

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 12, 2022

Released: December 12, 2022

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 or Auction 903) funding recipients that have met their deployment and reporting obligations until December 31, 2023. We find good cause exists to grant these waivers due to the ongoing 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.<sup>6</sup> Further, the Bureau held that a waiver was in the public interest because it would result in more rapid deployment of broadband services.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

4. On December 2, 2021, the Bureau extended the waiver until December 31, 2022 for all CAF II support recipients.<sup>10</sup> 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.<sup>11</sup> Specifically, the Bureau asked whether previous negative impacts on financial and market conditions remain, whether there have been any improvements, and whether carriers are facing any new issues or concerns that are impeding business operations and broadband deployment.<sup>12</sup> The Bureau also asked whether small rural carriers are still experiencing a disproportionately difficult time accessing financial resources.<sup>13</sup> The Bureau requested commenters provide specific examples of any issues they are facing warranting an extension of the waiver.<sup>14</sup>

5. In addition to seeking comment, the Bureau proposed extending the waiver only to those support recipients that had met their deployment and reporting obligations.<sup>15</sup> Specifically, the Bureau sought comment on only extending the waiver to CAF II support recipients that "demonstrated by reporting in the HUBB by March 1, 2023, of deployment to at least 40% of their locations as of December 31, 2022."<sup>16</sup> The Bureau also proposed that CAF II support recipients "that do not timely file their first location report or that fail to timely file a subsequent location report be automatically excluded from any waiver of the Auction 903 letter of credit requirements,"<sup>17</sup> and that any CAF II support recipient maintaining an LOC at a reduced value in accordance with RDOF rules must obtain an LOC with an increased value in accordance with CAF II rules if it does not pass a USAC verification.<sup>18</sup> A CAF II support recipient that did not meet its deployment or support obligations would be required to obtain a new LOC in accordance with the CAF II LOC rules.

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<sup>5</sup> 47 CFR § 54.804(c)(1)(v).

<sup>6</sup> *LOC Waiver Order*, 35 FCC Rcd at 6558, para. 7.

<sup>7</sup> *Id.* at 6560, para. 10.

<sup>8</sup> *Id.* at 6560, para. 12.

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

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

<sup>11</sup> *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 22-879 (Aug. 22, 2022) (*2022 LOC Public Notice*).

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

6. We received three comments, all supporting extending the waiver. The Connect America Fund Phase II Coalition supports extending the waiver to CAF II support recipients that have met their deployment obligations by December 1, 2022.<sup>19</sup> However, the Coalition also argued that the waiver should extend to CAF II support recipients who previously met their optional 20% deployment obligation, even if the recipient does not meet its current 40% deployment obligation. The Coalition also objected to setting a common deadline to obtain a new letter of credit and asserts that support recipients should only be required to obtain new LOCs when their current LOCs expire. Finally, the Coalition stated that the waiver should only be revoked if a support recipient misses two reporting deadlines, rather than one.<sup>20</sup> USTelecom supports both extending the waiver and making the relief permanent.<sup>21</sup> Lastly, the Wireless Internet Service Providers Association (WISPA) also supports making the waiver permanent and argues that a single missed reporting deadline should not lead to termination of the waiver.<sup>22</sup> As discussed in more detail below, we decline to extend the waiver to CAF II support recipients that do not meet their 40% deployment obligation, even if they had previously met their 20% deployment obligation. We also decline to extend the waiver to CAF II support recipients that miss a reporting deadline. However, we agree with USTelecom that recipients requiring new LOCs should be allowed to wait until their current LOCs expire.

### III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.<sup>23</sup> 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.<sup>24</sup>

8. Based on the record, we conclude that carriers are still facing difficulties with financial markets and operational capacity due to the pandemic.<sup>25</sup> Nonetheless, we are not persuaded that conditions warrant extending the waiver to all CAF II support recipients, and we disagree with the Coalition's argument that support recipients that previously met the optional 20% deployment obligation but have failed to meet their current 40% deployment obligation should be allowed to continue to follow RDOF's LOC rules. We agree, however, that CAF II support recipients that are required to obtain a new LOC because they failed to meet their deployment obligations may wait until their current LOCs' expiration date, instead of being obligated to obtain a new LOC upon expiration of the current waiver.

9. We find that extending the waiver of LOC requirements to recipients that have met their deployment 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.

10. While we are mindful of the difficulties CAF II support recipients may be facing, we believe that extending a waiver of the LOC rules to support recipients who are already failing to comply with CAF II 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

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<sup>19</sup> Comments of the Connect America Fund Phase II Coalition (filed Sep. 21, 2022) (Coalition Comments).

<sup>20</sup> *Id.* at 4.

<sup>21</sup> Comments of USTelecom – The Broadband Association (filed Sep. 21, 2022) (USTelecom Comments).

<sup>22</sup> Reply Comments of the Wireless Internet Service Providers Association (filed Oct. 6, 2022).

