



PUBLIC NOTICE

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**GRANT OF DOMESTIC SECTION 214 APPLICATION FOR THE ACQUISITION OF
CONNECT AMERICA FUND PHASE II AUCTION FUNDING AND RELATED BUILDOUT
AND SERVICE OBLIGATIONS OF
RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC. BY EMPOWER BROADBAND, INC.
AND LIMITED RELIEF FOR EMPOWER FROM CERTAIN CAF PHASE II AUCTION
COMPLIANCE AND LETTER OF CREDIT RULES**

WC Docket No. 24-145

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by RiverStreet Communications of Virginia, Inc. (RiverStreet) and EMPOWER Broadband, Inc. (EMPOWER) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), and sections 63.03-63.04 of the Commission's rules,¹ requesting consent for the acquisition of RiverStreet's Connect America Fund Phase II Auction (CAF II Auction) support and related buildout and service obligations associated with certain designated Census Block Groups (CBGs) in the Commonwealth of Virginia (Assigned CBGs) by EMPOWER.²

In Section II of this Public Notice, we address EMPOWER's requests to waive certain CAF II Auction obligations and requirements to which EMPOWER will be subject upon authorization. More specifically, we deny EMPOWER's request to waive and extend three deployment milestones by which CAF II Auction support recipients must deploy service to a specific percentage of supported locations, but we modify certain consequences of noncompliance with those milestones.³ Second, we grant EMPOWER's request for a limited waiver of certain CAF II Auction Letter of Credit (LOC) rules.⁴

¹ See 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

² See Section I *infra*; Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc., WC Docket No. 24-145 (filed May 14, 2024) (Application). Applicants provide a list of each of the CBGs included in the Assigned CBGs. See Application, Exh. A (Census Block Groups, Location Figures and 10 Year CAF II Funding Amounts Applicants Propose to Assign from RiverStreet Communications of Virginia, Inc. to EMPOWER Broadband, Inc.). On May 15, 2024, Applicants filed a supplement to their domestic section 214 application. Supplement to Joint Domestic 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations, WC Docket No. 24-145 (filed May 15, 2024) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, applications.

³ Application at 15-18; 47 CFR §§ 54.310(c), 54.320(d)(i)-(iv).

⁴ On July 5, 2024, EMPOWER filed a request for limited waiver of section 54.315(c)(1) of the Commission's rules. See 47 CFR §§ 54.315(c)(1); Further Supplement to Joint Domestic 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations, Request for Limited Waiver

On May 20, 2024, the Bureau released a Public Notice seeking comment on the Application and EMPOWER's waiver request included in the Application.⁵ The Bureau did not receive comments or petitions in opposition to the Application or EMPOWER's waiver requests.

I. DOMESTIC SECTION 214 APPLICATION

Applicants

RiverStreet, a Virginia corporation, provides service as a competitive local exchange carrier (LEC) in the following Virginia counties: Bedford, Brunswick, Campbell, Charlotte, King and Queen, and Pittsylvania. RiverStreet serves Internet subscribers in Pittsylvania, Campbell, Bedford, Franklin, Halifax, Charlotte, Prince Edward, King and Queen, Caroline, Essex, Middlesex, King William, Nelson, Albemarle, City of Danville (Pittsylvania), Pittsylvania, Charles City County, City of Emporia (Greensville County), Halifax, City of South Boston (Halifax), and City of Martinsville (Henry).⁶ RiverStreet has been designated as an Eligible Telecommunications Carrier (ETC) in Virginia pursuant to section 214(e) of the Act.⁷ On July 15, 2019, the Bureau authorized RiverStreet to receive \$32,140,887.10 in CAF II Auction support to serve 13,518 locations in Virginia.⁸ RiverStreet does not have any customers in the Assigned CBGs.⁹

EMPOWER, a Virginia corporation, provides communications services in south central Virginia in the counties of Brunswick, Charlotte, Emporia, Greensville, Halifax, Lunenburg, Mecklenburg, Pittsylvania, Southampton, and Sussex.¹⁰ EMPOWER is a designated ETC pursuant to section 214(e) of the Act.¹¹ On June 10, 2019, the Bureau authorized EMPOWER to receive \$1,868,320.00 in CAF II Auction support in Virginia to serve 838 locations.¹² EMPOWER is a wholly-owned subsidiary of

of the Commission's Rules, WC Docket No. 24-145 at 3 (filed July 5, 2024) (Further Supplement and Waiver Request).

