

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

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

**EMERGENCY PETITION FOR WAIVER AND REQUEST FOR
EXTENSION OF TIME TO FILE LOC COMMITMENT LETTER**

Northeast Rural Services, Inc. (“NRS”), hereby respectfully submits this request for waiver and extension of the deadline in the above-captioned proceeding, requiring the submission of a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit (“LOC”) to NRS. For the reasons explained herein, good cause exists to grant the relief requested with respect to this requirement.

INTRODUCTION

On December 5, 2014, the Federal Communications Commission (“FCC”) announced NRS was provisionally selected for \$1,029,274.00 in funding through the Rural Broadband Experiment (“RBE”). In support of this provisional selection, NRS timely submitted audited financial statements, a technology description, and secured a letter of credit commitment letter from CoBank. NRS also timely submitted appropriate documentation of its Eligible Telecommunications Carrier designation for the non-rural telephone company areas in which NRS was provisionally awarded RBE support. For the rural telephone company study areas containing census blocks for which NRS was provisionally awarded support, NRS timely submitted its Petition of Northeast Rural Services, Inc. for Extension of Time and/or Waiver of ETC Designation Deadline for Rural Broadband Experiments. NRS has continued to work

toward obtaining ETC designation in these study areas, and the applicable Administrative Law Judges for the Oklahoma Corporation Commission recommended final hearings on NRS's Eligible Telecommunications Carrier applications encompassing the applicable rural telephone study areas be set for June 25, 2015 and July 2, 2015.

On March 4, 2015, the FCC announced NRS was provisionally selected for an additional \$7,415,062.00 of funding through the RBE. As such, the FCC required NRS to submit an additional letter of credit commitment letter encompassing this additional support. At this time, NRS has been unable to obtain the appropriate letter of credit commitment letter for the second round of the RBE funding provisionally awarded to NRS, but believes opportunities still exist to obtain such commitment letter as described in more detail herein.

FACTS

When the FCC provisionally selected NRS for additional RBE funding, NRS immediately commenced best efforts to obtain a second LOC commitment letter from CoBank. NRS has maintained ongoing negotiations with CoBank; however, NRS's efforts thus far have yet to secure a letter of commitment. As CoBank issued NRS a commitment letter for NRS's initial RBE funding, the ability to obtain a second letter of commitment letter despite NRS's best efforts was an unforeseen event, the occurrence of which requires additional time to secure a second commitment letter from CoBank or an alternative financial institution. NRS continued its efforts to obtain the letter of commitment up to the May 4, 2015 deadline, at which time NRS's efforts had not yet been successful. Specifically, CoBank is concerned that RUS holds a prior lien describing NRS's assets as collateral under NRS's loan provided under RUS's Rural Broadband program. RUS and CoBank were unable to agree to terms regarding shared collateral interests but the possibility of obtaining a LOC under terms mutually agreeable to the lenders

may still exist.¹ NRS could not have obtained a second commitment letter from an alternative bank at this late hour and requires additional time to provide a commitment letter.

DISCUSSION

Pursuant to 47 C.F.R. § 1.3, the FCC may suspend, revoke, amend or waive its rules upon the showing of good cause. Such a request may serve the public interest when the request is not inconsistent with the policy underlying the rule.²

The letter of commitment requirement supports the objectives of universal service as it enables the FCC to immediately reclaim disbursed funds in the event a recipient was not using the awarded support for the universal service objectives.³ In the case of the RBE, the universal service objectives include the advancement of voice and broadband-capable networks into rural, high costs areas while ensuring Americans benefit from the technology transitions occurring within the communications industry.⁴

A waiver or extension of the timeline for submission of a LOC commitment letter furthers the policy of the RBE in bringing voice and broadband-capable networks to rural, high cost areas. NRS diligently worked to meet the RBE post-selection review requirements for both the first and second provisionally award of funding from the FCC. NRS has expended significant time and resources to obtain the RBE support for its rural broadband network and continues to expend resources in order to meet the requirements.

¹ See email from RUS attached as Exhibit "A".

