

**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
)	

REQUEST FOR LIMITED WAIVER

Halstad Telephone Company (“Halstad”), by its attorneys and pursuant to Section 1.3 of the Commission's Rules,¹ hereby requests a limited waiver of the filing deadline by which Halstad must submit a letter of commitment for a Letter of Credit (“LOC”) from an acceptable bank pursuant to the *Rural Broadband Experiments Order*,² and that the Commission accept the attached letter of commitment from a bank meeting the Commission’s requirements.³ In the alternative, Halstad requests the Commission waive the top-100 bank requirement for its original LOC. For the reasons explained herein, good cause exists to grant the requested relief, such that Halstad be reinstated as a provisionally winning bidder in the Rural Broadband Experiments (“RBE”) proceeding.

In support of its request, Halstad states the following:

Factual Background

On December 5, 2014, the Wireline Competition Bureau (“Bureau”) announced that Halstad was provisionally selected for \$303,370 in funding through the RBE program. In support

¹ 47 C.F.R. 1.3.

² *In re Connect Am. Fund; Annual Reports & Certifications*, 29 FCC Rcd 8769 (F.C.C. July 14, 2014)(*Rural Broadband Experiments Order*).

³ See Attachment A.

of its provisional selection, Halstad timely submitted the information required by the Bureau, including a letter of commitment for an LOC on January 26, 2015. Included with Halstad's January 26, 2015 submission was a letter explaining Halstad's efforts to obtain an LOC from a top-100 bank, and that it had ultimately gotten its LOC from its local bank, with which it has done business for more than one hundred years. Implicit in Halstad's presentation (although not precisely stated as such) was an informal request for waiver of the top-100 bank requirement.

On June 15, 2015, the Bureau issued an *Order* in which it affirmatively removed Halstad from further consideration as a winning bidder in the RBE program for failing to submit a letter of commitment for an LOC from a top 100 bank.⁴ The Bureau did not address Halstad's informal request for waiver of the top-100 requirement. Under separate cover, Halstad is seeking reconsideration of the Bureau's decision.

Good Cause Exists for Waiver of the Commission's Rules

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis.⁶

In this case, the Commission "expressly contemplated that participants in the experiments might meet the LOC requirement in a variety of ways," and affirmatively stated that "selected entities would have flexibility in how they structure these arrangements and might choose to

⁴ *In the Matter of Connect America Fund, Rural Broadband Experiments*, WC Docket No. 10-90, 14-259, DA 15-698, released June 15, 2015 at ¶9 (the "*Order*").

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

obtain multiple LOCs over the support term.”⁷ In particular, the Commission also expressly noted that “[t]here is no Commission requirement that the same bank issue the commitment letter and the ultimate LOC.”⁸ Through the instant waiver, Halstad is essentially asking to use a subsequent LOC issued by CoBank instead of the LOC that Halstad initially submitted on January 26, 2015, in a manner similar to what the Commission has already contemplated above.

In the alternative, Halstad requests the Commission waive the top-100 bank requirement for its original LOC. In the *Order* removing Halstad from consideration as a provisionally winning bidder, the Bureau indicated that it did not have the time to determine whether a bank that is not a top-100 bank would have its assets exhausted by drawing on the LOC.⁹ However, Halstad’s provisionally winning bid of \$303,760 is small compared to most of the other provisionally selected winning bidders, more than half of which were more than \$1 million, and indeed, such a scenario is highly unlikely. According to the terms of the Commission’s requirements for the LOC, the initial letter need only cover the first disbursement – in Halstad’s case, \$30,376 – and may be incrementally increased upon each additional disbursement.¹⁰ These requirements effectively limit any issuing bank’s exposure to a manageable sum.

Further, the record in the RBE proceeding demonstrates that the top-100 bank requirement is unnecessarily burdensome for small rural carriers like Halstad, so much so that NTCA-The Rural Broadband Association (“NTCA”) filed an emergency petition for waiver of the requirement for all participating carriers.¹¹ In its request, NTCA states the difficulty rural providers may have obtaining LOCs from top-100 banks. No party filed in opposition to

⁷ *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket No. 10-90, Public Notice (released Jan. 23, 2015).

