

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	AU Docket No. 17-182
<b>POINT BROADBAND, LLC</b>	)	
	)	AU Docket No. 20-34
Petition for Waiver of Sections 54.804(c)(2) and	)	
54.315(c)(2) of the Commission’s Rules	)	WC Docket No. 10-90

To: Chief, Wireline Competition Bureau

**PETITION FOR WAIVER**

Point Broadband, LLC (“Point LLC”), on behalf of itself and its wholly-owned subsidiaries, Point Broadband Fiber Holding, LLC (“Point Fiber”) and Sunset Digital Communications, LLC (“Sunset Digital”) (Point LLC, Point Fiber, and Sunset Digital, collectively, “Point Broadband”), hereby respectfully requests waiver of Sections 54.804(c)(2) and 54.315(c)(2) of the Commission’s rules.<sup>1</sup> The requested waiver would permit Point Broadband to maintain the letters of credit associated with its Rural Digital Opportunity Fund Phase I (“RDOF”) and Connect America Fund Phase II (“CAF II”) support with its existing issuer, Ally Bank, one of the top 25 banks in the United States.

Grant of the requested waiver will permit Point Broadband to focus resources on broadband buildout to unserved areas and avoid the unnecessary and substantial expense of entering into a new letter of credit relationship, while fully protecting the government’s interest in funds disbursed to Point Broadband and its subsidiaries. Ally Bank is a strong, stable U.S. bank, with some \$180 billion in assets and an investment grade rating from Standards & Poor’s and other nationally recognized ratings agencies. Point Broadband has been allowed to have its letters

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<sup>1</sup> Waiver is sought pursuant to Section 1.3 of the Commission’s rules. *See* 47 C.F.R. § 1.3.

of credit with Ally Bank since October 2021 (when it began receiving RDOF support), and the sole reason for ambiguity at this time is that one ratings agency, Weiss, currently has a rating for the bank at one notch below the “B-” level specified in Sections 54.804(c)(2) and 54.315(c)(2). Notably, however, Weiss also has found Ally Bank to have “excellent current capitalization” and “excellent overall stability.” The Commission accordingly should allow Point Broadband to maintain letters of credit with Ally Bank and not require it to incur needless new banking and transaction fees of up to \$1,000,000 annually, as these unnecessary expenses would detract from capital otherwise available for broadband deployment.

**Background.** Point Broadband, headquartered in West Point, Georgia, was founded in 2017 with the mission of delivering a superior broadband solution to consumers and businesses in rural communities in the United States. The Commission’s Wireline Competition Bureau (“Bureau”) has authorized Point Fiber to receive RDOF support in Alabama, Georgia, Michigan, New York and Virginia,<sup>2</sup> as well as CAF II support in Michigan.<sup>3</sup> It also has authorized Sunset Digital to receive CAF II support in Tennessee and Virginia.<sup>4</sup> Point Broadband is building broadband to the designated census blocks in these states on a timely basis and, in many cases, is meeting its RDOF and CAF II milestones well ahead of schedule. Point Broadband also is working vigorously to deploy its own private capital to enhance broadband availability and affordability throughout its service area.

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<sup>2</sup> *Rural Digital Opportunity Fund Support Authorized for 466 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 21-1158, Att. A (WCB/OEA Sept. 15, 2022).

<sup>3</sup> *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 20-261, DA 20-1136 (WCB Sept. 28, 2020) (authorizing Point Fiber’s acquisition of the CAF II obligations and support of Crystal Automation Systems, Inc., also known as Casair).

<sup>4</sup> *Connect America Fund Phase II Auction Support Authorized for 387 Winning Bids*, AU Docket No. 17-182 and WC Docket No. 10-90, Public Notice, DA 19-1030, Att. A (WCB/OEA Oct. 10, 2019).

In October 2021, following a Commission-approved transaction in which funds managed by GTCR, LLC acquired a majority interest in Point Broadband, Point Broadband entered into a new letter of credit arrangement with Ally Bank. Point Broadband timely submitted the letters of credit and Bankruptcy Code opinions of counsel to the Universal Service Administrative Company (“USAC”), with copies to the FCC Auction System, for both Point Fiber and Sunset Digital. USAC promptly confirmed that the letters of credit and opinions met all applicable requirements.

Pursuant to Section 54.804(c) of the Commission’s rules, Point Broadband arranged with Ally Bank to increase the amount of Point Fiber’s RDOF-related letters of credit for Year Two of the RDOF award.<sup>5</sup> Point Broadband submitted the applicable amendments to USAC for review and approval on July 27, 2022. USAC explained, however, that it did not have authority to accept the amended letters of credit because Ally Bank currently has a Weiss rating of C+, and it directed Point Broadband to submit new letters of credit and opinions of counsel. Point Broadband understands that absent a waiver, if new letters of credit and opinions are not in place and approved by USAC by approximately mid-September, USAC may be required under FCC rules to withhold all RDOF and CAF II payments to Point Fiber and Sunset Digital.

**Justification for waiver.** The Commission’s rules may be waived for good cause shown.<sup>6</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule, and deviation from the general rule will serve the public interest.<sup>7</sup> Point Broadband’s request for waiver so that it may maintain its letter of credit arrangement with Ally Bank neatly

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<sup>5</sup> 47 C.F.R. § 54.804(c).

<sup>6</sup> 47 C.F.R § 1.3.

<sup>7</sup> See *Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). See also *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

fits within the bounds of that waiver authority, and the Bureau should act promptly to issue the requested waiver.

