

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform - Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

To: The Commission

COMMENTS OF COBANK, ACB

CoBank, ACB (“CoBank”) hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) seeking comment on, *inter alia*, rules related to the competitive bidding process for Phase II of the Mobility Fund and Phase II of the Connect America Fund (“CAF”).¹ CoBank urges the Commission to modify one aspect of Section 54.1017 of the proposed rules (which defines an “acceptable bank” for purposes of the letters of credit (“LOCs”) to be submitted by winning bidders for Phase II Mobility Fund support) to address a factual inaccuracy in the current version of the proposed rule related to agricultural credit banks that are members of the United States Farm Credit System (the “System”). The System is a unique federally chartered network of borrower-owned lending institutions composed of cooperatives, farmers, other eligible borrowers and related service organizations

¹ *Connect America Fund; Universal Service Reform - Mobility Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime; WC Docket No. 10-90; WT Docket No. 10-208; WC Docket No. 14-58; WC Docket No. 07-135; CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order in Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014).*

that are exclusively dedicated to serving as a critical source of debt capital to rural America and the vital industries that support rural America, including the rural communications industry. Specifically, proposed Section 54.1017(a)(1)(ii)(B) should be corrected to reflect that the “obligations” (rather than the “deposits”) of agricultural credit banks that are members of the System are insured by the Farm Credit System Insurance Corporation (“FCSIC”). In addition, to the extent the Commission adopts similar financial requirements (*e.g.*, the posting of a bond, LOC, or other deposit) by winning bidders for Phase II CAF support pursuant to Section 1.21001(c) of its rules, it should use the definition of “acceptable bank” that is set forth in proposed Section 54.1017, modified as proposed herein.

I. DISCUSSION

A. The Commission’s Past Actions Reflect an Intent to Include Agricultural Credit Banks Within the Definition of “Acceptable Bank”

CoBank appreciates the efforts the Commission has taken thus far to permit agricultural credit banks that are members of the System to provide LOCs to winning bidders for Mobility Fund support. Following the Mobility Fund Phase I auction, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the “Bureaus”) granted a blanket waiver, *sua sponte*, allowing auction winners to provide LOCs issued by CoBank.² Based upon the fact that CoBank “is insured through the [FCSIC], which was modeled after the FDIC,”³ and the Bureaus’ conclusion that “FCSIC insurance provides protections equivalent to those indicated by holding

² *Mobility Fund Phase I; Waiver of Section 54.1007(a)(1) of the Commission’s Rules*, 12 FCC Rcd 13457 (WCB WTB 2012) (“*Waiver Order*”).

³ *Id.*, ¶ 9.

FDIC-insured deposits,” the Bureaus found that allowing CoBank to provide LOCs “would not compromise the policy underlying” the rule.⁴

In addition, in response to the Public Notice seeking further comment on how to structure Phase II of the Mobility Fund,⁵ CoBank submitted comments asking the FCC to revise proposed Section 54.1017 of the rules to find a bank “acceptable” if it is insured by the Federal Deposit Insurance Corporation (“FDIC”) *or FCSIC*.⁶ Following that, the FCC revised subsection (a)(1)(ii) of the proposed rule so that it now includes within the definition of acceptable bank:

- (ii) An agricultural credit bank in the United States that serves rural utilities and is a member of the United States Farm Credit System
 - (A) That has total assets equal to or exceeding the total assets of any of the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,
 - (B) Whose deposits are insured by the Farm Credit System Insurance Corporation, and
 - (C) That has a long-term unsecured credit rating issued by Standard & Poor’s of A- or better (or an equivalent rating from another nationally recognized credit rating agency).⁷

The Commission’s revised version of proposed rule 54.1017 reflects a clear intent to include agricultural credit banks that are members of the System as “acceptable” banks for purposes of providing LOCs for Phase II Mobility Fund support winners.