² See e.g., *In re Standing Rock Telecommunications, Inc. Request for Limited Extension of Time to Submit Bank Commitment Letter for Mobility Fund Phase I Support (Auction 901)*, Order, DA 13-1848 at ¶ 12 (Released September 11, 2013) ("SRTI Waiver Order").

³ *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, Public Notice, WC Dkts. 10-90, 14-259, DA 15-99 at page 1 (Released January 23, 2015).

⁴ See *Report and Order and Further Notice of Proposed Rulemaking*, Order, WC Dkts. 10-90, 14-58, *In re Connect America Fund et al.*, FCC 14-59 at ¶ 1 (Released July 14, 2014).

As other petitioners have asserted, “[t]here is good cause for grant of a waiver in light of the hardships and inequities that such winning bidders face in meeting the Commission’s stringent LOC requirements, and grant of a waiver will advance policy objectives designed to support the provision of fixed broadband services in unserved rural areas of the country.”⁵ In spite of issuing NRS a commitment letter for its first RBE provisional funding award, CoBank was unable to award NRS a commitment letter for the second provisional funding award upon the terms required in the RBE. Thus, NRS requests that in addition to extending the LOC submission deadline, the FCC should consider modification of the “Top 100” bank requirement and additionally consider creating a shorter, less stringent LOC commitment obligation allowing entities lacking the required collateral, such as NRS, to carry out the FCC’s universal service goals.

As argued in LTD Broadband, LLC’s Request for Extension of Time to File LOC Commitment Letter, the FCC previously found an extension of the LOC filing requirement appropriate when a financial institution required additional time to issue necessary financial instruments.⁶ Exhibit “A” attached hereto evidences CoBank’s and RUS’s need for additional time to resolve any collateral sharing issues, which still appears plausible. Just as LTD Broadband, LLC asserted, the withdrawal of a financial institution near the LOC commitment letter deadline necessitates the extension or waiver of the LOC deadline in order for NRS to remain in consideration for the RBE support.

⁵ Petition for Waiver, Alliance of Rural Broadband Applications, *In re Connect America Fund et al*, WC Dkt Nos. 10-90, 14-58 at iii (January 27, 2015) (Summary).

⁶ Request for Extension of Time to File LOC Commitment Letter, LTD Broadband, LLC, *In re Connect America Fund et al*, WC Dkt. Nos. 14-259 *et al.*, at 4 (February 3, 2015) (citing *SRTI Waiver Order* at ¶ 13) (extending deadline for filing LOC commitment letter due to “process [that] was prolonged and complicated” by banks that lacked familiarity with issues related to applicant).

The collateral CoBank required in exchange for its commitment to the second LOC ultimately created an environment where the parties were unable to agree on the LOC terms. NRS does not currently possess the relationship with an alternative FCC approved bank to obtain a LOC at this late hour. However, waiver of the LOC requirement and/or extension of the deadline can allow for an alternative financial institution not within the “Top 100” banks to consider NRS’s request and potentially issue the required LOC commitment letter. This waiver would balance the FCC’s desire to ensure integrity in the use of universal service funds with the interests of the rural communities who would realize the ultimate benefit of the support provisionally awarded to NRS.

Grant of a waiver or extension of the LOC commitment letter requirement will allow NRS and northeast Oklahoma rural communities to realize benefits from the resources NRS expended to meet the RBE requirements, and thus preserves the ability for those resources to have been expended in support of the FCC’s mission to bring broadband to rural, high cost areas. As expressed throughout the Connect America Fund and Rural Broadband Experiment dockets,⁷ NRS and similarly situated entities have encountered difficulties meeting the LOC commitment letter obligations, as financial institutions have been unwilling to enter into a commitment under the current terms. However, NRS poses a special case as it met the LOC commitment letter obligation for its initial provisional award of support, but on the deadline date the same financial institution has not yet agreed to extend a second LOC commitment letter for NRS’s additional RBE provisionally awarded support. Therefore, the public interest would be furthered, and good

