

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Connect America Fund
ETC Annual Reports and Certifications
Connect America Fund Phase II Auction
WC Docket No. 10-90
WC Docket No. 14-58
AU Docket No. 17-182

ORDER

Adopted: December 6, 2023

Released: December 6, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) extends the limited waiver of the letter of credit (LOC) rules for the Connect America Fund Phase II Auction (CAF II Auction or Auction 903) funding recipients that have met their deployment and reporting obligations until December 31, 2024. We find good cause exists to grant these waivers due to some of the remaining economic and financial hardships that recipients face as a result of the coronavirus (COVID-19) pandemic.

II. BACKGROUND

2. In 2018, the CAF II Auction made available up to \$1.98 billion over 10 years to service providers that committed to offer voice and broadband services meeting certain requirements to fixed locations in unserved high-cost areas. In order to receive funding, CAF II Auction support recipients must maintain a LOC each year valued "at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year."

3. In June 2020, in response to the COVID-19 pandemic, the Bureau granted two petitions for waiver of the LOC rules for Rural Broadband Experiments (RBE) and CAF II participants. The Bureau waived section 54.315(c) of the Commission's rules and instead directed petitioners and all CAF II funding recipients to comply with the section 54.804(c) LOC rules for the Rural Digital Opportunity Fund (RDOF) auction LOC obligations. The RDOF LOC rules generally require less support and permit recipients to reduce their letter of credit burden sooner in their buildout term than the CAF II rules. The

1 See Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903, Public Notice, 33 FCC Rcd 1428 (2018) (Auction 903 Procedures Public Notice).

2 See Connect America Fund; ETC Annual Reports and Certification, Rural Broadband Experiments, WC Docket Nos. 10-90, 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5997, para. 135 (2016).

3 Connect America Fund; ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (2020) (LOC Waiver Order).

4 Id. at 6558, para. 6.

Bureau found that special circumstances warranted deviation from the Commission's rules due to the disruptive impacts of the pandemic on businesses, including funding recipients.⁶ Further, the Bureau held that a waiver was in the public interest because it would result in more rapid deployment of broadband services.⁷ In doing so, the Bureau forecasted that "current market conditions will continue for the foreseeable future," and it stated that it would reevaluate at the end of the two-year period to determine whether the relief should be extended.⁸ As part of its waiver, the Bureau, consistent with RDOF's LOC rules, also allowed CAF II recipients that had deployed service to at least 20% of their eligible locations by the end of their second year of support to reduce their LOC's value to one year of support.⁹ On December 2, 2021, the Bureau extended the waiver until December 31, 2022 for all CAF II support recipients.¹⁰

4. On August 22, 2022, the Bureau released the *2022 Letter of Credit Public Notice* seeking comment on issues related to the letter of credit requirements, including extending the limited waiver of the LOC rules for all CAF II recipients.¹¹ The Bureau received three comments, all supporting extending the waiver. On December 12, 2022, the Bureau issued an Order extending the waiver through 2023, though the Bureau declined, as commenters had requested, to extend the waiver to CAF II support recipients that had not met their 40% deployment obligation, even if they had previously met their 20% deployment obligation, and also declined to extend the waiver to CAF II support recipients that missed a reporting deadline.¹² However, the Bureau agreed with one commenter that recipients requiring new LOCs should be allowed to wait until their current LOCs expired before obtaining new LOCs.¹³

5. On August 11, 2023, the Bureau released the *2023 Letter of Credit Public Notice* seeking comment again on issues related to the letter of credit requirements, including extending the limited waiver of the LOC rules for CAF II participants who have met each of their previous deployment and certification deadlines.¹⁴ We received two comments, both of which support extending the waiver. As in 2022, the Connect America Fund Phase II Coalition again supports extending the waiver.¹⁵ The Coalition notes that supply chain issues and a tight labor market still impact CAF II providers.¹⁶ It also states that the tightening of credit markets is an "additional dynamic" that further supports extending the waiver,¹⁷ as

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⁵ 47 CFR § 54.804(c)(1)(v).

⁶ *LOC Waiver Order*, 35 FCC Rcd at 6558, para. 7.

⁷ *Id.* at 6560, para. 10.

