Petition for Limited Waiver of 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*, WC Docket Nos. 10-90 and 14-259 (rel. Feb. 4, 2015) (“Public Notice”).

<sup>2</sup> John Staurulakis, Inc. is a consulting firm offering regulatory, financial and business development services to more than two hundred rate-of-return rural incumbent local exchange carriers throughout the United States.

Phase II competitive bidding requirements; it assisted rural communications providers with the RBEs, some of which have been provisionally-selected entities that have completed a lengthy and resource-intensive process of obtaining LOC commitment letters and await the next step of finalizing and submitting their LOCs to the Federal Communications Commission (“Commission” or “FCC”). As such, JSI hereby provides the following reply comments on bank eligibility and LOC issues with the CAF Phase II competitive bidding process as well as lends support for previously-filed comments by USTelecom, CoBank and NTCA The Rural Broadband Association.

#### **I. The LOC Term Should Not Exceed the Build-Out Timeframe**

In the RBEs, the FCC required winning bidders to secure a LOC for a timeframe of **ten years plus 120 days** after the completion date for the experiment. The LOC must be renewed annually and increased as more funds are disbursed, and the winning bidder risks having its entire cumulative LOC claimed by the FCC if it defaults in some manner. Additionally, banks charge an annual fee to keep a LOC open, which effectively reduces the amount of funds that a winning bidder would have available to construct networks and deploy broadband service. Even more concerning, a LOC could tie up a significant portion of a small company’s collateral which could inhibit the company from undertaking other types of projects for which it may need readily-available capital and credit. Taken together, the LOC requirement as it stands for the RBEs is a significant entry barrier for small rural broadband providers.<sup>3</sup>

For larger sums of CAF support in particular, the risks and costs of maintaining the LOC sharply begin to outweigh the benefits, especially if a broadband provider could utilize the funds

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<sup>3</sup> The restriction to only the top 100 banks as approved by the FCC is also a significant entry barrier for RLECs. Accordingly, as it develops other rules for the CAF Phase II competitive bidding process, JSI encourages the FCC to consider expanding the number of banks that are eligible to issue LOCs to participants.

that it must tie up in an extended-term LOC for capital expenditures in its network or expanding into new territory to deliver broadband to unserved and underserved locations. In a way, broadband providers interested in participating in the CAF Phase II competitive bidding rounds face a conundrum: participate in the CAF Phase II and likely have to put up a large sum of money for a long period of time as collateral for a LOC to derive benefits from the fund, or just use the funds that would be put up as collateral to invest in or upgrade rural broadband networks. Given the cost of obtaining a LOC and the uncertainty of the future of the CAF Phase II, it seems as though a smaller pool of broadband providers would be willing to jump through the hoops to serve a few additional census blocks.

If the FCC indeed wishes to encourage participation in the CAF Phase II, it should look into less restrictive and more realistic LOC requirements, should the Commission adopt LOC requirements. JSI's experience with the RBEs has shown that entities were reluctant to commit to participating because of the large and lengthy LOC requirement. The ten year plus 120 day LOC duration was an actual deterrent to participation, especially for entities with limited capital and a strong need for support to deploy broadband in extremely high cost areas. JSI agrees with comments filed by CoBank,<sup>4</sup> and argues that a more reasonable approach would be to require the LOC to remain open, and increase annually, only for the duration of the build-out period. Once the build-out is complete, the FCC can verify easily that the CAF Phase II funds were used for the intended purpose, and the winning bidder must certify each year in an extensive annual report that it is indeed using the funds as intended. Furthermore, as CoBank observes, the FCC can simply discontinue future disbursements if it finds that the funds are not being used as intended.

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<sup>4</sup> See *Comments of CoBank*, WC Docket Nos. 10-90 and 14-259 (filed March 20, 2015) at p. 3.

Another option would be for the FCC to release the winning bidder from retaining a LOC once the bidder's final build-out certification has been submitted.

## **II. The FCC Should Consider Alternative Indicators of Financial Capability**

While JSI supports the FCC's efforts to design effective rules for CAF Phase II that ensure financial competency of participants, we suggest that the FCC consider alternative methods for ensuring collateral and the financial competence of CAF Phase II winning bidders, including performance or construction bonds in lieu of LOC or establishing a waiver process for RLEC affiliates in light of the extensive scrutiny RLECs already receive as being ETCs.

### **a. Performance or Construction Bonds in Lieu of LOCs**

Several rural broadband providers that JSI assisted on the RBEs inquired about securing a performance bond in lieu of a LOC. These entities assert that a performance bond was easier and less costly to secure. Also, the purpose of such a bond is to guarantee the completion of a construction project which is appropriate for the purpose of completing a network build-out within a specific time frame. Performance bonds are commonly used for large construction projects, and would fit the FCC's needs for ensuring financial collateral of a CAF Phase II recipient.

### **b. Parent Company's Track Record with High Cost USF**

Many entities that plan on participating in the CAF Phase II are affiliated with rural incumbent local exchange carriers ("RLECs") that already receive high cost Universal Service Fund ("USF") support in some capacity. The RLECs are continually scrutinized to ensure they are good stewards of USF dollars and that the funds are used as intended. RLECs undergo scrutiny by the FCC, the Universal Service Administrative Company ("USAC"), the National Exchange Carrier Association ("NECA"), and their state commissions. JSI believes that these

companies, should they decide to participate in the CAF Phase II competitive bidding on their own or through an affiliate or subsidiary, should be assumed to have met at least some conditions to illustrate their financial and technical capability. For example, all Eligible Telecommunications Carriers (“ETCs”) that receive high cost support must provide three years of audited financial statements, or financial reports reviewed by a CPA, to the FCC, USAC and state commission once a year. The FCC should take into consideration the burden of proof that these companies have already met to illustrate their financial capability and ability to be good stewards of USF and use the funds as intended. One approach that JSI recommends is to allow waiver of the LOC requirement if a competitive bidding participant’s parent company is an ETC that already receives high cost USF.

### **III. Conclusion**

JSI encourages the FCC to design effective rules for CAF Phase II that ensure financial competency of participants but that do not go to the extreme LOC conditions that were imposed in the RBE. If the FCC decides to adopt LOC requirements for CAF Phase II, the FCC should modify the LOC requirements as recommended herein and by comments filed by USTelecom, CoBank and NTCA The Rural Broadband Association.

Respectfully submitted,

/s/ John Kuykendall

John Kuykendall, Vice President  
John Staurulakis, Inc.  
7852 Walker Drive, Suite 200  
Greenbelt, MD 20770  
301-459-7590  
[jkuykendall@jsitel.com](mailto:jkuykendall@jsitel.com)

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