



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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June 23, 2020

The Honorable Ajit Pai
The Honorable Michael O'Rielly
The Honorable Brendan Carr
The Honorable Jessica Rosenworcel
The Honorable Geoffrey Starks
Federal Communications Commission (Commission)
445 12th Street, SW
Washington, DC 20554

Delivered via FCC Electronic Comment Filing System

RE: Proposed Rule GN Docket No. 20-32; FCC 20-52; FRS 16709

Dear Chairman Pai and Commissioners O'Rielly, Carr, Rosenworcel, and Starks:

The National Association of Surety Bond Producers (NASBP) is a national trade association whose members specialize in providing surety bonds for construction contracts and other purposes to companies and individuals needing the assurance offered by surety bond. NASBP members engage in contract and commercial surety production throughout the United States, Puerto Rico, Guam, and a number of other countries.

In the captioned proposed rule, the Commission seeks comment on whether the 5G Fund for Rural America should use alternate risk management measures as a means to reduce the burdens of the letters of credit (LOC) requirement. We specifically respond to the question posed in paragraph 189:

"The Commission observed in these prior auction processes that companies with existing lending relationships often use letters of credit in the normal course of operating their businesses and, generally, are able to maintain multiple forms of financing for varying purposes. On the other hand, the Commission also found that winning bidders complained of the high cost of obtaining and maintaining a letter of credit. The Commission therefore seeks comment on whether it should decline to require a letter of credit for the 5G Fund. Are there viable, less costly alternatives that still minimize risk to public funds?"

We understand that the Commission requires a LOC to secure the obligation to repay the support already paid for which there is a compliance shortfall (i.e., failure to meet a milestone). However, based on our observation of rural internet service providers (ISPs) who are having difficulty in securing sufficient collateral to obtain a LOC to meet security requirements, an issue which was emphasized in a January 16, 2020 comment letter to the Commission regarding the Rural Digital Opportunity Fund (RDOF) submitted on behalf of seven organizations who represent rural broadband members, we support broadening the range of options for performance security to include a surety bond.¹ A surety bond would provide value and benefits

¹ Letter from seven rural broadband organizations (INCOMPAS, US Telecom – The Broadband Association, NCTA – The Internet and Television Association, Wireless Internet Service Providers Association, National Rural Electric

to the Commission that are not provided by a letter of credit, while allowing small business ISPs the opportunity to participate responsibly in this program. Furthermore, expanding performance security creates greater competition and participation, which may reduce costs while still protecting the government's financial interest.

First, a performance bond assures that the successful carrier is qualified to perform the obligations in the award. Second, the bond serves as a "deep pocket" in the event the carrier fails. The first form of protection, prequalification, is the result of the surety's review of the financial strength and capabilities of the carrier in determining whether to provide a bond. A surety provides a bond only to those carriers that it believes can perform. Thus, the Commission benefits from this prequalification. In comparison, a LOC is secured by a specific liquid asset(s), has a specific expiration date, and simply does not provide the same financial guarantee to the government.

To assure a reasonably available market for surety bonds, particularly for smaller ISPs, the obligations being secured by the bond should be predicated on clear performance requirements. In addition, the obligations under the bond should be conditioned on a default of performance rather than premised on a demand for payment, which would ensure the government is financially protected. Given this is a structural departure from a LOC, NASBP would be happy to discuss the specifics in forming a workable, broadly available surety bond.

Additionally, NASBP would like to cite a letter (attached below) sent to Chairman Pai in January of this year by seven United States Senators. In particular, the Senators highlight the Commission's leadership in supporting broadband deployment throughout the entire country, especially through the Rural Digital Opportunity Fund, but note that "potential participants in the auction share concerns regarding the need to significantly reduce the burdens of the letter of credit requirement."²

NASBP believes a workable bond requirement can be established that provides effective protection to the Commission, presents a reasonable risk to the sureties, and enhances competition among responsible carriers. As stated above, we would be happy to discuss the parameters of a workable surety bond requirement.

Respectfully submitted for your consideration,



Larry LeClair
Director, Government Relations NASBP

Cooperative Association, WTA – Advocates for Rural Broadband, and NTCA – The Rural Broadband Association) to Chairman Ajit Pai and Commissioners regarding the burdensome LOC requirement effectively barring many companies entry into the RDOF auction process, *January 16, 2020*.

² Letter from seven Senators (John Boozman, Ken Cramer, Bill Cassidy, Roy Blunt, Susan Collins, Angus King, Ben Sasse) to Chairman Ajit Pai regarding alternative risk management measures for rural broadband deployment, *January 28, 2020*.