⁵ See *Domestic Section 214 Application Filed for the Acquisition of Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by Empower Broadband*, WC Docket No. 24-145, Public Notice, DA 24-477 (WCB rel. May 20, 2024) (*Public Notice*). In the *Public Notice*, the Bureau also granted RiverStreet a limited waiver of the CAF II Auction non-compliance Tier 4 (T4) support recovery deadline, so that RiverStreet had until June 30, 2024, to pay the required support recovery amount or certify to offering service to enough locations to move into a lower non-compliance tier before the Bureau would direct the Universal Service Administrative Company (USAC) to draw on RiverStreet's letter of credit. *Public Notice*, Section III (RiverStreet's Request for Waiver of the Non-Compliance Tier 4 Support Recovery Deadline) at 5-8.

⁶ Application at 2-3. Applicants provide ownership and affiliate information related to RiverStreet in their Application. *Id.* at 3-5, 12. Applicants state that RiverStreet currently participates in the Commission's Lifeline program and participated in the Affordable Connectivity Program. *Id.* at 8. We note that at this time of this Public Notice, due to a lack of additional funding from Congress, the Affordable Connectivity Program has ended.

⁷ 47 U.S.C. § 214(e); Application at 3.

⁸ *Id.*; *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019) (*CAF II Public Notice*). Applicants note that RiverStreet also receives Rural Digital Opportunity Fund (RDOF) support. Application at 3. Specifically, on February 14, 2022, the Bureau authorized RiverStreet to receive \$39,777,711.20 in RDOF support in Virginia to serve 24,213 locations. See *Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 1617, Attach. A (WCB/OEA 2022) (*RDOF Public Notice*).

⁹ Application at 2.

¹⁰ *Id.* at 5-6. Applicants state that EMPOWER participates in the Commission's Lifeline and, at the time of Application filing, the Affordable Connectivity Program, and would continue to participate in both programs. *Id.* at 8.

¹¹ 47 U.S.C. § 214(e); see also Application at 6.

Mecklenburg Electric Cooperative (Mecklenburg EC), a Virginia corporation and rural electric cooperative that is owned by its members.¹³ Applicants state that neither EMPOWER, EMPOWER TELECOM, nor Mecklenburg EC holds a 10% or greater interest in any other provider of domestic telecommunications services.¹⁴

Description of the Proposed Transaction

Pursuant to the terms of the proposed transaction, Applicants entered into an agreement on April 25, 2024, subject to Commission approval, whereby RiverStreet will assign the CAF II Auction obligations for the Assigned CBGs to EMPOWER, who has agreed to assume and accept all future CAF II Auction compliance obligations for the Assigned CBGs.¹⁵ Applicants state that, for the Assigned CBGs, EMPOWER will receive a total of \$8,173,842.00 in annual CAF II Auction support for 3,757 locations.¹⁶ In addition, RiverStreet will pay to EMPOWER an amount equal to all CAF II Auction support received to date by RiverStreet in the Assigned CBGs at closing.¹⁷ EMPOWER is not acquiring any of RiverStreet's infrastructure assets or customers.¹⁸

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁹ We then employ a

¹² See *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019). On October 14, 2021, the Bureau also authorized EMPOWER to receive \$5,053,914.90 in RDOF support in Virginia to serve 3,602 locations. See *Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 36 FCC Rcd 14528, 14526, Attach. A (WCB 2021).

¹³ Application at 6. Applicants state that no single member holds a 10% or greater interest in Mecklenburg EC. *Id.* Mecklenburg EC wholly owns EMPOWER TELECOM, Inc. (EMPOWER TELECOM), a Virginia corporation, that provides services as a rural incumbent LEC in south central Virginia. *Id.* at 7.

¹⁴ Supplement at 3.

¹⁵ *Id.* at 7.

¹⁶ Application at 7.

