

A man in a dark vest and shirt is shown in profile, looking at a tablet device. He is standing in a field of solar panels under a cloudy sky. The entire image has a blue color cast.

# Letters of Credit and Opinions of Counsel: A Webinar for Winning Bidders

High Cost Program

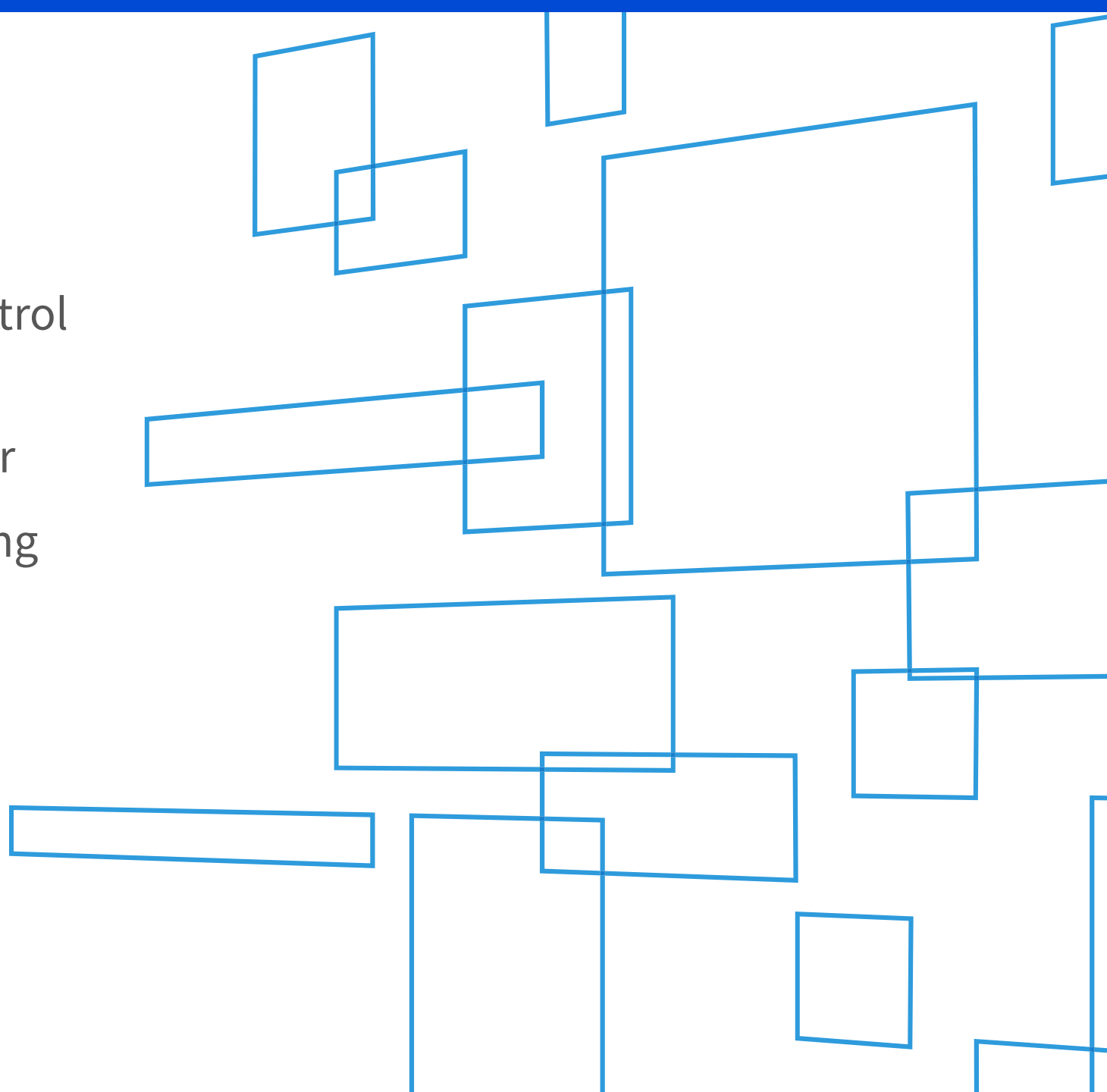
October 3, 2019



Universal Service  
Administrative Co.