*First*, grant of the requested waiver will in no way undermine the government’s interest in funds disbursed to Point Fiber. Ally Bank is the 22<sup>nd</sup> largest bank in the United States, with over \$180 billion in assets.<sup>8</sup> Its stock is publicly traded on the New York Stock Exchange, and it is a Member FDIC bank.<sup>9</sup> Standard & Poor’s has assigned a long-term credit rating to Ally Bank at the investment grade level of BBB-, and each of Moody’s and Fitch have likewise assigned an equivalent investment grade rating to it.<sup>10</sup> Thus, all of the “Big Three” credit rating agencies agree that Ally Bank is a stable financial institution with a low risk of default.

Although Weiss has assigned an overall rating of C+ to the bank, a closer look at the individual components of the rating reveals that even Weiss has found that Ally Bank has an “Excellent overall stability index (9.9 on a scale of 0 to 10)” and “Excellent current capitalization (8.0 on a scale of 0 to 10).”<sup>11</sup> In fact, as a Top 100 (indeed, a Top 25) bank with an investment grade rating from Standard & Poor’s, Ally Bank would qualify as an acceptable issuer of a letter of credit under the criteria established by the Commission for CoBank and the National Rural Utilities Cooperative Finance Corporation.<sup>12</sup>

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<sup>8</sup> See Federal Reserve Statistical Release, Large Commercial Banks as of March 31, 2022, at <https://www.federalreserve.gov/releases/lbr/current/> (listing Ally Bank as the 22<sup>nd</sup> largest U.S. bank); Ally Financial Inc., 2021 Annual Report, at 6 (2022) (“Ally Bank 10-K”), at <https://www.ally.com/about/investor/annual-reports/>.

<sup>9</sup> See FDIC, Institutional Details for Ally Bank (FDIC Cert # 57803), at <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/57803>.

<sup>10</sup> See Ally Bank 10-K at 98.

<sup>11</sup> See Weiss Ratings, Bank Ratings for Ally Bank as March 31, 2022, at <https://weissratings.com/en/bank/57803/summary>.

<sup>12</sup> See 47 C.F.R. §§ 54.804(c)(2)(iii)-(iv) and 54.315(c)(2)(iii)-(iv) (establishing that each of CoBank and The National Rural Utilities Cooperative Finance Corporation is an acceptable issuer of letters of credit so long as it “maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the

To be clear, Point Broadband fully agrees with and respects the underlying policy reflected in the Commission’s rules, as it is important that banks that issue letters of credit associated with RDOF and CAF II support be financially stable. Here, however, the Commission’s interest in funds disbursed to Point Fiber and Sunset Digital will be well protected by letters of credit issued by Ally Bank, given that bank’s demonstrated strength and stability. As the Bureau has explained, the rules in question are intended to help “ensure that the bank offers financial security and has the resources to deal with a variety of adverse economic conditions.”<sup>13</sup> The unique facts presented here demonstrate that Ally Bank provides that financial security and has ample resources to stand behind the letters of credit.

*Second*, Point Broadband already has entered into letters of credit with Ally Bank that were found to be acceptable less than one year ago, at the time it was authorized for RDOF support. Point Broadband recognizes that the Bureau may view the situation differently if approached in the first instance for approval of a letter of credit under similar facts. Here, however, Point Broadband and its subsidiaries have developed reliance interests with respect to the relationship with Ally Bank. Particularly given that Ally Bank is a reliable, well-capitalized issuer, it would be inequitable to force Point Broadband to unwind its letter of credit arrangement now.

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issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor’s of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency”).

<sup>13</sup> *Uniendo a Puerto Fund and the Connect USVI Fund Connect American Fund*, Order on Reconsideration and Order, DA 20-838, 35 FCC Rcd. 8211 at para. 39 (WCB 2020). The instant waiver request can easily be distinguished from the foregoing case, in which the a coalition of carriers sought a blanket waiver of the bank eligibility rules at the outset of support and did not present any evidence demonstrating the financial stability of the banks that might issue the required letters of credit pursuant to the waiver. Here, as noted above, Point Broadband already has a letter of credit with Ally Bank and provides herein ample evidence of that bank’s financial stability.

*Third*, and relatedly, requiring Point Broadband to obtain new letters of credit and opinions of counsel would needlessly impose costs, in the form of additional banking and transaction fees, of up to \$1,000,000 annually as compared to its current arrangement with Ally Bank. That would be up to \$1,000,000 annually that could be better spent on building the company's fiber-to-the-premises broadband network in unserved and underserved areas within the Point Broadband footprint. The Commission and Bureau have made great strides in facilitating the availability of broadband in rural and other unserved areas, both through the Universal Service Fund and by lowering barriers to private investment. By ensuring that strict application of its rules do not inadvertently force an RDOF and CAF II recipient to incur needless expenses, grant of the requested waiver will serve the Commission's overarching goals of furthering broadband availability and affordability.

## Conclusion

For the foregoing reasons, Point Broadband respectfully requests that the Bureau grant a waiver of Sections 54.804(c)(2) and 54.315(c)(2) of the Commission's rules, so that Ally Bank may continue to serve as the issuer of letters of credit for Point Fiber and Sunset Digital in connection with receipt of RDOF and CAF II support.

Respectfully submitted,

**POINT BROADBAND, LLC**

**on behalf of itself and its wholly-owned  
subsidiaries:**

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