¹⁷ *Id.* EMPOWER filed, contemporaneously with the Application, a petition seeking FCC expansion of its ETC designation to include the CAF II Auction-funded census blocks in the Assigned CBGs which, if granted, will make EMPOWER eligible to receive CAF II Auction and federal Lifeline support in the Assigned CBGs. *Id.* In this petition, EMPOWER also seeks a Lifeline-only ETC designation in additional areas in south central Virginia. *Id.* The Bureau placed this petition on public notice on June 12, 2024, with a comment deadline of July 12, 2024, and a reply deadline of July 29, 2024. *Wireline Competition Bureau Seeks Comment on EMPOWER Broadband, Inc.'s Petition for Expansion of Its Eligible Telecommunications Carrier Designation*, WC Docket No. 09-197, Public Notice, DA 24-561 (WCB June 12, 2024).

¹⁸ Application at 2.

¹⁹ See, e.g., *Application of Verizon Communications Inc. a América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and*

balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²¹

We find that there are no potential public interest harms identified in the record. To begin with, the proposed transaction will not result in a reduction of competition. RiverStreet does not have any subscribers in the Assigned CBGs.²² Accordingly, the transaction will not result in any loss or impairment of service for any subscribers in the Assigned CBGs, and we therefore expect no potential harm to existing customers or competition resulting from the proposed transaction. Applicants state that EMPOWER has both the necessary industry experience and requisite financial means to take on the responsibility of deploying CAF II Auction-supported voice and broadband service in the CAF II Auction-funded census blocks located within the Assigned CBGs.²³ Applicants assert the transaction will not result in any adverse alteration to the buildout plans that EMPOWER submitted to the Commission to be authorized to receive CAF II Auction support.²⁴ Applicants state that there will be no changes in the fiber-to-the-home technology being used by EMPOWER in executing its CAF II Auction buildout plans and that EMPOWER will continue to deploy fiber technology capable of providing symmetrical gigabit-tier speeds in meeting its CAF II Auction buildout milestones.²⁵ Applicants further note that EMPOWER is not taking on any debt repayment obligations or otherwise increasing substantially its costs to deploy service, and will continue to have the same access to financial resources following consummation of the transaction.²⁶ As a result, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.²⁷ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.²⁸ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and

Transferors et al., MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*).

²⁰ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

²¹ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

²² Application at 2.

²³ *Id.* at 9. Applicants note that the Commission has already reviewed and approved EMPOWER's CAF II Auction and Rural Digital Opportunity Fund (RDOF) long-form applications and authorized EMPOWER to receive CAF II Auction and RDOF support. *Id.* Applicants state that they do not anticipate that any changes to EMPOWER's operations or other circumstances might occur in the wake of the transaction that could compromise Applicants' ability to meet their service obligations. *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

²⁸ See *id.* at 9237-38, paras. 275-76.

likelihood than when harms are present.²⁹

Applicants assert that the proposed transaction will serve the public interest because it will accelerate EMPOWER's ongoing efforts to expand broadband service to unserved areas.³⁰ Applicants believe that customers in the Assigned CBGs would be best served by EMPOWER because of the overlap of the Assigned CBG areas with the electric service territory of Mecklenburg EC, the proximity of the Assigned CBG areas to EMPOWER's broadband service area, and considering EMPOWER's existing operations, resources, and infrastructure.³¹ Applicants assert that EMPOWER can achieve economies of scale and leverage its labor force, infrastructure, and operational capabilities to build out the Assigned CBGs rapidly and cost-effectively as it expands its broadband operations.³² Given that EMPOWER is prepared to devote additional capital to accelerate facilities-based service offerings,³³ we find it likely that the proposed transaction would result in some public interest benefits, including the deployment of facilities in the acquired CAF II Auction area more quickly than if the transaction did not take place. Absent any potential harms and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

II. EMPOWER'S WAIVER REQUESTS

We deny EMPOWER's request to waive and extend, as of its authorization, the 40%, 60% and 80% CAF II Auction service milestones but modify certain consequences for noncompliance with these milestones.³⁴ RiverStreet is currently in Tier 3 (T3) non-compliance status in Virginia and has not deployed broadband to any locations in the CBGs being transferred to EMPOWER. Therefore, EMPOWER will be in a non-compliance tier at the time the transaction closes.³⁵ Upon being authorized in the transferred CBGs, EMPOWER will receive support consistent with the percentages set forth in section 54.320(d)(i)-(v) scaled to the level of noncompliance,³⁶ and will be subject to quarterly reporting obligations until its noncompliance status is 5% or less.³⁷ However, we permit EMPOWER to remain in

²⁹ *See id.*

³⁰ Application at 10.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 7.

