

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

Connect America Fund)	WC Docket No. 10-90
)	
Connect America Fund Phase II Auction)	AU Docket No. 17-182
)	
The Uniendo a Puerto Rico Fund and the Connect USVIA Fund)	WC Docket No. 18-143
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Rural Digital Opportunity Fund Auction)	AU Docket No. 20-34
)	
Establishing a 5G Fund for Rural America)	GN Docket No. 20-32
)	
Letters of Credit for Recipients of High-Cost Competitive Bidding Support)	WC Docket No. 24-144

Comments of

NTCA–THE RURAL BROADBAND ASSOCIATION

To the Commission:

I. INTRODUCTION

NTCA–The Rural Broadband Association (NTCA) hereby submits comments on the Notice of Proposed Rulemaking (NPRM) in the above-captioned docket.¹ The Commission seeks comment on three issues: (1) Revisions to credit ratings standards for letters of credit; (2) Mid-term minimum value requirements for RDOF letters of credit; and (3) Conversion of a temporary

¹ *Connect America Fund (Docket No. 10-90); Connect America Fund Phase II Auction (Docket No. 17-182); The Uniendo a Puerto Rico Fund and the Connect USVA Fund (Docket No. 18-143); Rural Digital Opportunity Fund (19-126); Rural Digital Opportunity Fund Auction (Docket No. 20-34); Establishing a 5G Fund for Rural America (Docket No. 20-32); Letters of Credit for Recipients of High-Cost Competitive Bidding Support (Docket No. 24-144); Notice of Proposed Rulemaking, FCC 24-64 (2024) (NPRM).*

CAF II LOC value waiver to permanent relief. As an overarching position, NTCA identifies the combined goal of this proceeding as ensuring that the Commission can ensure through reasonable measures that recipients of high-cost competitive bidding support are financially qualified to provide service.² NTCA has consistently urged the Commission to enact consistent and exacting standards aimed at ensuring applicants' technical and financial abilities to provide the services for which support the applicant bids.³ Accordingly, the prevailing NTCA position in this proceeding is to strike a balance in avoiding unreasonable burdens while ensuring that confidence in the Commission's high cost programs is not disrupted by the disbursement of support to entities whose solvency may evaporate without appropriate recourse.

II. DISCUSSION

A. AMENDMENTS TO RATINGS GUIDELINES SHOULD MAINTAIN EQUIVALENT STANDARDS.

The Commission explains that the original letter of credit (LOC) rules instituted for the Rural Broadband Experiment (RBE) proceeding resulted in 70 banks meeting the FCC's LOC criteria. Observing that this limited field could present a barrier (and especially so to small entities) that were endeavoring to participate in subsequent auctions, the Commission amended these rules in 2016 to rely on Weiss ratings.⁴ This change enabled approximately 3,600 banks nationwide to meet Commission criteria for LOCs.⁵ Since that time, however, approximately half

² *Rural Digital Opportunity Fund, Connect America Fund: Reply Comments of NTCA-The Rural Broadband Association*, Docket Nos. 19-126, 10-90, at 26-28 (Oct. 21, 2009).

³ *See, Rural Digital Opportunity Fund Auction (Auction 904), Rural Digital Opportunity Fund, Connect America Fund: Comments of NTCA-The Rural Broadband Association*, Docket Nos. 2-34, 19-126, 10-90, at 4-6, 8-14 (Mar. 27, 2020). *See, also, Rural Digital Opportunity Fund, Connect America Fund: Comments of NTCA-The Rural Broadband Association*, Docket Nos. 19-126, 10-90 at 25, 26, n.44 (Sep. 20, 2019).

⁴ NPRM at para. 6.

⁵ NPRM at para. 5.

of those banks have lost their Weiss B- rating.⁶ And, an auction winner whose bank suffers a Weiss rating loss faces the prospect of having its support withheld until it obtains a new LOC from a qualified bank. The Commission has routinely granted waivers to ensure that support is not suspended, and in March 2024 issued a waiver *sua sponte* of the Weiss B- requirement.⁷ The Commission now seeks a permanent solution to the lower Weiss ratings that many banks have earned in the past several years to ensure the continued provision of high-cost support that enables broadband deployment in high-cost areas.