⁸ *Id.* at 6560, para. 12.

⁹ *Id.* at 6560, para. 11 (citing 47 CFR § 54.804(c)(1)(v)).

¹⁰ *See Connect America Fund, et al.*, Order, 36 FCC Rcd 16633 (WCB 2021) (*2021 LOC Credit Waiver Extension*).

¹¹ *Wireline Competition Bureau Seeks Comment on Extending Waiver of Letter of Credit Rules for Connect America Fund Phase II Auction (Auction 903)*, WC Docket Nos. 10-90, 14-58; AU Docket No. 17-182, Public Notice, 37 FCC Rcd 9580 (2022) (*2022 LOC Public Notice*).

¹² *See Connect America Fund, et al.*, Order, 37 FCC Rcd 14592 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*) (extending the limited waiver of the Commission's CAF II letter of credit rules until December 31, 2023 for CAF II support recipients that have met their deployment and reporting obligations).

¹³ *Id.* at 14595-96, para. 13.

¹⁴ *Wireline Competition Bureau Seeks Comment on Extending Waiver of Letter of Credit Rules for Connect America Fund Phase II Auction (Auction 903)*, WC Docket Nos. 10-90, 14-58; AU Docket No. 17-182, Public Notice, DA 23-681 (Aug. 11, 2023) (*2023 LOC Public Notice*).

¹⁵ Comments of the Connect America Fund Phase II Coalition (filed Sept. 11, 2023) (Coalition Comments).

¹⁶ *Id.* at 8-11.

¹⁷ *Id.* at 3-4.

do the ratings downgrades that some banks have experienced that make them no longer eligible to issue LOCs for the CAF II program.¹⁸ However, the Coalition also argues that the waiver should extend for two years until the end of the CAF II deployment term so that the providers and the Bureau would not have to re-visit the waiver issue.¹⁹

6. The Coalition supports several modifications to the proposal that CAF II recipients must have met all deployment and certification deadlines in order to be allowed the benefit of the waiver.²⁰ It suggests that “the letter of credit waiver benefit be relinquished if an Auction 903 recipient fails to timely file *two* annual location reports unless the Commission has granted a waiver for the late filing,” with the additional caveat that the Bureau should also implement a five-day grace period for filers that have not previously missed a deadline.²¹ Lastly, the Coalition advocated that CAF II recipients that have completed 95% of the 60% deployment milestone be allowed to benefit from the waiver.²² RiverStreet Communications of Virginia, Inc. (RiverStreet) also filed comments supporting the extension of the waiver, including making the waiver permanent.²³ RiverStreet advocates for extending the waiver to all CAF II support recipients that “anticipate coming into compliance by December 31, 2024.”²⁴

III. DISCUSSION

7. Generally, the Commission’s rules may be waived for good cause shown.²⁵ Waiver of the Commission’s rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.²⁶ As discussed in more detail below, we extend the limited waiver granted in 2022, but we decline to extend the waiver to CAF II support recipients that do not meet their 60% deployment obligation, even if they had previously met their deployment obligations. We also reject calls to extend the waiver to CAF II support recipients that miss a reporting deadline. Further, we decline to make the waiver permanent or to extend it now through 2025. We will retain the modification adopted last year that recipients requiring new LOCs in accordance with the CAF II rules be allowed to wait until their current LOCs expire before obtaining new LOCs.

8. Based on the record, we conclude that carriers are still facing difficulties with financial markets and operational capacity due to the pandemic and tightening of credit markets and therefore find that extending the limited waiver of the LOC rules for CAF II Auction participants that have met each of their previous deployment and certification deadlines is warranted.²⁷ Extending the waiver of LOC requirements to recipients that have met their deployment and reporting obligations would allow recipients to better allocate resources to operate successfully and continue to fulfill their obligations. Further, extending the waiver will provide certainty for CAF II Auction carriers to plan their future investments as they continue their deployments.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 2, 13.

²⁰ *Id.* at 14-15.

²¹ *Id.* at 14.

²² *Id.* at 14-15.

²³ Comments of RiverStreet Communications of Virginia, Inc. (filed Sept. 11, 2023) (RiverStreet Comments).

²⁴ *Id.* at 3.