³⁴ Application at 15, n.16 (seeking an extension of the 40% and 60% milestones until December 31, 2024, and the 80% milestone until June 30, 2025). 47 CFR § 54.310(c) (providing that CAF II Auction support recipients must complete deployment to 40% of its supported locations by December 31, 2022, 60% of supported locations December 31, 2023, 80% of supported locations by December 31, 2024, and 100% of supported locations by December 31, 2025). EMPOWER also seeks an extension of the deadlines to certify compliance with the extended milestones. Application at 15, n.17; 47 CFR § 54.316(b)(4) (providing that CAF II Auction support recipient recipients must certify by March 1st of every year following a service milestone, that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations). Because we deny the milestone extension requests and therefore, EMPOWER cannot certify compliance with these milestones, the related requests for extension of these certifications are moot. Further, because EMPOWER has provided notice of its post-authorization noncompliance with post-authorization milestones in its Application, the truth and accuracy of which the Chief Executive Office of EMPOWER certifies, under penalty of perjury, we find that EMPOWER has already provided the requisite notice of noncompliance as required by section 54.320(d) of the Commission's rules. Application at 22 (Certification of John C. Lee, Jr., President and Chief Executive Office, EMPOWER Broadband, Inc. (dated May 14, 2024)); 47 CFR § 54.320(d).

³⁵ We note that EMPOWER can choose to combine all of its CAF II Auction areas in Virginia and calculate compliance on a state-wide basis. However, because the number of locations in EMPOWER's current CAF II Auction areas in Virginia is significantly smaller than the number of locations in the CBGs being acquired from RiverStreet, EMPOWER will not be in compliance in Virginia even if the areas are combined.

³⁶ 47 CFR § 54.320(d)(1)(i)-(iv).

noncompliance status without recovering any support until December 31, 2025.³⁸ As requested by EMPOWER, we also waive the pre-authorization withholding of support from RiverStreet for its noncompliance with prior milestones, thus permitting EMPOWER to receive all support that would have been disbursed to RiverStreet for the assigned CBGs had it complied with all requirements.³⁹ In addition, we permit EMPOWER to maintain a LOC securing support equal to three years of support as specified in the RDOF LOC rules, rather than the six years of support specified in the CAF II Auction LOC rules.⁴⁰

Discussion

Generally, the Commission's rules may be waived for good cause shown.⁴¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁴³ In general, the Commission does "not expect to routinely grant waiver requests" of deployment milestones.⁴⁴

EMPOWER seeks post-authorization relief from the withholding and reporting consequences for noncompliance with two past deployment milestones consistent with a request to extend the 40% and 60% milestones until December 31, 2024, and the 80% milestone until June 30, 2025.⁴⁵ If these waiver requests are not granted, EMPOWER will, at the time of authorization, have a compliance gap likely exceeding 50% of the number of locations to which it must deploy service to meet the 60% milestone.⁴⁶ If this compliance gap continues for more than six months, EMPOWER would be subject to support recovery.⁴⁷ For the reasons explained below, we waive any support recovery for noncompliance until December 31, 2025.⁴⁸

We find that EMPOWER has not demonstrated good cause to grant its requested waiver of the two prior deployment milestones and the withholding and reporting consequences of its post-

³⁷ *Id.* § 54.320(d)(1)(i).

³⁸ *Id.* § 54.320(d)(1)(iv).

