

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

In the Matter of

Petition of Massachusetts Broadband Institute and
Westfield Gas + Electric for Waiver of Sections
54.315(b)(3) and 54.315(c) of the Commission's
Rules

AU Docket 17-182

WC Docket 10-90

WC Docket 14-58

WC Docket No. 14-259

PETITION FOR WAIVER

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Dated: November 5, 2018

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The Massachusetts Broadband Institute ("MBI"), a division of the Massachusetts Technology Park Corporation doing business as the Massachusetts Technology Collaborative, and the City of Westfield Gas and Electric Light Department, operating as Westfield Gas + Electric ("WG&E")(together "Petitioners"), hereby petition the Wireline Competition Bureau pursuant to 47 C.F.R. 1.3 to waive as necessary any portions of Sections 54.315(b)(3) and 54.315(c) to allow WG&E, as a winning bidder in Auction 903 ("Auction"), to have MBI, assist in securing a letter of credit commitment letter ("Commitment Letter"), an irrevocable standby letter of credit ("Letter of Credit"), and an accompanying bankruptcy opinion letter ("Opinion Letter").¹

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*").

I. BACKGROUND

The Massachusetts Broadband Institute is an institute within the Massachusetts Technology Collaborative, a Massachusetts quasi-public agency established and operating pursuant to M.G.L.c. 40J (“MBI”). MBI was established in 2008 to meet the broadband access needs of underserved citizens throughout Massachusetts. The City of Westfield Gas and Electric Light Department, operating as Westfield Gas + Electric (“WG&E”), is a Massachusetts municipal light plant (“MLP”), operated pursuant to M.G.L.c. 164. It has been providing electricity and, later, natural gas to the residents of Westfield, Massachusetts since 1860 and has been owned by the City of Westfield since June 1, 1899.² WG&E qualified for and participated in the Auction and won bids for 5,163 locations in Massachusetts, representing \$10,325,400.60 in CAF II funds.

As a winning bidder in the Auction, WG&E must provide the Universal Service Administrative Company (“USAC”) with a Commitment Letter, pursuant to Section 54.315(b)(3), and a Letter of Credit, pursuant to Section 54.315(c). However, as an MLP operating under Chapter 164, WG&E is prohibited from incurring a debt obligation, such as a Letter of Credit, for the purpose of conducting business beyond the municipal boundaries of the city it serves. In order to meet its Letter of Credit requirement, WG&E has reached a partnership with the MBI whereby the MBI will secure a letter of credit to cover WG&E's Auction obligations. This is accomplished by the MBI placing grant funds in a pledged cash account with Berkshire Bank for the purpose of initially collateralizing the Letter of Credit. WG&E will additionally commit to deposit its Auction support into a pledged cash account with Berkshire Bank to meet the continuing collateralization needs of the Letter of Credit.

² Pursuant to Chapter 370 of the Acts of 1891, now codified at M.G.L.c. 164.

WG&E and the MBI have agreed to terms with Berkshire Bank to issue a Letter of Credit Commitment and an irrevocable Letter of Credit that satisfy the requirements of 47 C.F.R.

54.315(b)(2). Berkshire Bank is a 170 year old bank which is owned by Berkshire Hills Bancorp, Inc., a Delaware corporation with \$11.6 billion in assets and 113 branches in six states and headquartered in Boston, MA.³ Berkshire Bank meets the requirements of 47 C.F.R.

54.315(c)(2) as a United States bank, that is FDIC insured, and has a Weiss-issued bank safety rating of B- or better. Berkshire Bank will establish the Letter of Credit backed by cash collateral accounts in the names of the Petitioners (“Account(s)”) that will be pledged to Berkshire Bank. MBI will fund the first Account with an amount equal to the total CAF II support due to WG&E in the first support year,⁴ \$1,032,531.06, plus expenses. Berkshire Bank will issue a Commitment Letter naming USAC as beneficiary with WG&E as winning bidder and that will otherwise meet the requirements of 47 C.F.R. 54.315(b)(2).

Once its first support year begins, WG&E will direct CAF II support payments into the second Account, thereby increasing its balance and allowing Berkshire Bank to increase the value of the Letter of Credit to the value required by 47 C.F.R. 315(c)(1), or as otherwise specified by Berkshire Bank. The Petitioners commit to continue to direct CAF II support payments into the Accounts for as long as necessary to fund the Accounts in an amount necessary to meet the requirements of 47 C.F.R. 315(c)(1) and Berkshire Bank’s requirements. As the required value of the Letter of Credit decreases, any funds remaining in the Accounts that are not needed to (1) secure the Letter of Credit; or (2) reimburse the MBI for its costs related to

³ See *United States Securities and Exchange Commission Form 10-K Annual Report, for the fiscal year ending December 31, 2017*, <http://www.snl.com/Cache/c392411000.html>.

