

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Amendment of Part 54 of the Commission's)	RM-11853
Rules to Update the Provisions of Section)	
54.315(c) to Conform to Requirements)	
Adopted for the Rural Digital Opportunity Fund)	

**REPLY COMMENTS OF
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (NRECA) submits these reply comments in response to the initial comments regarding the Petition for Waiver and Petition for Rulemaking submitted by the Connect America Fund Phase II Coalition (Petitioners) requesting the Commission to align the letter of credit requirements in §54.315(c) adopted for winning bidders in the Connect America Fund Phase II (CAF II) auction with the more targeted letter of credit obligations of §54.804(c) adopted for the Rural Digital Opportunity Fund (RDOF).¹ NRECA fully supports the intent and substance of the Petitions.

INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states, or

¹ Connect America Fund Phase II Coalition Request for Waiver, WC Docket No. 10-90 and RM-11853 (Mar. 10, 2020) (Petition for Waiver); Connect America Fund Phase II Coalition Petition for Rulemaking, WC Docket No. 10-90 and RM-11853 (Mar. 10, 2020) (Petition for Rulemaking); *Wireline Competition Bureau Seeks Comment on Petition for Rulemaking and Petition for Waiver Filed by the Connect America Fund Phase II Coalition Regarding Connect America Fund Phase II Letter of Credit Rules*, WC Docket No. 10-90 and RM-11853, Public Notice, DA 20270 (Mar. 13, 2020) (Public Notice).

approximately 12 percent of electric customers, including 327 of the nation's 353 (or approximately 93%) "persistent poverty counties." Many cooperatives are considering, planning, or have already made investments and committed the resources to deploy fixed broadband networks and to provide broadband service within their existing territories and in some cases to adjacent communities. Consistent with this interest in delivering broadband to their communities, over thirty cooperatives participated in the CAF Phase II auction, securing approximately \$254 in total support. ²

DISCUSSION

In response to the Notice of Proposed Rulemaking in Docket No. 19-126,³ NRECA proposed the Commission “re-calibrate” the proposed rules for the letter of credit for the RDOF so that as buildout milestones are achieved, the amount of the letter of credit would remain constant and not increase on an annual basis through the buildout period.⁴ Consistent with NRECA’s recommendations and those of the vast majority of persons addressing the proposed letter of credit rules, the Commission adopted §84.304(c)(1) implementing a series of changes limiting the annual increases in the letter of credit as buildout milestones are met and establishing an incentive to cap the letter of credit to one-year of total support for most of the buildout period in contrast to the mandatory cumulative increases associated with the letter of credit requirements imposed on CAF II award recipients. The letter of credit for the initial year remains at one year of total support and, for year two, the amount of the letter of credit is reduced to 18 months of total

² “FCC Approves \$254 million for 32 Electric Cooperatives to Provide Rural Broadband,” August 28, 2018, <https://www.electric.coop/fcc-approves-220-million-33-electric-cooperatives-provide-rural-broadband/> (thirty-two electric cooperatives submitted thirty-five winning bids in the FCC’s CAF II reverse auction).

³ *Rural Digital Opportunity Fund, Connect America Fund*, WC Docket Nos. 10-90, 19-126, *Notice of Proposed Rulemaking*, 34 FCC Rcd 6778 (2019) (*NPRM*).

⁴ Reply Comments of NRECA, WC Docket Nos. 10-90, 19-126 (filed Oct. 21, 2019) (NRECA Reply Comments), at 10.

support (from 24 months).⁵ To incent winning bidders to buildout their networks in a timely manner while protecting federal expenditures, the Commission established an optional buildout threshold: if by the end of year two or sooner, as verified by USAC, a winning bidder completes 20% of its buildout obligation, its letter of credit for year three is reduced to one year of total support and remains at this level so long as the award recipient continues to meet its annual buildout milestones.⁶ For winning bidders not meeting the optional 20% milestone at the end of year two, the letter of credit amount for year three is equal to two years of its total support and, for year four, the letter of credit amount is three years of total support.⁷