³⁹ Application at 15, 17. On January 17, 2023, RiverStreet notified the Bureau that it had missed the 40% service milestone and detailed its plan for coming into compliance. Letter from Eric S. Cramer, President/CEO, RiverStreet Management Services LLC to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al. (filed Jan. 17, 2023). Although the Bureau has not and will not recover support from RiverStreet consistent with its waiver of the deadline for repaying such support and RiverStreet's move into a lower noncompliance tier (T3), the Bureau has withheld a percentage of support disbursements in accordance with section 54.320(d)(1) for its noncompliance with the 40% milestone for more than 6 months. *See Public Notice* at 7-8; 47 CFR § 54.310(d)(1)(iv)(B).

⁴⁰ Further Supplement and Waiver Request at 1-6. 47 CFR §§ 54.315(c)(1) (requiring CAF II Auction support recipients to maintain a LOC in an amount equal to, at a minimum, the amount of already disbursed support and support that will be disbursed in the coming year); *id.* at §54.804(c)(v)(ii) (requiring RDOF support recipients to maintain a LOC equal to three years of support when noncompliant with more than one deployment milestone).

⁴¹ 47 CFR § 1.3.

⁴² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴³ *Id.*

⁴⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15660, para. 40 & n.93 (2014).

⁴⁵ Application at 15-18. 47 CFR § 54.310(c).

⁴⁶ EMPOWER takes no assets from RiverStreet. Application at 2, 15 n.16.

⁴⁷ 47 CFR § 54.320(d)(1)(iv)(B).

⁴⁸ *Id.*

authorization non-compliance status.⁴⁹ We also deny the requested extension of the 80% milestone.⁵⁰ Accordingly and consistent with our precedent, as of its authorization to receive the support associated with the assigned CBGs, EMPOWER assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact its ability to meet its present and future obligations.⁵¹ This approach helps ensure that parties do not enter lightly into high cost support transactions without completing their requisite level of due diligence and without a plan to timely resolve current noncompliance and meet future requirements.⁵² Even if, as EMPOWER explains, interim withholding consequences would make future deployment more expensive in the short run, EMPOWER's pre-transaction due diligence should and did take into account these consequences and the availability of other funding.⁵³ Moreover, long-

⁴⁹ Application at 15-18. We note that this decision does not conflict with the Bureau's prior decision in the *Atlink Transfer and Waiver Order*, where the Bureau waived two deployment milestones (40%, 60% milestones) that, at the time of Atlink's authorization, had yet to occur. *Domestic 214 Application and Waivers Granted for the Transfer of Connect America Fund Phase II Auction Support Obligations from Redwire, Inc. to Atlink Services, LLC, et al.*, WC Docket Nos. 22-55, 10-90, AU Docket No. 17-182, 37 FCC Rcd 7406, 7413-16 (WCB 2022) (*Atlink Transfer and Waiver Order*). Because these waivers pertained to future milestones, Atlink would not have been immediately noncompliant as of its post-transaction authorization and was not seeking relief from the post-transaction, ongoing obligation to have met a milestone. Instead, Atlink sought prospective relief from any withholding or recovery consequences so as to allow it the resources to meet future milestones. Moreover, that decision reflected circumstances created by an economic crisis threatening the Otoe-Missouria Tribe of Oklahoma. *See id.* at 7414.

⁵⁰ Although in the *Atlink Transfer and Waiver Order*, the Bureau did extend two future milestones, there were also differentiating circumstances in that case warranting different treatment of EMPOWER's request for extension of the 80% milestone. *Atlink Transfer and Waiver Order*, 37 FCC Rcd 7406. As discussed in detail below, EMPOWER will receive all support that would have been disbursed to cover deployments in the assigned CBGs as of its authorization, which will constitute all but a six month period (at most) of support payments preceding the upcoming 80% milestone. *See infra* page 9. In addition, the 80% milestone occurs within a year of the 100% milestone, and the Commission's interest in ensuring full deployment in these circumstances outweighs any limited and temporary financial burden that EMPOWER will face pending its full compliance. *See* 47 CFR § 54.310(c) (providing that CAF II Auction support recipients must complete deployment to 100% of supported locations by December 31, 2025).

