HWG | HARRIS, WILTSHIRE & GRANNIS LLP

October 28, 2015

<u>VIA ECFS</u>

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Rural Broadband Experiments*, WC Docket No. 14-259

Dear Ms. Dortch:

On October 26, 2015, Brad Captain, Frank Vaughan, and Russell Laird, of the National Rural Utilities Cooperative Finance Corporation ("CFC"), Brian Cavey and Martha Duggan, of the National Rural Electric Cooperative Association ("NRECA"), Jill Canfield of NTCA – The Rural Broadband Association, Doug Jarrett, of Keller and Heckman LLP on behalf of NRECA, and Kristine Devine and the undersigned, of Harris, Wiltshire & Grannis LLP on behalf of CFC, met with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, Amy Bender, Legal Advisor to Commissioner O'Rielly, and Stephanie Weiner, Senior Legal Advisor to the Chairman, to discuss CFC's request that the Commission permit CFC to issue irrevocable stand-by letters of credit ("LOCs") on behalf of its members, and the members of its affiliate, the Rural Telephone Finance Cooperative ("RTFC"), who are either recipients of funding under the Rural Broadband Experiments ("RBE") program or who wish to participate in the upcoming Connect America Fund Phase II ("CAF II") auction.

CFC explained that it meets two of the three criteria required by the FCC for institutions that wish to issue LOCs for RBE participants and CAF II bidders: By size, CFC would be one of the 100 largest banks in the country and CFC has an issuer credit rating of A, well above the Commission's requirement of a BBB- credit rating. But CFC cannot meet the third requirement—that it be insured by the FDIC—because CFC is not a depository institution and is therefore is ineligible for FDIC insurance. CFC explained that the requirement to have FDIC insurance is a proxy for financial stability, as FDIC insurance is deposit insurance and does not guarantee loans, and noted that CFC can demonstrate its financial soundness in other ways.

For instance, CFC issues bonds to the Federal Financing Bank ("FFB") in the Department of Treasury that are guaranteed by the Department of Agriculture's Rural Utilities Service ("RUS"), and as of May 31, 2014 has entered into bond purchase agreements with the FFB totaling over $4.9 billion.[1] As part of its guarantee program, RUS periodically audits CFC for compliance with regulatory and contractual requirements. CFC must also submit annually independently audited financial statements and independently determined credit ratings. These factors have been considered by RUS to be a sufficient assessment of CFC's credit risk for approximately $4.3 billion in outstanding federally guaranteed debt as of May 31, 2014.[2]

In addition to the oversight provided through its participation in federal programs, CFC also faces the scrutiny of its private lenders on a regular basis. As a non-profit lender to its member utilities, CFC relies heavily on capital and credit markets for financing and is a well-known seasoned issuer (WKSI) as defined in Rule 405 of the Securities Act of 1933, as amended. In addition to its capital market activities, CFC also has credit facilities in place with large, sophisticated financial institutions. Over the past decade, CFC has either entered into a new credit facility or amended an existing facility at least once each year.

Finally, CFC is listed by name in the Rural Electrification Act as an eligible recipient of a federal guarantee for loans made for rural electric and telecommunications purposes. The Act states that the borrower must "specifically appl[y] for such assistance" and discusses the execution of a "contract of guarantee" by the Secretary (of Agriculture) which shall govern regarding issues such as assignability of guaranteed loans. The relationship established by this contract constitutes a situation involving significant coordination and oversight.

CFC stressed that any or all of these indicia of financial soundness could serve as a substitute for the FDIC insurance requirement in allowing it to issue LOCs for the RBE program and in the CAF II auction.

NRECA and NTCA then explained that their members rely on CFC for financing, with NRECA noting that more than 900 of its members use CFC and more than 200 borrow exclusively from CFC. NTCA similarly noted a reliance by its members on CFC financing. NRECA explained that many of its rural electric cooperative members are committed to delivering broadband to their communities to provide all the benefits the Commission has acknowledged are essential for social, economic and educational development in rural communities. NTCA echoed the same themes, noting the interest of its members in the RBE program and the CAF II auction. Because CFC cannot issue LOCs for bidders under the current FCC rules, however, those members of NRECA and NTCA that have been "authorized" or are "ready to be authorized" for grants under the RBE program could not obtain their initial LOCs

---

1 *See* CFC 2014 Form 10-K at 2, *available at* https://www.nrucfc.coop/content/dam/cfc_assets/public_tier/Public%20Docs/Investors/NRU_10K_20140828.pdf.

2 *See* CFC 2014 Form 10-K at 57, *available at* https://www.nrucfc.coop/content/dam/cfc_assets/public_tier/Public%20Docs/Investors/NRU_10K_20140828.pdf.

from CFC, and those members that wish to bid in the CAF II auction will only be able to do so if they can obtain an LOC from some other institution—almost certainly one with which they do not have an existing relationship.

Those institutions that are eligible to issue LOCs are generally unwilling to do so where they don't have an existing relationship, as is generally the case for the rural electric cooperatives and rural broadband providers that make up NRECA and NTCA's membership. To that point, last year, CFC was able to work with a top-100 bank to guarantee an LOC issued to one of its members; the bank issued the LOC to the member but CFC guaranteed the LOC, thus enabling the member to participate in the program. That bank, however, has recently informed CFC that it no longer wants to issue the LOC; CFC and the member are now forced to find an alternative.

Even if NRECA and NTCA's members could obtain an LOC from an eligible institution, they would pay much higher rates than they would with CFC. CFC estimates that a top-100 bank would charge a premium of 1.2% to 1.5% for an LOC over what CFC would charge. That premium amounts to an additional $50,000 per $4 million dollars covered by the LOC per year. Assuming the premium is 1.25% for each $4 million in funds over six years for build out of a network, and assuming the rate remains constant over the six year period, the cumulative additional expense would come to $1,050,000:

Year	Funds Covered by LOC to Date		Premium		Additional Fee for LOC in that year	Cumulative Additional Fee
Year 1	$4 million	x	1.25%	=	$50,000	*$50,000*
Year 2	$8 million	x	1.25%	=	$100,000	*$150,000*
Year 3	$12 million	x	1.25%	=	$150,000	*$300,000*
Year 4	$16 million	x	1.25%	=	$200,000	*$500,000*
Year 5	$20 million	x	1.25%	=	$250,000	*$750,000*
Year 6	$24 million	x	1.25%	=	$300,000	***$1,050,000***

Of course, if the LOC must extend for 10 years, the cumulative impact would be substantially higher. And while bidders may include the additional fees in their bid, that money will never be used to deploy broadband to the neediest communities; instead, it will go straight to the bank.

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 functionally meets the security requirements of the bank eligibility criteria. CFC urges the Commission to adopt a modified version of the bank eligibility requirements for the RBE program and CAF II to permit it to issue LOCs on behalf of its and RTFC's member entities.

Please contact me if you have any questions.

Sincerely,

John T. Nakahata
Counsel to CFC

cc: Amy Bender, Neil Dellar, Rebekah Goodheart, Heidi Lankau, Carol Mattey, Alex Minard, Stephanie Weiner