⁸ *Id.*

⁹ *Order*, supra fn. 4 at ¶9.

¹⁰ *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket No. 10-90, Public Notice (released Jan. 23, 2015).

¹¹ *Emergency Petition of NTCA-The Rural Broadband Association for Limited Waiver of Rural Broadband Experiment Letter of Credit Requirement*, WC Docket Nos. 10-90, 14-58, and 14-259, filed February 3, 2015.

NTCA's request. The Commission also sought comment on, but has not yet addressed, LOC requirements for Connect America Phase II funding.¹² In that proceeding, NTCA again raised the issue of the top-100 bank requirement, as did the National Rural Electric Cooperative Association.¹³ And indeed, Wells Fargo – a top 100 bank – told Halstad that the Commission's next-day payment requirement is "close to impossible" to meet, and "will cause under operational risk that [Wells Fargo] should not assume."¹⁴

In either case, good cause exists for the requested waiver because it would allow Halstad to proceed as a provisionally winning bidder in the Rural Broadband Experiments program and to advance the policy objectives thereof – i.e., to "ensure that all Americans benefit from the technology transitions, and that [the Commission gains] data on the impact of technology transitions in rural areas, including Tribal lands, where residential consumers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services."¹⁵ As outlined in Halstad's project application, the company will be leveraging its existing network to provide service to the RBE locations in question. Therefore, Halstad is positioned to deliver on the Commission's stated objective of rapid distribution of funding and similarly rapid deployment of broadband service.

In rejecting other requests for waivers of its RBE requirements, the Commission has also repeatedly emphasized the need to avoid delay in the implementation of both the price cap initial

¹² *Wireline Competition Bureau Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process*, WC Dockets No. 10-90 and 14-259, Public Notice (Wireline Com. Bur. Released Feb. 27, 2015).

¹³ *Comments of the National Rural Electric Cooperative Association on Petitions for Waiver of Letter of Credit Financial Institution Eligibility and Other Requirements for Rural Broadband Experiments and the Connect America Phase II Competitive Bidding Process*, WC Docket Nos. 10-90 and 14-259, filed March 30, 2015 at pp. 3-4 (highlighting how the top-100 bank LOC requirement would undermine participation by many small businesses that are located in rural areas and that tend to work with lenders other than national or big regional banks).

¹⁴ See Email from Brian O'Connell to Gregory Sjostrom, attached hereto as Attachment B.

¹⁵ *Rural Broadband Experiments Order* at ¶6.

model support offering and the implementation of Connect America Phase II.¹⁶ However, grant of the instant waiver will not delay either the price cap model-based support offer or the implementation of Connect America Phase II because the Commission has already finalized the census block list for those purposes and has already made the offer of support to the price cap carriers.¹⁷

Nor would granting Halstad's waiver result in prejudice to either the Commission's processes, as the Commission already has a cure period for funded RBE participants in place,¹⁸ or other carriers, as the Commission has already stated no additional rural broadband experiment bids will be selected.¹⁹

Waiver of the Commission's rules is appropriate if the waiver applicant is able to demonstrate: (1) that the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances in the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

The Commission has authority to waive its rules if "good cause" to do so can be shown.²⁰ The Commission may exercise its discretion to waive a rule where particular facts would make

¹⁶ See *In the Matter of Connect America Fund, Rural Broadband Experiments*, WC Docket No. 10-90, 14-259, DA 15-698, released June 15, 2015 at ¶4; *In re Connect Am. Fund; Rural Broadband Experiments*, 30 FCC Rcd 772 (F.C.C. 2015) at ¶5.

¹⁷ *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 15-509, 30 FCC Rcd 3905 (Wireline Comp. Bur. rel. Apr. 29, 2015).

¹⁸ *Rural Broadband Experiments Order* at ¶60.

¹⁹ *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 15-509, 30 FCC Rcd 3905 (Wireline Comp. Bur. rel. Apr. 29, 2015).