⁵¹ *See, e.g., Authorization of Atlink Services, LLC to Receive Connect America Fund (CAF) Phase II Auction Support Transferred from Cherokee Telephone Company Pursuant to a Commission Approved Transaction*, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 6158, 6159 (WCB 2022) (stating that as a condition of the 214 authorization, a transferee "assumes responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions on the ground in the Assigned Census Blocks that could negatively impact [its] ability to meet these obligations in the future," and "must assume all risk and consequences of noncompliance with CAF Phase II auction requirements ...").

⁵² *See Connect America Fund et al., WC Docket No. 10-90 et al., Order on Reconsideration*, 33 FCC Rcd 1380, 1390, para. 25 (2018) ("emphasiz[ing] that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications."); *see also id.* at 5966, para. 47 (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

⁵³ Application at 16-18 (explaining that EMPOWER "is prepared to dedicate considerable administrative and financial resources to meet deployment milestones applicable to the Assigned CBGs, but the receipt of CAF II support awarded for these Assigned CBGs would make Assignee's ability to meet its proposed deadlines easier"). We note that because EMPOWER anticipates deploying service to 60% of its required locations no later than the 80% milestone deadline (December 31, 2024), or 75% of the locations that it must serve to meet the 80% milestone, its withholding status will be reduced to T3 and it will receive 75% of its total month payments at this time. *See* Application at 16-17; 47 CFR § 54.320(d)(1)(iii). EMPOWER's new combined location obligation will be 4,595 locations. When it serves 60% of those locations, it will be serving 2,757 locations. It will meet its 80% milestone

standing Commission precedent has repeatedly held that absent special circumstances, financial hardship in meeting obligations is insufficient to justify waiver.⁵⁴ For these reasons, we conclude that EMPOWER has failed to show special circumstances warranting post-authorization deviation from ongoing program requirements and certain related consequences, including the withholding of support and quarterly reporting. Moreover, waiver of these requirements would not serve the public interest because it would reduce the incentive that withheld support serves to encourage carriers to come back into compliance with broadband deployment milestones.

We do, however, agree that waiver of some of our rules is warranted. Unique circumstances in this case prevented RiverStreet from deploying broadband in these CBGs and raised the possibility of duplicative federal and state support in these areas. Based upon coordination with the Virginia Department of Housing and Community Development (Virginia DHCD), the Bureau has determined that waiver of our rules to allow EMPOWER to receive, immediately upon authorization, any withheld support associated with the assigned CBGs and extend the deadline for any support recovery from noncompliance until December 31, 2025 will result in the swiftest deployment of broadband services in these areas while ensuring the efficient and non-duplicative use of federal and state broadband funds.⁵⁵ This waiver will ensure that EMPOWER has sufficient funding to undertake deployment in the assigned CBGs while providing EMPOWER with an incentive to come into compliance with the deployment milestones as soon as possible.

We also grant EMPOWER's request to waive the LOC rules, allowing it to secure a post-authorization LOC equal to three years of support rather than the six years of support.⁵⁶ In 2023, the Commission declined to extend to noncompliant CAF II Auction support recipients a long-standing waiver of CAF II Auction LOC rules in favor of the less onerous RDOF LOC rules.⁵⁷ In so limiting this waiver, the Commission reasoned that in situations involving noncompliant support recipients, the Commission is "most likely to need to draw on the LOCs of the CAF II support recipients," and noted that the "LOCs exist to protect the Universal Service Fund and allow for more efficient recovery of funds, when necessary."⁵⁸ While there may be some marginally increased risk that EMPOWER will not meet future deployment obligations when compared with fully compliant CAF II Auction support recipients, this risk is significantly attenuated given EMPOWER has demonstrated its diligence and general effectiveness in meeting requirements by fully complying with its current obligations.⁵⁹ Further, there is

when it serves 3,676 locations. Accordingly, EMPOWER will be serving 75% of its total location requirement as of the 80% milestone (2,757/4,595 locations) if it reaches the service commitment timeline it makes in its Application, and will enter T3 status.