NRECA agrees with the Comments filed in support of the Petitions. As USTelecom points out, the cumulative increases in the CAF II letter of credit obligations “are far more onerous than the less restrictive obligations of future RDOF winners.”⁸ As NTCA notes, by modifying the CAF II LOC requirements, more money awarded under CAF II will be made available for the deployment of advanced communications infrastructure in unserved rural areas consistent with the goals of the High Cost program.⁹ NRECA concurs with USTelecom’s observation that in not adopting the proposed LOC requirements, the Commission appropriately decided not to “impose a disproportionate financial burden on support recipients” and that the same approach should apply to CAF II award recipients.¹⁰ Indeed, maintaining the LOC obligations adopted several years ago for the CAF II award recipients is at odds with the recently

⁵ *Rural Digital Opportunity Fund, Connect America Fund*, WC Docket Nos. 10-90, 19-126, *Report and Order* (Rel. Feb. 7, 2020) (*Report and Order*), at para. 101.

⁶ *Id.* at para. 99.

⁷ *Id.* at para. 101.

⁸ Comments of USTelecom, The Broadband Association, WC Docket Nos. 10-90, 19-126 (filed Mar. 27, 2020) (USTelecom Comments), at 3.

⁹ Comments of NTCA—The Rural Broadband Association, WC Docket Nos. 10-90, 19-126 (filed Mar. 27, 2020) (NTCA Comments), at 8.

¹⁰ USTelecom Comments, at 4.

adopted Report and Order and should be addressed as proposed by the Petitioners. NRECA agrees with the observations that by granting the Petitions, the Commission will free more money for network deployments¹¹ and increase the likelihood that CAF II awardees will participate in the Phase I auction.¹²

In the Report and Order, the Commission is departing in a reasoned manner from the LOC requirements adopted several years ago for the CAF II auction. There is no apparent underlying basis or support for the continued effectiveness of §54.315(c) of the Commission's rules.

As Petitioner notes, the relief requested is more than warranted, particularly the grant of the Petition for Waiver.

It is well within the Commission's authority under Section 1.3 to grant immediate relief based on the record established in the RDOF proceeding. That rule permits the Commission to grant a rule waiver "for good cause shown, in whole or in part, at any time," including on its own motion without a formal request. A waiver may be granted if the grant "would not undermine the policy objective of the rule in question and would otherwise serve the public interest," or in circumstances "where particular facts would make strict compliance inconsistent with the public interest." (footnotes omitted).¹³

A timely grant of the Petition for Waiver will allow many CAF II awardees to reduce their letter of credit amount for year two from 24 months to 18 months of total support. For those approaching their second year and even those within the second year of their buildout, they may be in a position to achieve the 20% threshold. Exclusive reliance on the Petition for Rulemaking may prove too little too late as the Commission typically adopts a Notice of Proposed Rulemaking, considers the views of interested parties, and then adopts modified rules under a Report and Order. The concern is that, even assuming the Commission adopts rules responsive to the Petition for Rulemaking, many CAF II awardees may be well along in the second year of the

¹¹ NCTA—The Internet and Television Association Comments, WC Docket Nos. 10-90, 19-126 (filed Mar. 27, 2020) (NCTA Comments), at 3.

¹² NTCA Comments, at 9.

¹³ Petition for Waiver, at 5-6.

buildout period obtaining, at best, a revision to the 2nd year's letter of credit or far too late in year two to adjust buildout schedules to achieve the 20% threshold. The latter is a particular concern for CAF II awardees that bid at the gigabit tier.

CONCLUSION

The Commission is respectfully requested to grant the Petition for Waiver in a timely manner and move forward with a Petition for Rulemaking as proposed by the Petitioner. The RDOF letter of credit rules reflect a more balanced approach to protecting federal funds and allocating these scarce funds for the intended purpose of deploying broadband infrastructure in rural areas. This approach should be extended to the CAF II awardees.

Respectfully submitted,

National Rural Electric Cooperative Association

/s/

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