²⁵ 47 CFR § 1.3.

²⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

²⁷ Coalition Comments at 8-12 (noting supply chain issues and labor shortages, which have led to increased costs and extended deployment timelines, and the continuing cost to maintain letters of credit).

9. However, we are not persuaded that conditions warrant extending the waiver to a broader pool of CAF II Auction support recipients than proposed, so we reject the Coalition's argument that support recipients that have failed to fully meet their current 60% deployment obligation should be allowed to continue to follow RDOF's LOC rules.²⁸ We also reject the RiverStreet proposal to extend the waiver to support recipients that anticipate coming into compliance by December 31, 2024, as that standard is not sufficiently definite and would place unnecessary and uncertain risk on the rate payers.²⁹ While we are mindful of the difficulties CAF II Auction support recipients may be facing, we believe that extending a waiver of the LOC rules to support recipients that are already failing to comply with CAF II Auction rules and deadlines would be counter to the public interest. The Commission is most likely to need to draw on the LOCs of the CAF II support recipients that have failed to comply with the program's rules and deadlines, and the LOCs exist to protect the Universal Service Fund and allow for more efficient recovery of funds, when necessary. Reducing the LOCs of CAF II Auction support recipients that are not complying with our rules and deadlines would make it more difficult to efficiently recover funds and would undermine the purposes of the LOC requirement.

10. For the same reasons, we disagree both with the Coalition's suggestion that CAF II Auction support recipients should be permitted to miss two reporting deadlines before they are obligated to follow CAF II Auction LOC rules, as well as with the suggestion that we allow a five-day grace period for recipients that miss a reporting deadline but that have not previously missed a reporting deadline.³⁰ This limited waiver should only extend to those CAF II Auction support recipients that are in compliance with program rules and obligations and are less likely to be subject to support recovery. Extending this waiver to support recipients that are not in compliance with our rules is not in the public interest. We further disagree with the Coalition's suggestion to extend the waiver until 2025 and/or to make the waiver permanent,³¹ because waivers are only appropriate in special circumstances in which a deviation from the rules will serve the public interest, and we cannot know at this point if the current special circumstances would continue to exist into 2025.

11. Thus, we will continue to extend the RDOF letter of credit rules to CAF II Auction support recipients that have met their deployment obligations (i.e., met the 40% milestone and will meet and certify the 60% milestone) and allow them to maintain a LOC for one year of support upon verification by USAC that the recipients have met their buildout milestones.³² We conclude that it will serve the public interest to continue allowing these providers to comply with the RDOF letter of credit rules until the end of 2024, permitting them to more efficiently deploy broadband across the country and balancing that against the risk the public faces from carriers that fail or failed to meet interim deployment obligations.³³

²⁸ Coalition Comments at 14-15.

²⁹ RiverStreet Comments at 3.

³⁰ Coalition Comments at 14.

³¹ Coalition Comments at 2 and 13; RiverStreet Comments at 3.

³² 47 CFR § 54.804(c)(1)(v). *See LOC Waiver Order*, 35 FCC Rcd at 6558-59, paras. 8-11. *See also Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 98-99. A CAF II Auction support recipient that has already been approved to maintain a LOC for one year of support pursuant to our LOC waivers may continue to do so if the support recipient timely certifies (or has already certified) to meeting the 60% CAF II Auction deployment milestone. If the support recipient fails to timely certify compliance or is determined to have not met the milestone based on a verification, the support recipient shall increase the value of its LOC in accordance with the CAF II Auction LOC rules. Furthermore, a CAF II Auction support recipient that meets the 60% milestone but failed to meet the 40% milestone must maintain the value of its LOC in accordance with the CAF II Auction LOC rules.

³³ We note that, unlike in the *2022 Letter of Credit Waiver Extension Order*, we do not extend the LOC Waiver to support recipients in the Rural Broadband Experiments (RBE). Any RBE support recipient that has not completed

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12. Accordingly, for the reasons discussed above, we find that special circumstances exist to extend the limited waiver for an additional year, until December 31, 2024, as described herein.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

14. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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its project at this point is in a default cure period, such that it currently is required to have an LOC that covers all of its support, so a waiver would not be applicable to those support recipients.