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WIRESLINE COMPETITION BUREAU REMINDS PROVISIONALLY SELECTED RURAL BROADBAND EXPERIMENTS BIDDERS OF LETTER OF CREDIT REQUIREMENTS

WC Docket No. 10-90
WC Docket No. 14-259

On December 5, 2014, the Wireline Competition Bureau (Bureau) released a list of 37 entities provisionally selected as winning bidders for rural broadband experiments support.¹ As part of the continuing process to be authorized to receive such Connect America Fund support, provisionally selected bidders are required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit (LOC) to that entity.² These entities must submit their LOC commitment letters to the FCC through Form 5620 by Tuesday, February 3.³ Today, in response to informal discussions with a number of the provisionally selected bidders, the Bureau summarizes for provisionally selected entities several aspects of the LOC requirements.

In the *Rural Broadband Experiments Order*, the Commission explained that requiring entities to obtain LOCs would enable it to immediately reclaim disbursed funds in the event a recipient was not using such support to further the objectives of universal service.⁴ The Commission's intent was to ensure that the public funds disbursed over the course of the 10-year support term of the rural broadband experiments are used to build and maintain robust voice and broadband capable networks.

The Commission expressly contemplated that participants in the experiments might meet the LOC requirement in a variety of ways. The Commission's illustrative LOC notes that "the amount of the Letter of Credit shall increase/additional letter(s) of credit shall be issued as additional funds are

¹ See *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, DA 14-1772 (Wireline Comp. Bur. rel. Dec. 5, 2014) (*Provisionally Selected Bidders PN*). Six of these provisionally selected bidders have defaulted or withdrawn from consideration for funding. See *Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petitions of Provisionally Selected Bidders*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 14-1889 (Wireline Comp. Bur. rel. Dec. 23, 2014).

² See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8787-88, para. 54 (2014) (*Rural Broadband Experiments Order*). The commitment letter must at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC. See *id.* at 8788, para. 54, n.94.

³ See *Provisionally Selected Bidders PN*, Attach. B.

⁴ See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788-89, para. 56.

disbursed pursuant to the terms of the Order.”⁵ Thus, the Commission contemplated that selected entities would have flexibility in how they structure these arrangements and might choose to obtain multiple LOCs over the support term.

Entities may negotiate all the terms of their LOC with the issuing bank, including the length of the LOC, so long as they hold a LOC in each of the 10 years that they receive support. For example, a recipient of funding could obtain a LOC that remains open until it completes the build-out of its network and covers the first five years of support it receives.⁶ Once the build-out is complete, the recipient of funding could close its original LOC and obtain another LOC from the same or different institution. We conclude that this arrangement, as well as similar arrangements, would be consistent with the Commission’s requirement that entities obtain LOCs for their selected projects for the ten-year term of support.⁷

Entities also are reminded that the commitment letter that must be submitted by February 3rd only is required to commit to providing the provisionally selected bidder with a LOC in the amount of the first year of distributed support.⁸ The issuing bank is not required to make a commitment for the full ten-year period. For example, if an entity is scheduled to receive a total of \$10 million over the ten-year term of support, the LOC commitment letter would indicate an intent to issue a LOC in the amount of \$1 million; if the entity chose the accelerated disbursement option to receive 30 percent of its funding upfront, the LOC commitment letter would indicate an intent to issue a LOC in the amount of \$3.7 million.⁹

Finally, we note that provisionally selected bidders are free under the Commission’s rules to submit a commitment letter by the February 3rd deadline from one bank, and subsequently submit an LOC from a different issuing bank when the Bureau ultimately issues a Public Notice that the entity is ready to be authorized to receive support, after satisfaction of all of the requirements to be authorized to receive support. There is no Commission requirement that the same bank issue the commitment letter and the ultimate LOC.

For additional information on this proceeding, contact Ian Forbes (Ian.Forbes@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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⁵ See *id.* at 8805, App. A. See also *id.* at 8793, para. 69 (“By virtue of entering into a LOC, the recipient has notice that the Bureau may choose to draw on the LOC if . . . it fails to timely replace an expiring LOC.”) (emphasis added).

⁶ In this instance, the LOC would escalate for the five years, i.e., the first year would be equal to the amount of support distributed in the first year, the second year would be equal to the amount of support distributed in the first and second years, and so on. Depending on the terms negotiated with the issuing bank, the LOC could, on its face, terminate after five years. In such situations, it would be the obligation of the recipient of funding to obtain another letter of credit from another institution within 60 days, as specified by the Commission. See *id.* at 8790-91, para. 61 and 8805, Appx. A.

⁷ We note that all LOCs remain subject to review and verification by the Universal Service Administrative Company. See *id.* at 8787-88, para. 54.

⁸ See *id.* at 8791, para. 62 (“when a winning bidder first obtains a LOC, it must be equal to the amount of the first disbursement.”)

⁹ See *id.* at 8794, para. 75. The LOC commitment letter would address the 30 percent upfront payment (\$3 million) plus the first year’s disbursement of the remaining 70 percent of support (\$700,000).