## Housekeeping

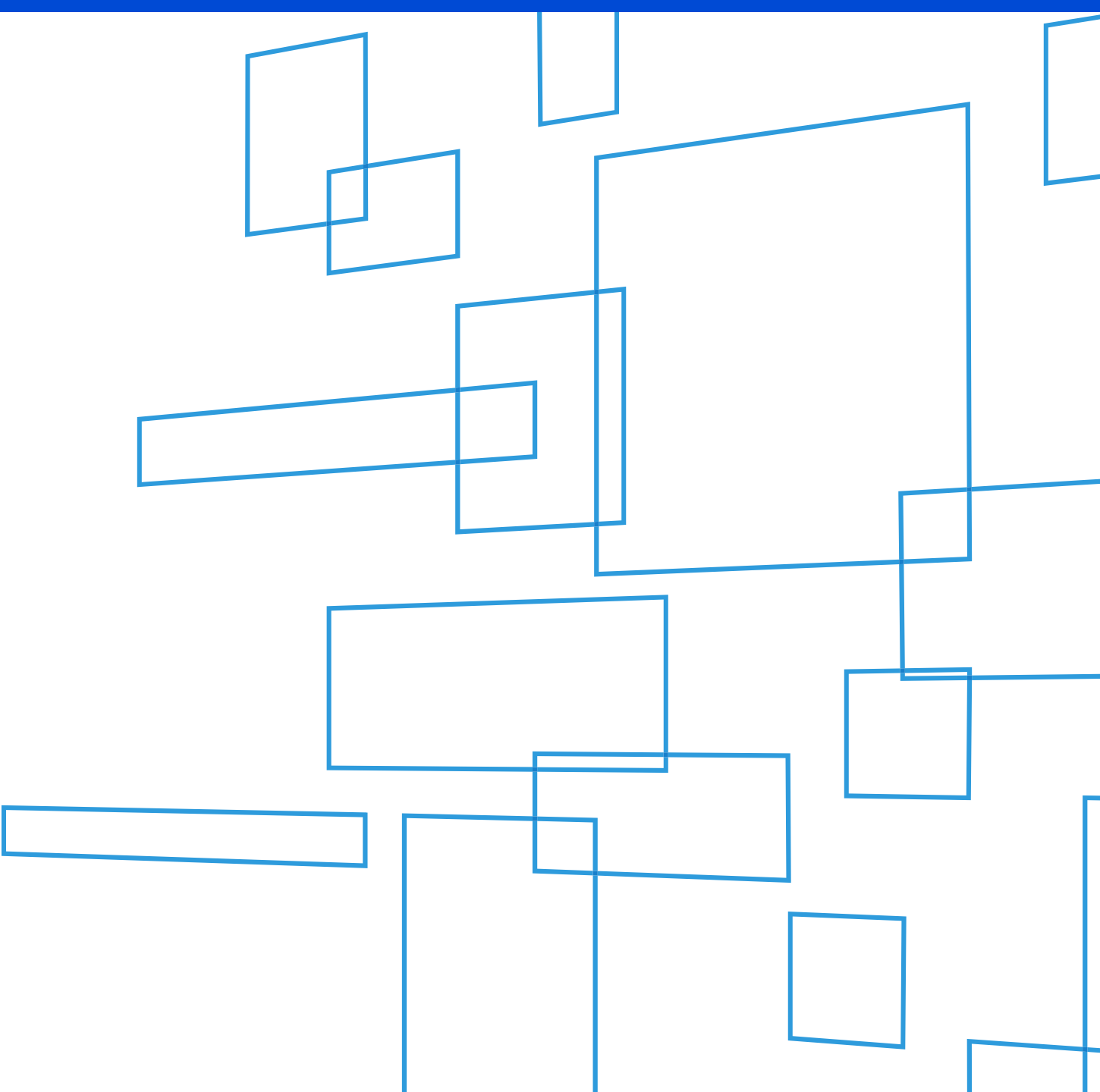
- Use the “Audio” section of your control panel to select an audio source
- Turn on your computer’s speaker, or
- Use the call-in instructions (including audio PIN)



# Welcome

Today's Speakers:

- Peter Bean  
Associate General Counsel, USAC



# Scope and Agenda

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- This webinar is intended to provide high-level information about the Letters of Credit (LOC) and Opinions of Counsel (OOC) requirements for winning bidders, their banks, and their lawyers. The FCC has relied on LOCs and OOCs in the CAF II Auction and in other High Cost programs.
- **Topics covered:**
  - Letters of credit
  - Bankruptcy opinions of counsel
  - Reducing LOC amounts by fulfilling deployment obligations