As part of this inquiry, the Commission seeks comment on why 50% of Weiss-rated banks have lost LOC-compliant ratings; these reasons are varied and beyond factors that reside within the broadband market. On background, Weiss is but one of several organizations that confer bank ratings, and the record in the instant proceeding reveals different opinions of Weiss as compared to other bank rating sources.⁸ According to Weiss, its safety ratings are based on several broad index categories including capitalization, asset quality, profitability, liquidity and stability.⁹ Adverse conditions affecting any single index category can depress overall ratings. Weiss explains that ratings are affected by many factors including inflation, interest rates, and

⁶ NPRM at para. 10.

⁷ NPRM at paras. 10, 11, 13.

⁸ For example, Bank Policy Institute characterizes Weiss ratings as “opaque” and argues that Weiss “appears to lack sufficient resources” to assess that which it rates. Letter from Joshua Smith, Vice President and Assistant General Counsel, Bank Policy Institute, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission, at 2, (Feb. 2, 2024) (posted in Commission Docket No. 17-182). Weiss notes that it is funded independently of any institution that it rates. *See*, “Whitepaper: Role of Independent Ratings in the Screenings of Commercial Banks by the Federal Communications Commission,” Weiss Ratings (Apr. 28, 2024) (<https://weissratings.com/en/weiss-news/whitepaper-role-of-independent-ratings-in-the-screening-of-commercial-banks-by-federal-communications-commission>) (visited Aug. 2, 2024). The Wisconsin Bank Association avers that Weiss is not a nationally recognized statistical rating organization that is registered with the SEC. *See*, NPRM at para. 12.

⁹ “Weiss Ratings Guide to Banks,” Grey House Publishing (Spr. 2024) (https://www.greyhouse.com/guide_to_banks#:~:text=The%20Weiss%20Ratings%20are%20calculated,at%20a%20letter%20grade%20rating.) (visited Jul. 26, 2024).

higher capital and liquidity requirements that may be imposed by regulation.¹⁰ Notably, none of these factors arise out of conditions within the industry of applicants for high-cost support.

Accordingly, it is not the intent of NTCA to comment on the relative expertise or value of one rating source as compared to another. Rather, NTCA confines its comments to the dynamics of small provider acquisition of an LOC.

Small providers in particular face distinct hurdles in obtaining LOCs. The cost of an LOC can be very high (and when working with top banks, prohibitive); the cash reserve requirements to obtain an LOC can reach a magnitude that throws into a question whether the entity must seek high-cost support or simply rely on its existing resources. Moreover, inasmuch as a LOC creates a contingent liability, the mere existence of the LOC would make the provider less attractive to private lenders, compounding the diminishment of deployment abilities caused by the LOC. Recognizing the potential disruption as banks lost their Weiss ratings, the Commission wisely issued a waiver last year¹¹ and now seeks comment on a permanent solution.

The Commission proposes several alternatives for consideration, including recommendations for the financial industry. These include recommendations to adopt an LOC from a bank that:

(a) has a (i) a Weiss B- rating or better (ii) a “long-term unsecured credit rating issued by a widely-recognized credit agency that is equivalent to a BBB- or better rating by Standard & Poor’s” (option (ii) is currently the requirement for non-U.S. banks);¹² or

(b) has more than \$100B in total assets and is (i) Federally supervised bank with (ii) investment grade rating; or,

¹⁰ Gavin Magor, “Banks: Which Will Fail First in 2024?,” Weiss Ratings Daily (Jan. 16, 2024) (<https://weissratings.com/en/weiss-ratings-daily/banks-which-will-fail-first-in-2024>) (visited Jul. 26, 2024).

¹¹ NPRM at para. 13.

¹² NPRM at para. 19.