⁵⁴ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Advantage Cellular Systems, Inc. Petition for Waiver of the FCC's Universal Service Rules*, Order on Reconsideration, WC Docket No. 08-71, CC Docket No. 95-45, Order, 31 FCC Rcd 3753, 3757, para. 11 (WCB 2016) ("If we were to hold that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support, that would effectively negate the public interest requirement, as this criterion would be met any time failure to meet a filing deadline resulted in reduced support."); *Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542 para. 8 (WCB 2014).

⁵⁵ 47 CFR § 54.320(d)(1)(iv)(B).

⁵⁶ Compare 47 CFR § 54.315(c)(1) with 47 CFR § 54.804(c)(v)(ii). *2023 CAF Phase II Auction Letter of Credit Waiver Order*, at 4, paras. 9-10.

⁵⁷ See *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 35 FCC Rcd 6556 (2020) (granting waiver of the CAF II Auction LOC rules in favor of the RDOF LOC rules); *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 36 FCC Rcd 16633 (WCB 2021); *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 37 FCC Rcd 14592 (WCB 2022) (extending the waiver through 2023); *Connect America Fund, et al.*, WC Docket No. et al., Order, DA 23-1140 at 3, para. 9 (WCB Dec. 6, 2023) (extending the waiver through 2024 but limiting it to fully compliant support recipients) (*2023 LOC Waiver Extension Order*).

⁵⁸ *2023 LOC Waiver Extension Order* at 3, para. 9.

no evidence that the unique combination of factors that resulted in RiverStreet's failure to deploy service in the assigned CBGs will impact EMPOWER's ability to deploy service in this area.

Accordingly, we conclude that special circumstances in this situation warrant waiver of the CAF II Auction LOC rules in favor of the RDOF LOC rules to permit EMPOWER to maintain a letter of credit valued at three years of support until USAC verifies compliance with the final broadband deployment milestone. We also find that this waiver serves the public interest as it will allow EMPOWER to better allocate resources to operate successfully and fulfill its deployment obligations.⁶⁰

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.⁶¹

Pursuant to sections 1, 4(i), 5(c), and 254 of the Act, 47 U.S.C. §§ 151, 154(i), 155(c), 254,⁶² and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3,⁶³ the Bureau hereby grants in part, denies in part, and dismisses in part, EMPOWER's petition for limited waiver of sections 54.310(c), 54.316(b)(4), and 54.320(d)(i)-(iv) of the Commission's rules, 47 CFR §§ 54.310(c), 54.316(b)(4), and 54.320(d)(i)-(iv),⁶⁴ to the extent described herein, and grants in full EMPOWER Broadband, Inc.'s request for limited waiver of section 54.315(c)(1) of the Commission's rules, 47 CFR § 54.315(c)(1).⁶⁵

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.⁶⁶ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.⁶⁷

For further information regarding the Application discussed in Section I, please contact Gregory Kwan, Wireline Competition Bureau, at gregory.kwan@fcc.gov. For further information regarding the waivers discussed in Section II, please contact Nissa Laughner, Wireline Competition Bureau, at nissa.laughner@fcc.gov.

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⁵⁹ Application at 16 (stating that EMPOWER is "on track" to meeting its current 80% deployment milestone).

⁶⁰ *See id.* at 3, para. 8. *See also* Further Supplement and Waiver Request at 5 ("Granting the requested waiver will promote these CAF II policies by better enabling EMPOWER Broadband to use its available capital to bring advanced broadband services to rural Virginia communities and consumers"); *id.* at 4-6.

⁶¹ 47 U.S.C. § 214; 47 CFR §§ 0.91, 0.291, 63.03, and 63.04. *See CAF II Public Notice*, 34 FCC Rcd at 5967-71; *RDOF Public Notice*, 37 FCC Rcd at 16-17.

⁶² 47 U.S.C. §§ 151, 154(i), 155(c), 254.

⁶³ *Id.* §§ 0.91, 0.291, 1.3

⁶⁴ *Id.* §§ 54.310(c), 54.316(b)(4), 54.320(d)(i)-(iv).

⁶⁵ *Id.* § 54.315(c)(1).

⁶⁶ 47 CFR § 1.103. We direct Applicants to transmit a copy of this Public Notice to the Universal Service Administrative Company. We further direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 24-145 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

⁶⁷ 47 CFR §§ 1.106, 1.115.