

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
)

To: The Commission

COMMENTS OF COBANK, ACB

CoBank, ACB (“CoBank”) hereby submits these comments in response to the Wireline Competition Bureau request to seek comment more generally on letter of credit proposals raised by several petitions for waiver and their potential applicability to the Phase II competitive bidding process.¹

CoBank supports the Federal Communication Commission’s (the Commission) efforts to expand broadband access in rural America. As CoBank's mission is to serve rural America, we have a vested interest in this matter. CoBank’s customers include local, regional and national agricultural cooperatives, rural communications, energy, water and waste disposal systems, Farm

¹ *Connect America Fund*; WC Docket No. 10-90; DA 15-140; DA 15-158, Proposed Rule, Wireline Competition Bureau Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process, FCC 14-259 (rel. February 27, 2015).

Credit associations and other businesses serving rural America. Our rural customers' ability to thrive and compete in the world market depends on reliable and affordable basic essential services – water, electric, telephone and now broadband.

The Connect America Fund (CAF) II Rural Broadband Experiment (RBE) program that the Commission announced in July 2014, represents an important step forward. While the program's design to stimulate the build out of broadband in rural areas is critical to promote rural economic development, we have concerns about the structure and conditions of the Letters of Credit ("LOC") that recipients of RBE funding will be required to post.

Most importantly, each carrier that has been awarded funding is required to put in place an LOC equal to the award funds already disbursed and the funds scheduled to be disbursed over the coming year. The initial LOC can be opened for one year, but then must be renewed and increased each year as more funds are disbursed. The LOC must remain open for 120 days after the completion of the 10-year program, and failure by the recipient to renew (and increase) the LOC would result in default under the terms of the program, enabling the Commission to draw on the LOC and effectively "claw back" all the funds disbursed over the course of a decade.

While the LOCs are legally structured as one year commitments that renew at the issuing bank's option, it would be difficult for an issuing bank to not renew an LOC at any point over the 10-year program. This structure has the potential of putting the award recipient into default under the program if the recipient were unable to replace the original LOC with one from a new issuing

bank. This could cause financial distress and potentially trigger ancillary defaults under the carrier's other loan agreements, exposing the original issuing bank to lender liability risk. This means that the LOC, as currently structured, effectively has a 10-year tenor with an increasing exposure amount to the life of the program. This is inconsistent with commercially prudent lending practices, as it is impossible to assess the various risks facing operators in the rapidly changing telecommunications industry over a 10-year horizon.

We recommend that the LOCs be structured such that the amount increases only through the build-out period. Once the plant is certified as operational to the Commission's satisfaction, the LOC requirement should either be eliminated, as it was under the Mobility Fund Phase I, or the amount of the LOC should be reduced to cover only the funds that the Commission will disburse over the coming year (a "rolling one-year coverage" approach). The first option protects the Commission by ensuring that the award recipients use the funds to build out appropriate telecommunications plants; once the plant is built out and operational, the Commission will have the option to discontinue further disbursements at any time it believes the funds are not being used to its satisfaction. Alternatively, the rolling coverage approach would add an additional level of security for the Commission's disbursements of support funds after the successful completion of the project's build-out phase.

In addition, the language in the Order permits the Commission to change the performance requirements that the carriers must meet during the life of the program. This ability of the beneficiary to unilaterally change the terms under which the LOC may be drawn *ex post* is not

market standard. It adds an element of regulatory and political risk that is impossible for a commercial lender to assess, regardless of the LOC tenor. It is also inconsistent with commercially prudent lending practices. Therefore, we recommend that any revisions to the program include a clarification stating that the award recipients will be responsible only for meeting the performance standards for which the awards were originally made.

CoBank appreciates the Commission's effort to balance the risk of funding broadband deployment with the need to effectively secure the financial commitment of providing Connect America support. By adopting CoBank's recommendation to modify the structure of the LOC for the Phase II competitive bidding process, more companies will be able to meet the Phase II financial requirements and more rural consumers will benefit from gaining broadband access.

CoBank has extensive experience in financing broadband in rural America, and we understand the challenges that involves. In rural areas, where there are fewer customers per mile, deploying affordable broadband is not economically possible without a sufficient, sustainable cost-recovery mechanism. The 10-year level of support provided by the RBE is an important step forward in bringing broadband to rural areas that are currently unserved.

As we have stated in previous comments, rural residents, farmers and businesses need broadband capacity to support the future demands of commerce, health care, education, energy and public safety. We appreciate the Commission's support of a stable rural communications network that supports the use of wireless, voice, and data applications for rural Americans.

We look forward to working with the Commission to support the deployment and maintenance of robust broadband service in rural America.

Respectfully submitted,

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