B. The Commission Should Further Modify its Proposed Rules to Ensure that Agricultural Credit Banks Will Qualify as Acceptable Banks

Notwithstanding the Commission’s intent to include agricultural credit bank members of the System within the definition of “acceptable” banks, there is a factual error in the proposed

⁴ *Id.* at ¶ 9.

⁵ *Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90; WT Docket No. 10-208; Public Notice, DA 12-1853 (rel. Nov. 27, 2012) (“*Public Notice*”).

⁶ *Comments of CoBank, ACB*, filed in WC Docket No. 10-90, WT Docket No. 10-208 (Dec. 20, 2012).

⁷ *FNPRM*, App. B, proposed rule 54.1017(a)(1)(ii).

rule that could undermine this effort. Specifically, clause (a)(1)(ii)(B) of the proposed rule refers to the banks' "deposits" being insured by the FCSIC, but agricultural credit banks that are part of the System are not legally authorized to accept deposits. Agricultural credit banks are authorized under Sections 3.7 and Section 3.8 of the Farm Credit Act of 1971 ("Farm Credit Act") to "make loans and commitments" and to extend "other technical and financial assistance at any time."⁸ CoBank is an agricultural credit bank within the System that was established by the Farm Credit Act to meet the lending needs of agribusiness and utilities, including communications in rural America. CoBank provides loans, leases, LOCs and other financial services to vital industries across rural America.

The FCSIC is an independent Government-controlled corporation that was created "to enhance the financial integrity of the [System]"⁹ by "insur[ing] the timely payment of principal and interest on the debt securities issued jointly by the four Farm Credit System Banks" to the public.¹⁰ Thus, the FCSIC insures the banks' "obligations" (as opposed to "deposits"). In light of the foregoing, CoBank respectfully submits that proposed Section 54.1017(a)(1)(ii)(B) should be revised to read "Whose obligations are insured by the Farm Credit System Insurance Corporation, and".

⁸ 12 U.S.C. § 2128(a) and 12 U.S.C. § 2129.

⁹ FCSIC – General Information, available at <http://www.fcsic.gov/General%20Information.html> (last visited July 8, 2014).

¹⁰ FCSIC - Insurance Fund, available at <http://www.fcsic.gov/FCSIC%20Insurance%20Fund.html> (last visited July 8, 2014).

C. *The Commission Should Extend the Modified Definition of “Acceptable Bank” to the CAF Phase II Auction Process and other Bonds or Deposits Required by Section 1.21001(c) of the Commission’s Rules*

The FNPRM seeks comment on what “specific rules and requirements must be in place before we make the offer of model-based support to price cap carriers” in the context of CAF Phase II,¹¹ and notes that the Commission has already adopted certain rules to govern that process. Among other things, those existing FCC rules indicate that applicants to participate in competitive bidding for Universal Service Fund (“USF”) support may be required to post a bond or submit a deposit in connection with their auction participation, and that any such requirements will be set forth in a public notice.¹² To the extent that the FCC requires applicants to post a bond or some other form of deposit with the FCC in connection with CAF Phase II or other USF support auctions, CoBank respectfully requests that the Commission employ a similar definition of “qualified bank” as proposed herein. Since the purpose of the bond/deposit is the same as the LOC in the Mobility Fund context (*i.e.*, to protect the Government in the event of a default by a winning bidder), there should be no difference in the group of entities that is qualified to provide the financial instrument required.

¹¹ FNPRM ¶ 234.

¹² 47 C.F.R. § 1.21001(c).

II. CONCLUSION

CoBank urges the Commission to further modify the proposed Mobility Fund Phase II rule (Section 54.1017) defining an “acceptable bank” as discussed herein. CoBank also requests that the Commission extend a similar definition of acceptable bank to the CAF Phase II and other USF support auctions in the event the Commission requires applicants to post a bond, LOC, or other form of deposit pursuant to Section 1.21001(c) of its rules.

Respectfully submitted,

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