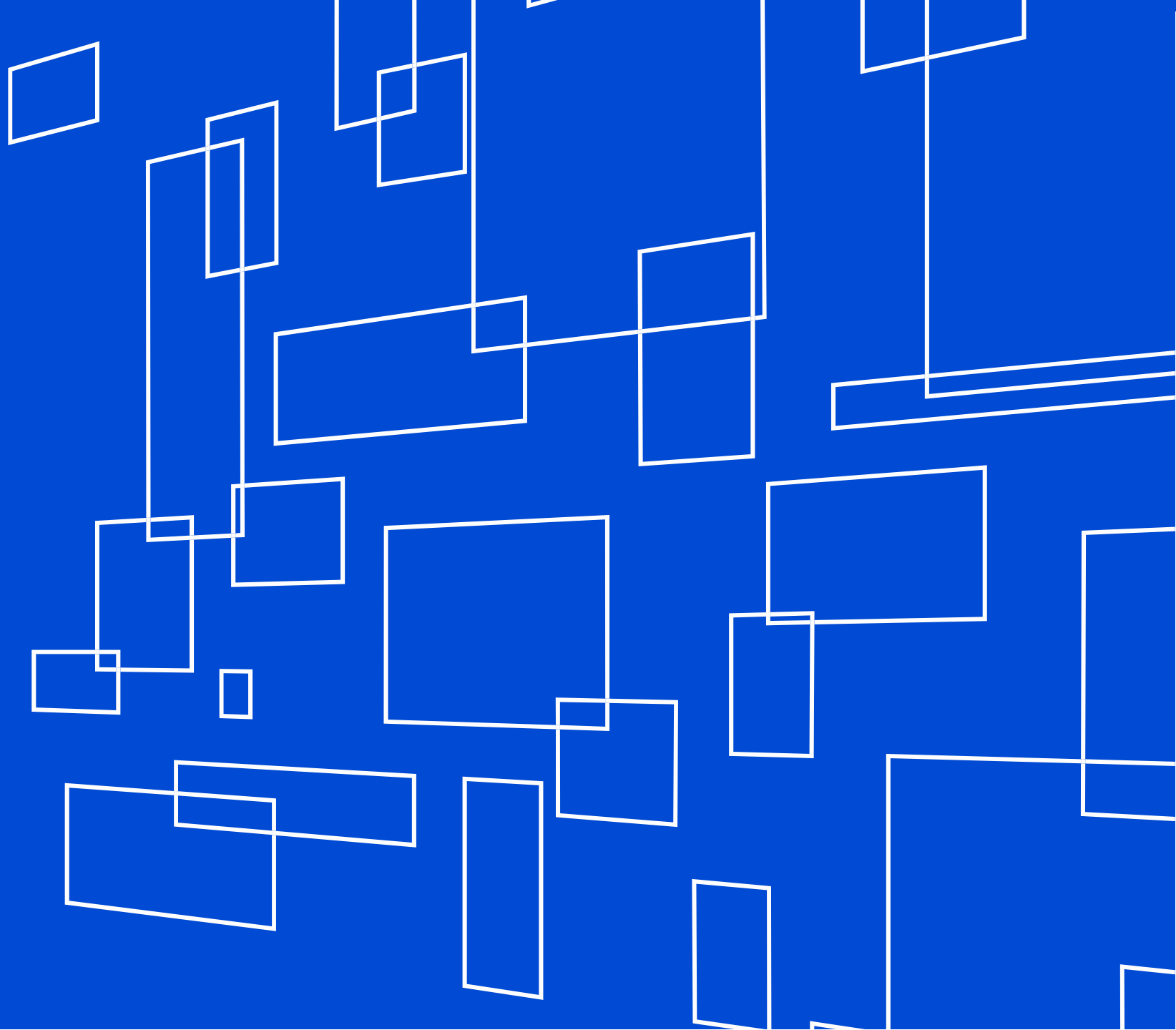
# The Application Process

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- After approval of the long-form application, the FCC issues a “ready to authorize” public notice.
- The FCC issues ready to authorize public notices on a rolling basis.
- The long-form applicant then has 10 business days to submit to USAC:
  - a LOC from a qualified bank and
  - an OOC.