²⁰ 47 CFR 1.3.

strict compliance inconsistent with the public interest.²¹ Thus, *WAIT Radio* charges the Commission with administering its responsibilities in a manner that is consistent with the public interest. That a federal agency may discharge its responsibilities by promulgating rules of general applicability which, in the overall context, establish the “public interest” for a broad range of situations, does not relieve it of an obligation to take a “hard look” and seek out the public interest in particular individualized cases. Indeed, the Commission’s right to waive its rules is not unlike an obligation in that it is a *sine qua non* to its ability to promulgate otherwise rigid rules. It is the necessary “safety valve” that makes the system work.²²

In the instant case, it is clear that the underlying purpose of the Commission’s rules would be frustrated by their strict application and would be inequitable, unduly burdensome and contrary to the public interest. Accordingly, a waiver is justified in the following circumstances here presented:

1. Halstad timely submitted a letter of commitment for an LOC from its local bank, along with an informal request that the Commission waive the top-100 bank requirement.
2. Halstad is a small, rural telephone cooperative that, like many similarly situated entities, could not get a letter of commitment from a top-100 bank without onerous conditions.
3. Halstad has since obtained a letter of commitment from CoBank, which meets all of the Commission’s requirements.
4. Halstad has demonstrated that prejudice will not result from a grant of either of the requested waivers.

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²² *Id.*

Conclusion

For the forgoing reasons, good cause, considerations equity, and the effective implementation of the Commission's policies warrant grant of the Halstad's requested limited waiver of either i) the deadline for submission of a letter of commitment for an LOC, such that Halstad's LOC from CoBank is accepted *nunc pro tunc* or ii) the top-100 bank requirement, such that Halstad's original LOC commitment from its local bank is accepted.

Respectfully submitted,

Halstad Telephone Company

By:  _____
Harold Mordkofsky
Benjamin H. Dickens, Jr.
Salvatore Taillefer, Jr.
Its Attorneys

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Phone: (202) 659-0830

Dated: July 15, 2015

ATTACHMENT A

July 8, 2015

Attn: Mr. Tom Maroney
Halstad Telephone Company
345 Second Avenue West
Halstad, MN 56548-0055

Dear Mr. Maroney,

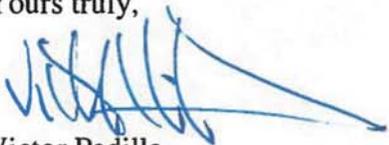
CoBank, ACB ("**CoBank**") is pleased to issue its commitment (the "**Commitment**") to provide Halstad Telephone Company (the "**Company**") with an Irrevocable Stand-by Letter of Credit in the amount of \$303,000.00 (the "**LOC**") to support the winning bids of the Company and for the benefit of the Universal Service Administrative Company ("**USAC**"). The LOC terms and conditions will be substantially in a form and substance consistent with those found in the Federal Communications Commission's Model Letter of Credit, a form of which is attached hereto as **Exhibit A**, and will include such other terms and conditions as required by CoBank.

Additionally, the issuance of the LOC is subject to and contingent upon the execution by CoBank and the Company of all documentation required by and in form and content acceptable to CoBank (the "**LOC Documents**"), the payment of any and all associated fees or costs, and such other requirements as deemed necessary by CoBank.

The LOC Documents will be provided under separate cover. The LOC will not be issued until the LOC Documents have been executed by all parties and all terms and conditions detailed in the LOC Documents have been satisfied as determined in CoBank's sole discretion. Nothing contained in this letter shall be construed as an agreement or a commitment on behalf of CoBank to provide additional letters of credit in the future.

If you have any questions, please contact me at (303)740-6468. We appreciate the opportunity to do business with you and look forward to serving your financial needs.

Yours truly,

A handwritten signature in blue ink, appearing to read "Victor Padilla", with a long horizontal flourish extending to the right.