(c) if with less than \$100 million in assets can provide a certificate that it is “well capitalized; or,

(d) obtains adequate ratings from an SEC regulated rating firm or,

(e) has a Weiss rating of C-.

The Commission acknowledges that each of these options implicates inquiries. For example, how would “widely recognized” ((a)(i)) be defined? How would Commission staff verify bank ratings or assess a bank’s long-term unsecured rating?¹³ Rather than explore current trends within financial markets, NTCA focuses its recommendations here to ensure confidence in the Commission’s processes while recognizing the benefits of broader approaches. In that vein, NTCA is largely agnostic to most of these alternatives. However, NTCA registers its concern with (e), which would effectively expand the pool of eligible banks by lowering the Commission’s standards. As NTCA explained in prior iterations of these investigations, the overarching goal is to ensure that Federal resources are expended with adequate safeguards. To the extent options (a), (b), (c), and (d), above, impose standards that are similar to a Weiss B-rating, they should obtain priority ranking among the Commission’s alternatives as the Commission seeks to “provide appropriate protection” for the support it administers. Simply lowering Commission standards risks the integrity of the programs and the ability of the Commission to ensure the financial capability of participants.

B. REDUCTIONS IN RDOF LOC REQUIREMENTS CAN BE A KEY STEP IN MITGATING THE BURDENS OF OBTAINING LOCS.

The Commission seeks comment on allowing RDOF recipients to reduce the value of their LOCs in a manner similar to that permitted for CAF II recipients.¹⁴ RDOF recipients are

¹³ NPRM at para. 19.

¹⁴ NPRM at para. 22, *et seq.*

typically required to maintain LOCs that (a) increase in value annually, and (b) are backed by cash reserves.¹⁵ However, once USAC has verified deployment, RDOF recipients are permitted to reduce the value of their LOC to one year of support if they have deployed to 20% of their locations by the end of their second year. The Commission now seeks comment on whether it should recalibrate that threshold to 10% and permit RDOF recipients who reach that milestone at the end of year-two to reduce the value of their LOC, as well as extending that relief to RDOF recipients who have already passed their two-year milestone.¹⁶

In prior filings, NTCA has identified the cost of an LOC as a potential barrier to entry to the RDOF program. Alongside other industry representatives, NTCA quantified the potential cost of LOCs (in aggregate, estimated in 2020 to be equal about 6%-to-7% of total Phase I funding) and cautioned that banks often treat the cash collateral and carrying costs as debt that could diminish an entity's ability to borrow.¹⁷ Those concerns yet abide and warrant consideration as the Commission explores ways to ease LOC costs in a way that enables providers to redirect resources to deployment. NTCA generally supports amendments that decrease LOC costs. At the same time, the Commission asks whether a 10% threshold "demonstrate[s] concrete progress in building [the applicant's] network."¹⁸ NTCA notes that this question evidences the Commission's practical concern to deploy adequate incentives (both positive and negative) to ensure that RDOF

¹⁵ NPRM at para. 3.

¹⁶ NPRM at para. 3.

¹⁷ See, *Rural Digital Opportunity Fund, Connect America Fund: Ex Parte Presentation of NTCA—The Rural Broadband Association, INCOMPAS, USTelecom, et. al.*, Docket Nos. 19-126 and 10-90 (filed Jan. 16, 2020). In this vein, as well, NTCA suggests that LOC requirements be waived when the award is sufficiently *de minimis* such that the cost of the LOC would exceed the amount of the award; that type of situation should similarly be cared for in any changes here.

¹⁸ NPRM at para. 23 (internal citation omitted).

participants meet their obligations. Similar issues surfaced only several months ago when the Commission sought comment on requests for amnesty by several CAF II and RDOF participants who sought to surrender locations.¹⁹ Commenters in that proceeding urged the Commission to avoid outcomes in which “any laundry list of intervening conditions” would absolve participants of their obligations.²⁰ NTCA does not discount the potential impact of inflationary pressures or supply chain disruptions. And, yet, while encouraging measures that reduce administrative costs, NTCA nevertheless urges the Commission to ensure that adequate disincentives are in place to discourage program participants from completing build outs. Accordingly, NTCA supports reductions in LOC requirements so long as those reductions are counter-balanced by adequate incentives (including negative repercussions) to ensure performance obligations of program recipients.²¹

C. CONSISTENCY BETWEEN CAF II AND RDOF RULES CAN REFLECT SIMILARITIES BETWEEN THE PROGRAMS AND ENABLE REDIRECTION OF RESOURCES TO NETWORK DEPLOYMENTS.