**Please do not submit a letter of credit and/or opinion of counsel prior to the FCC’s Ready to Authorize Public Notice announcing that it has completed review of your long form application.**

# Letters of Credit



# Letters of Credit/Opinions of Counsel

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- Letters of credit must be **free** of errors that impede legal enforceability.
  - **Any errors will delay the approval process.**
- USAC has developed resources to ensure that applicants' LOCs and OOCs contain all necessary information. See USAC's website at <https://www.usac.org/high-cost/funds/caf-phase-ii-auction/>.
- USAC will reject LOCs and OOCs that fail to satisfy the FCC's requirements.

# High Cost LOC Requirements

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- **The letter of credit must:**

- Be an original version of the letter of credit (not a copy);
- Be signed by an authorized individual of the bank, noting name and title;
- Be on official bank letterhead; and
- State USAC's mailing address under the header "BENEFICIARY"

Universal Service Administrative Company (USAC)

Attn: \_\_\_\_\_ (Insert relevant program name here; i.e. CAF II Auction)

700 12th St NW #900

Washington, DC 20005 .



# LOC Requirements

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- **The letter of credit must include:**
  - The Study Area Code (SAC) at the top of the letter of credit;
  - A reference to the relevant Commission order;
    - For the CAF II Auction, LOCs should reference “the Report and Order, adopted on May 25, 2016, issued by the Federal Communications Commission (“FCC”) in the matter of Connect America Fund, WC Docket 10-90 (the “Order”).”
  - The LOC amount in “U.S. Dollars;”
    - The amount must be correctly stated in words and figures.
  - The letter of credit number, as provided by the bank; and
  - The issuance date and the expiration date of the letter of credit.

# More LOC Requirements

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- **Applicants must:**

- Remove ALL “notes” and ALL “brackets” from the body of the LOC;
- In the initial LOC, ensure that the amount of the LOC is equal to at least the carrier’s first year of authorized support, found in the carrier’s FCC Ready to Authorize Public Notice;
- Specifically state that the LOC is an “Irrevocable Standby Letter of Credit;”
- Select either “check of Federal Reserve Bank of New York funds” or “wire transfer of Federal Reserve Bank of New York Funds” in both the body of the LOC and in Annex A to the LOC; and
  - Note: The selection must be the same in both the body of the letter of credit and in Annex A.
- State that the bank will honor a complying presentation of a Draft and Draw Certificate within one (1) business day.

# LOC Expiration Dates

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- Applicants have two options in structuring their LOC expiration date:
  1. An **auto-renewal provision** that automatically renews on an annual basis without amendment or
  2. A **fixed end-date** sufficient to cover the build-out period specified by the FCC.
    - For example, for CAF II Auction Winning Bidders, the build-out period is six (6) years. Accordingly, Winning Bidders may have fixed end-date LOCs that specify an expiration date six years from the date of issuance.

# LOCs with Auto-Renewal Provisions

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- **Applicants must:**
  - State that all notices of nonrenewal must be given by a “a nationally recognized overnight delivery service at least sixty (60) days but not more than ninety (90) days prior” to the expiry of the letter of credit, and
  - State that a copy of the notice of nonrenewal must be sent to the FCC and include the FCC’s mailing address.

Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

# Sample Auto-Renewal Expiration Provision

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- Example: “We hereby establish, at the request and for the account of **FakeTel Communications, Inc.**, in your favor, as required under the **Report and Order, adopted on May 25, 2016, issued by the Federal Communications Commission (“FCC”) in the matter of Connect America Fund, WC Docket 10-90 (the “Order”)**, our **Irrevocable Standby Letter of Credit No. 2N01** in the amount of **One Million U.S. Dollars and No/100 (\$1,000,000.00)** expiring at the close of banking business at our office described above on **May 32, 2020**, provided that such date will automatically be extended for periods of one year unless **FakeCity Bank, AB** gives **notice of non-renewal to USAC by a nationally recognized overnight delivery service, with a copy to the FCC, 445 12th Street, S.W., Washington, DC 20554, at least sixty (60) days but not more than ninety (90) days prior to the expiry thereof, or such earlier date as the letter of credit is terminated by USAC (the “Expiration Date”)**. Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.”