<sup>23</sup> 47 CFR § 1.3.

<sup>24</sup> *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)).

<sup>25</sup> Coalition Comments at 6-7 (noting supply chain issues and labor shortages, which have led to increased costs and extended deployment timelines).

more efficient recovery of funds, when necessary. Reducing the LOCs of CAF II 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.

11. For the same reasons, we disagree with the Coalition's suggestion that CAF II support recipients should be able to miss two reporting deadlines before they are obligated to follow CAF II LOC rules.<sup>26</sup> This limited waiver should only extend to those CAF II support recipients that are in compliance with program rules and obligations and are unlikely 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. Thus, we will continue to extend the RDOF letter of credit rules to CAF II support recipients that have met their deployment obligations and allow them to maintain a LOC for one year of support upon verification by USAC that the recipients have met their buildout milestones.<sup>27</sup> 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 2023, permitting them to more efficiently deploy broadband across the country. We will reevaluate the scope and impact of this waiver prior to that time to determine whether this relief should be extended again, taking into account market conditions at that time, as well as whether the waiver has had the intended benefits on providers and broadband deployment.

12. As explained in the *LOC Waiver Order*, we note that support recipients are not required to wait until the end of a specific support year to meet their deployment milestones and may request that USAC complete their verification process at any time.<sup>28</sup> We encourage reporting of deployment data on an ongoing basis.<sup>29</sup> We remind any provider seeking to reduce its LOC obligations that it must "be able to immediately produce the necessary documentation to minimize the time required for USAC to verify its milestone."<sup>30</sup> We also strongly encourage providers seeking to reduce their LOC to familiarize themselves with USAC's verification review procedures before requesting that USAC undertake such a review.<sup>31</sup> By understanding the documentation required for USAC to successfully verify that buildout, providers can help to streamline the process and potentially reduce their LOCs sooner.<sup>32</sup> We also note that in the event a support recipient's LOC expires after the recipient has certified that it has met its deployment obligations but before USAC has verified compliance, the support recipient may obtain a new LOC in accordance with the RDOF LOC rules. If the recipient fails verification, it must obtain a new LOC in accordance with the CAF II LOC rules.

13. While we limit the extension of our LOC waiver to those CAF II support recipients that have met their deployment obligations, we agree with the Coalition that those CAF II recipients that are required to obtain new LOCs because of their non-compliance with the CAF II deployment obligations

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<sup>26</sup> Coalition Comments at 13-14.

<sup>27</sup> 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. 99.

<sup>28</sup> See *LOC Waiver Order*, 35 FCC Rcd at 6561, para. 13; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 100.

<sup>29</sup> See *Connect America Fund et al*, WC Docket No. 10-90 et al, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6011, para. 173 n.156 (2016) ("[I]t would be a 'best practice' to submit location information 'no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations.'"); see also *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56 n.156 (encouraging filing deployment data on a rolling basis).

<sup>30</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56 n.156.

<sup>31</sup> See USAC, *Fund Verification Reviews*, available at <https://www.usac.org/high-cost/resources/fund-verification-reviews/> (last visited Dec. 12, 2022).

<sup>32</sup> We also note, consistent with the Coalition's Comments, that verification "involves an iterative process in which USAC and recipients engage in an ongoing process that leads to verification," and that a final determination from USAC is necessary before a recipient is determined not to have met its deployment obligations.

may wait until their current LOCs expire.<sup>33</sup> This will ensure that such carriers have sufficient time to procure new LOCs.

14. Finally, for the same reasons we expressed in the *2021 LOC Waiver Extension*, we extend, *sua sponte*, the LOC waiver to RBE support recipients.<sup>34</sup> In the *2021 LOC Waiver Extension*, we noted that most RBE support recipients had fully satisfied their defined deployment obligations and that the remaining few, were “working diligently” to do so.<sup>35</sup> We also explained that RBE support recipients have a 12-month period to cure a default and that reversion to the old letter of credit rules during this period would constitute a disproportionate hardship, particularly on those carriers that have substantially completed their buildouts.<sup>36</sup> Finally, we noted that extending temporary LOC waiver relief to RBE support recipients would “not significantly increase risks that support will not be recoverable in accordance with default rules.”<sup>37</sup> Each of these factors have continuing relevancy warranting a further extension of the LOC relief.

15. Accordingly, for the reasons discussed above, we find that special circumstances exist to extend the limited waiver for an additional year, until December 31, 2023, as described herein.

#### IV. ORDERING CLAUSES

16. 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.

17. 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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<sup>33</sup> Coalition Comments at 12-13.

<sup>34</sup> See *2021 LOC Credit Waiver Extension*, 36 FCC Rcd at 16636, 16637 paras. 9, 11.

<sup>35</sup> *Id.* at 16637, para. 11.

<sup>36</sup> *Id.* at 16636, para. 9.

<sup>37</sup> *Id.* at 16637, para. 11.