⁴ See *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 19-90, FCC 16-64 ¶ 30 (2016) (“CAF II Order”)

its involvement in obtaining and maintaining the Letter of Credit, will be used to repay the costs of network construction and maintenance.

II. STANDARD

The Federal Communications Commission (“Commission”)’s rules permit it to waive its rules, including the rules governing the Auction, for “good cause shown.”⁵ Courts have found that “good cause shown” “only exists if (1) ‘special circumstances warrant a deviation from the general rule,’ and (2) the waiver will ‘serve the public interest.’”⁶ In making this determination, courts have ruled that the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.⁷ The present facts clearly meet this waiver standard.

III. ARGUMENT

The Commission should grant Petitioners waiver request because WG&E has demonstrated that its unique circumstances warrant a deviation from the general rule and that such deviation would serve the public good. Specifically, the requested waiver would further the Commission’s goal of extending broadband service to unserved areas without diminishing the Commission’s ability to reclaim support in the event that WG&E fails to live up to its Auction obligations.

WG&E’s unique status as a MLP warrants deviation from the general rule because WG&E is prohibited from securing a Letter of Credit on its own, and without a Letter of Credit

⁵ 47 C.F.R. § 1.3.

⁶ *Consolidated Communications of California Company v. FCC*, 715 Fed.Appx. 13, 14 (D.C. Cir. 2018).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

the communities WG&E would serve will be harmed by failing to obtain broadband access. As explained above, WG&E's public status severely limits the extent to which it can obtain credit for operations outside its municipal boundaries. In contrast to the private providers typically associated with this program, WG&E's public status and cooperative project plan present obstacles to obtaining a Letter of Credit that a private entity does not have. By permitting the MBI to assist in obtaining a Letter of Credit, the Commission could level the field to the benefit of the residents in these communities.

Moreover, the Commission could grant such a waiver without jeopardizing its ability to safeguard Auction support. The rules of the Auction include the requirement for a Letter of Credit from winning bidders in order to protect USAC from losses and ensure that USAC dollars are spent as intended: to extend broadband service to areas currently unable to access those services. Specifically, the Commission chose to require a Letter of Credit over other possible forms of financial protection, because it will "permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements."⁸ Permitting WG&E to provide a jointly issued Letter of Credit with the MBI will not diminish the Commission's ability to immediately reclaim support because the Letter of Credit is irrevocable, abides by all other terms and conditions expressed in the CAF II Order, and is secured by a bank meeting the Commission's criteria. In fact, the Petitioners status as public entities require them to abide by several rules safeguarding the use of public funds, thus enhancing the Commission's ability to ensure support was properly used to further its goals in ways beyond what is possible with private entities.

⁸ *CAF II Order* at ¶ 30.

Here, the special circumstances warrant the slight deviation from the Auction rules that this Petition requests because that deviation would benefit the public interest in at least two ways. First, while WG&E's public status and its cooperation with MBI and several Massachusetts municipalities to maximize the effect of CAF II support complicates the obtaining of a bank letter of credit generally used by the private sector, it will allow WG&E, MBI and participating Massachusetts localities to achieve USAC's goal in conducting this Auction—the extension of broadband service to those currently unserved—far beyond what would be possible using USAC funds alone. Second, granting this waiver will provide USAC with a Letter of Credit established for an account held by not one, but two entities, both public. This will provide USAC protection even greater than would a Letter of Credit established for an account of a single, private sector entity, as both WG&E and MBI are publically managed and accountable. These special circumstances and the public benefits this waiver will provide to USAC warrant the Commission's granting of this waiver petition.

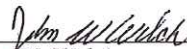
IV. CONCLUSION

For the foregoing reasons, the Bureau should grant this Petition and waive Sections 54.315(b)(3) and 54.315(c) as they relate to WG&E's participation in the Auction.

Respectfully submitted,

Westfield Gas & Electric Light Department

By its attorney,



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November 5, 2018

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Carolyn Kirk', is written over a horizontal line.

Carolyn Kirk
Interim Executive Director
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November 5, 2018