# Sample Fixed End Date Provision

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- Letters of credit with a fixed end date must be for a minimum of six years, which is the build-out period for all programs which require an LOC and OOC.
- Example: “We hereby establish, at the request and for the account of **FakeTel Communications, Inc.**, in your favor, as required under the **Report and Order, adopted on May 25, 2016, issued by the Federal Communications Commission (“FCC”) in the matter of Connect America Fund, WC Docket 10-90 (the “Order”)**, our **Irrevocable Standby Letter of Credit No. 2N01** in the amount of **One Million U.S. Dollars and No/100 (\$1,000,000.00)** expiring at the close of banking business at our office described in the following paragraph, **on the date which is six (6) years from the date of issuance or such earlier date as the Letter of Credit is terminated by USAC (the “Expiration Date”)**).

# LOC Appendices

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- For all annexes:
  - Confirm that the letter of credit number is correct and is not in brackets, and
  - Check that Universal Service Administrative Company (USAC) is spelled correctly.
- For Annex A:
  - Confirm that the check or wire option in Annex A is the same as that selected in the body of the letter of credit.
- For Annex B:
  - Confirm that the appropriate FCC Bureau is selected.
- For Annex C:
  - Ensure that there are two signature blocks for USAC and a countersignature block for the FCC.

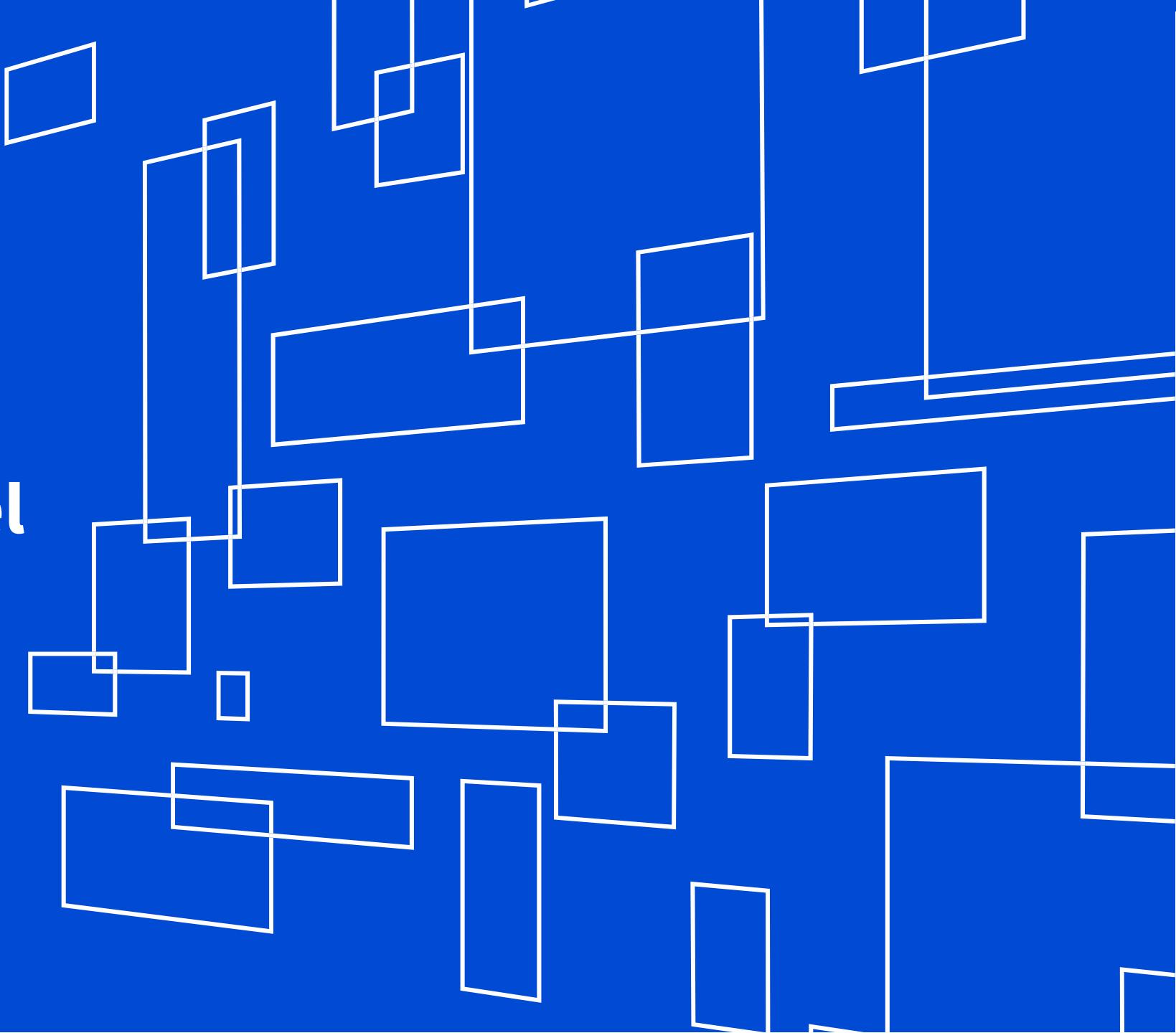
# Additional LOC Notes

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- In addition to the foregoing, banks should review the Illustrative Form of Letter of Credit at Appendix B of FCC 16-64, available at:  
<https://docs.fcc.gov/public/attachments/FCC-16-64A1.pdf>
- If an applicant submits a LOC to USAC, and then determines that the letter contains an error, please do not re-submit a new letter of credit or amendment.
  - Instead, wait to receive USAC's comments on the original submission because, in its comments, USAC may identify additional errors that need to be corrected.
- This is not an exhaustive list of issues. USAC may request other changes not listed here. USAC will request revisions to all documents requiring revision.



# Opinions of Counsel



# OOB Requirements

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- The OOC must be from outside legal counsel.
- The OOC must be on law firm letterhead.
- The OOC must be dated on the same day or any day after the issuance date of the LOC, including any amendments or replacements.
- Ensure that “Universal Service Administrative Company (USAC)” is spelled correctly.
- Include the Study Area Code.
- Include the correct LOC number and amount of the LOC.
- The OOC should refer to the relevant LOC as an “Irrevocable Standby Letter of Credit.”
- Cite the correct Order, for example, as the CAF II Auction citation was shown earlier.
- The OOC must state that counsel has reviewed the LOC and such other documents and made such examination of law as appropriate to give the opinion.