⁷ See e.g., Request for Extension of Time to File LOC Commitment Letter, LTD Broadband, LLC, *In re Connect America Fund et al*, WC Dkt. Nos. 14-259 *et al.* (February 3, 2015); Petition for Waiver, Alliance of Rural Broadband Applications, *In re Connect America Fund et al*, WC Dkt Nos. 10-90, *et al.* (January 27, 2015); Emergency Petition of NTCA – The Rural Broadband Association for Limited Waiver of Rural Broadband Experiment Letter of Credit Requirement, NTCA-The Rural Broadband Association, *In re Connect America Fund et al*, WC Dkt Nos. 10-90 *et al.* (February 3, 2015); Reply Comments of GVNW Consulting, Inc., GVNW Consulting, Inc., *In re Connect America Fund et al*, WC Dkt Nos. 10-90 *et al.* (April 13, 2015).

cause exists, to waive the LOC commitment letter requirement and/or extend the deadline thus allowing entities such as NRS the opportunity to remain in consideration for RBE support furthering FCC universal service goals. Accordingly, NRS requests that its Emergency Petition for Waiver and Request for Extension of Time to File LOC Commitment Letter be granted.

DATED this 4th day of May, 2015.

Respectfully submitted,

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EXHIBIT A

From: "Adams, Keith - RD, Washington, DC" <Keith.Adams@wdc.usda.gov>
Date: May 4, 2015 at 5:20:57 PM EDT
To: Sheila Allgood <sallgood@boltfiber.com>
Cc: "Aimable, Peter - RD, Washington, DC" <Peter.Aimable@wdc.usda.gov>, "Kombolias, Dimitrios - RD, Washington, DC" <Dimitrios.Kombolias@wdc.usda.gov>, DEAN CHURCH <DChurch@cobank.com>, "JOSEPH SLAGLE" <jslagle@CoBank.com>, "Naqvi, Farwa - RD, Washington, DC" <Farwa.Naqvi@wdc.usda.gov>, Connie Porter <connie.porter@neelectric.com>, "Kuchno, Kenneth - RD, Washington, DC" <Kenneth.Kuchno@wdc.usda.gov>, "Leverrier, Laurel - RD, Washington, DC" <laurel.leverrier@wdc.usda.gov>, "Badway, Gary - OGC" <GARY.BADWAY@OGC.USDA.GOV>, "carol.mattey@fcc.gov" <carol.mattey@fcc.gov>, Jonathan Chambers <Jonathan.Chambers@fcc.gov>, "Nivin Elgohary" <Nivin.Elgohary@cobank.com>
Subject: Re: Update for NRS

Hi Sheila, We met with our legal and policy team this morning in addition to reaching out again to the FCC. At this time our position is that we cannot reach an agreement with the information we have today to share the risk on our loan we have with NRS through the proposed Letter of Credit. The FCC has stated to us that there will be no extension to the letter of credit requirements in the second round of RBE funds.

One suggestion is that NRS does not have to accept all of the areas offered in the second round and that NRS could elect only to accept some. That could mean that either CoBank would agree to a lower number unsecured or we would be willing to go to some level of a secured position or some combination of secured and unsecured. Just a thought to consider.

We understand this is not the answer you were seeking. However we look forward to implementing a very successful program using our Farm Bill Broadband program funds into the future.

Thanks for your patience and understanding.

Keith

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J. DUKE LOGAN (1931-2013)
CHARLES E. WEST (1947-2014)

May 4, 2015

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

Re: Northeast Rural Services, Inc. - Emergency Petition for Waiver and Request for
Extension of Time to File LOC Commitment Letter
WC Docket No. 10-90, WC Docket No. 14-259

Dear Ms. Dortch:

Northeast Rural Services, Inc. (NRS) respectfully submits the subject Emergency Petition for Waiver and Request for Extension of Time to File LOC Commitment Letter. NRS seeks a waiver and extension of time in the above proceeding to obtain a commitment letter from an acceptable bank committing to issue an irrevocable stand-by letter of credit to NRS.

Please direct inquiries regarding this Petition to the undersigned counsel for NRS.

Sincerely,

s/ Michael T. Torrone

Michael T. Torrone
For the Firm

Enclosures

cc: Ian Forbes, Telecommunications Access Policy Division
Alexander Minard, Telecommunications Access Policy Division