The Commission seeks comment on whether CAF II rules should be amended to mirror RDOF LOC rules.²² This would permit CAF II recipients who have met deployment and reporting requirements to abide by RDOF rules through the end of the CAF II term. The Commission previously granted a series of waivers permitting this relief and seeks comment on

¹⁹ *Connect America Fund, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904)*, Docket Nos. 10-90, 19-126, 0-34, Public Notice (Mar. 5, 2024).

²⁰ *Connect America Fund, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904): Reply Comments of NTCA–The Rural Broadband Association*, Docket Nos. 10-90, 19-126, 0-34, at 3, quoting *Comments of National Rural Telecommunications Cooperative* (Apr. 9, 2024).

²¹ *See, i.e.*, Letter from Michael Romano, NTCA–The Rural Broadband Association, to Marlene Dortch, Federal Communications Commission, *Connect America Fund, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904)*, Docket Nos. 10-90, 19-126, 0-34 (Mar. 8, 2024), and Amnesty Reply Comments at 7-10.

²² NPRM at para. 25.

whether it should extend this relief either through another waiver or permanent measure. As background, when adopting LOC rules for RDOF, the Commission lowered the required value for RDOF recipients, as compared to CAF II recipients, and allowed RDOF recipients to reduce those values sooner in their support cycle than comparable CAF II recipients.²³ In 2020, in response to the COVID-19 pandemic, the Commission waived its rules to permit CAF II recipients to enjoy the less-stringent requirements to which RDOF recipients were subject.²⁴ At the time, NTCA supported the recommended adjustments, noting, *inter alia*, “the high cost and obtaining and maintain LOCs and the unnecessary ‘consum[ption] of funds that could otherwise be directed to network deployment,’”²⁵ as well as the general proposition that the reasoned security measures undertaken for RDOF would likewise enable rational and reasonable protections for CAF II funding.

NTCA similarly supports permanent amendment of the rules at this time. The CAF II and RDOF programs are similar in many ways. Participants in each program emerged from similar corporate populations, while the expenses occasioned by LOCs diminished otherwise-available resources for members of both cohorts. To the extent the RDOF LOC rules assured the Commission’s interest in ensuring the financial capability of program participants, those same rules provide similar confidence in the CAF II arena. Accordingly, a permanent reconciliation between the two programs is appropriate.

²³ *Rural Digital Opportunity Fund, Connect America Fund: Report and Order*; Docket Nos. 19-126, 10-90, FCC 20-5, at paras. 96-101 (2020).

²⁴ The Commission released a series of waivers; the latest was *Connect America Fund, ETC Annual Reports and Certifications, Connect America Fund Phase II Auction: Order*; Docket Nos. 10-90, 14-58, 17-182, DA 23-1140 (2023).

²⁵ *Petition for Rulemaking and Petition for Waiver of the Connect America Fund Phase II Coalition: Comments of NTCA—The Rural Broadband Association*, Docket No. 10-90, RM-11853, at 5, 6, quoting *Rural Digital Opportunity Fund, Connect America Fund: Notice of Proposed Rulemaking*, Docket Nos. 19-126, 10-90, FCC 19-77, para. 89 (2019).

III. CONCLUSION

NTCA supports amendments that reduce burdens while maintaining consistent standards aimed at ensuring applicants' financial abilities to provide the services for which support the applicant bids. Accordingly, and as explained more fully above, NTCA recommends the Commission to avoid unreasonable burdens while ensuring appropriate recourse in a manner that balances interests among the parties.

Respectfully submitted,

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