# OOO Requirements (continued)

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- The OOC must clearly state as follows: **“subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party’s bankruptcy estate, or the bankruptcy estate of any other Phase II competitive bidding process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code.”**
- Note: this language applies to CAF II Auction Winning Bidders. In subsequent programs, Winning Bidders should use the language specified in the Commission’s rules, to the extent it is different than the foregoing.
- Both the FCC and USAC must be able to rely on the opinion of counsel.
- The opinion of counsel must be signed by counsel.

# Payments

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- After USAC reviews and approves an applicant's LOC and OOC, the FCC will issue a “support authorization” public notice directing USAC to begin disbursing payments.
  - USAC will begin issuing monthly payments shortly after the release of the FCC's public notice.
  - The FCC issues support authorization public notices on a rolling basis.
- The amount of the LOC must increase to cover at a minimum the amount of Phase II auction support that has been disbursed in the prior year(s) and the amount of support that will be disbursed in the coming year before next year's payments will start. (See 47 C.F.R. § 54.315(c)(1)).

# Deployment Obligations and Reducing the Amount of the LOC

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- Pursuant to FCC rules, carriers must meet certain deployment obligations (see 47 C.F.R. § 54.310(c)).
  - Information about the Deployment Verifications process is available at: <https://www.usac.org/high-cost/resources/fund-verification-reviews/>.
- A carrier may reduce its LOC amount after it has certified and USAC has verified certain milestones.
  - For example, with the CAF II Auction:
    - 60%: After a fund recipient has certified its 60 percent service milestone in the HUBB and USAC has verified that the milestone has been met, it may reduce the value of its LOC to 90 percent of the total support received, plus the amount of support that will be disbursed in the coming year.
    - 80%: After a fund recipient has certified its 80 percent service milestone in the HUBB and USAC has verified that the milestone has been met, it may reduce the value of its LOC to 60 percent of the total support received, plus the amount of support that will be disbursed in the coming year.
    - 100%: After a fund recipient has certified its 100 percent service milestone in the HUBB and USAC has verified that the milestone has been met, USAC will prepare a final verification report and send it to the FCC for review.
  - If the FCC determines that the fund recipient has satisfied all obligations under the program, it will release the fund recipient from its LOC.
    - Both USAC and the FCC will sign off on the release of the LOC, and USAC will return the LOC to the carrier's bank and/or the carrier.

**Questions?**