Victor Padilla
Vice President

EXHIBIT A

Federal Communications Commission's Model Letter of Credit

[Subject to Issuing Bank Requirements]

No. _____

[Name and Address of Issuing Bank]

[Date of Issuance]
[AMOUNT]
[EXPIRATION DATE]

BENEFICIARY

[USAC]
[Address]

LETTER OF CREDIT PROVIDER

[Winning Bidder Name]
[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Winning Bidder], in your favor, as required under the [Report and Order, adopted on July 11, 2014 issued by the Federal Communications Commission ("FCC") in the matter of [Connect America Fund, WC Docket 10-90] (the "Order"), our Irrevocable Standby Letter of Credit No. _____, in the amount of [State amount of Letter of Credit in words and figures. NOTE: The amount of the Letter of Credit shall increase/additional letter(s) of credit shall be issued as additional funds are disbursed pursuant to the terms of the Order], expiring at the close of banking business at our office described in the following paragraph, on [the date which is ___ years from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to USAC by a nationally recognized overnight delivery service, with a copy to the FCC, at least sixty days but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by [USAC] (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the [USAC's] certificate purportedly signed by two authorized representatives of [USAC] in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF BANK]
[BANK SIGNATURE]

ATTACHMENT B

From: Gregory.S.Sjostrom@wellsfargo.com [mailto:Gregory.S.Sjostrom@wellsfargo.com]
Sent: Thursday, January 22, 2015 4:49 PM
To: markforseth@rrv.net
Subject: FW: reference

Per our phone conversation I have attached the email I received listing the two issues Wells Fargo has with the proposed Letter of Credit terms presented to us.

Greg Sjostrom
Business/Ag Banker
Wells Fargo Bank
730 Center Ave 11 S Broadway/PO Box 644
Moorhead, MN 56560 Pelican Rapids, MN 56572
Phone # 218-287-3508 Phone # 218-863-5050
Fax # 218-287-3557 Fax # 218-863-2213
Cell # 701-361-3698 Cell # 701-361-3698
MAC # N9529-011 MAC # N9534-011
gregory.s.sjostrom@wellsfargo.com

From: O'connell, Brian T.
Sent: Friday, January 16, 2015 2:26 PM
To: Sjostrom, Gregory S.; Standby Review
Cc: Balenbin, Aurea C.
Subject: FW: reference

Greg,

USAC and the FCC do not allow much deviation and the LC contains two provisions that can be issues for us...

1. Expedited Payment

*In reference to the standby application that we will receive for your client; We would like to bring to your attention the following concern. The letter of credit contains a provision in the language whereby Wells Fargo Bank, N.A. is requested to make payment "**NEXT DAY**" in the event of a compliant drawing. Needless to say, this provision puts a great deal of risk on our operation and on our organization as a whole if we are unable to meet that requirement. The time frame allowed is close to impossible to meet. The industry standard that is acceptable today is up to 5 days and our internal standard is within 3 days. Since this provision will cause undue operational risk that we should not assume, we are referring the matter to your attention for assistance and ask that you do the following:*

Contact your client (the applicant) and ask that this provision be modified to allow for at least 3 days payment.

2. A copy of the notice of non-extension must also be sent to the FCC

In addition to our having to send a notice of non-extension to the Beneficiary USAC, we also need to send a copy of the notice of non-extension to the FCC. We normally only are willing to send copies of notices of non-extension to parties other than the Beneficiary if the terms of the LC spell out that such copy of notice is for informational purposes only and won't affect the notice of non-extension sent to the Beneficiary if the copy of the notice is not received per the terms of the LC. USAC and the FCC do not allow us to make the copy of the notice to FCC informational so notice must be received by both parties in order for any notice of non-extension to be valid.

Regards

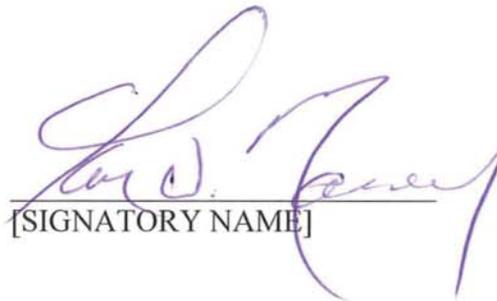
Brian

Declaration Under Penalty of Perjury

I, Tom Maroney, hereby state the following:

I am the Chief Executive Officer of Halstad Telephone Company. I have read the foregoing Petition for Waiver, which was prepared under my direction and supervision. I certify under penalty of perjury that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 10th day of July, 2015.


[SIGNATORY NAME]