January 16, 2020

Via ECFS

The Honorable Ajit Pai
The Honorable Michael O'Rielly
The Honorable Brendan Carr
The Honorable Jessica Rosenworcel
The Honorable Geoffrey Starks
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket No. 10-90

Dear Chairman Pai and Commissioners O'Rielly, Carr, Rosenworcel and Starks:

Through the Rural Digital Opportunity Fund (RDOF), the Commission has the opportunity to bring the power and promise of a broadband future to every corner of the country. The undersigned organizations, representing broadband innovators of all shapes and sizes, deploying a range of different technologies, and collectively serving millions of Americans, support the goal of connecting every American to broadband. Many of our members are motivated about the prospects of participating in the RDOF auction this year.

The draft Order that has been circulated does an admirable job of balancing many competing issues, on which some of our organizations have differences of opinion. However, one issue that unites us all, and many other commenters in the record, is the need to significantly reduce the burdens of the letter of credit (LOC) requirements so that these obligations correspond more appropriately to the risks presented. As drafted, given the magnitude of the RDOF even as compared to prior auctions, the LOC requirements will be a gating factor to participation for many companies, large and small. If modifications to the LOC requirements are not made, many companies could be effectively barred from participation in the auction and those that do will not be able to bid on the full amount of locations they might otherwise be able to serve because of the difficulties in obtaining and the cost of the required credit. Additionally, the LOC requirements conservatively will result in over \$1 billion in RDOF support (6-7 percent of the total Phase I funding) going to banks and other financial intermediaries rather than to building broadband in rural communities.¹ Also, in some cases banks are requiring cash collateral for the LOC and the carrying costs are treated as debt, both of which impair the borrowing power of support recipients.

Encouraging robust participation and prudentially managing risks to the Fund are both important goals, but should not, and need not, be mutually exclusive. We understand that the Commission has a responsibility to safeguard the funds it administers while protecting against potential defaults. We support such fiscal responsibility. Unfortunately, the compounding nature of the requirement as drafted to maintain letters of credit for multiple years of service is unsustainable

¹ See e.g. Reply Comments of WISPA, WC Docket Nos. 19-126, 10-90 at 29-32 (filed Oct. 21, 2019); Comments of USTelecom, WC Docket Nos. 19-126, 10-90, 19-195, at 44 (filed Sept. 20, 2019); Comments of Geolinks, WC Docket Nos. 19-126, 10-90, at 9-11 (filed Sept. 20, 2019).

and unprecedented at this scale. Nor is it necessary to fully and adequately address the underlying risk management goals for the Fund.

Each of our organizations filed comments in the record explaining our concerns on this issue, along with a number of other commenters. In order to enable the widest possible participation by our own members and other companies in the RDOF, we urge you to take seriously the concerns that have been raised and to consider modifying the LOC requirement to minimize the direct and indirect costs associated with obtaining and maintaining LOCs. In light of the existing authority that the Commission has to withhold funds from those who fail to meet their deployment commitments along with a range of other enforcement tools at its disposal, the Commission can achieve our shared goal of preserving and protecting the Fund without imposing the unreasonable, unsustainable, and ultimately unworkable multi-year LOC requirements currently in the draft order. Thus, we urge the Commission to implement more targeted mechanisms for effective risk management that will not deter or prevent their participation.

The Commission is on the cusp of a major step forward for rural Americans, bringing broadband connectivity and the opportunities that come with those connections to communities whose future depends on it. Our members are eager to serve these communities and to meet and exceed RDOF deployment milestones, starting in year one, if they have the chance to do so. A program adjustment to the LOC requirements will help to make this a reality.

Sincerely,

/s/ Angie Kronenberg
Angie Kronenberg
Chief Advocate and General Counsel
INCOMPAS

/s/ Jennifer McKee
Jennifer McKee
Vice President and Associate General Counsel
NCTA – The Internet & Television
Association

/s/ Brian O'Hara
Brian O'Hara
Senior Director Regulatory Issues – Telecom
& Broadband
National Rural Electric Cooperative
Association (NRECA)

/s/ Michael R. Romano
Michael R. Romano
Senior Vice President, Industry Affairs &
Business Development
NTCA – The Rural Broadband Association

/s/ Patrick R. Halley
Patrick R. Halley
Senior Vice President, Policy & Advocacy
USTelecom – The Broadband Association

/s/ Louis Peraertz
Louis Peraertz
Vice President of Policy
Wireless Internet Service Providers
Association

/s/ Derrick B. Owens
Derrick B. Owens
Senior Vice President of Government &
Industry Affairs
WTA – Advocates for Rural Broadband

United States Senate
WASHINGTON, DC 20510

January 28, 2020

Received & Inspected

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FCC Mailroom

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Dear Chairman Pai:

We would like to thank you and the Federal Communications Commission (FCC) as a whole, for your strong leadership to spur and support broadband deployment to every part of the nation. Our constituents benefit through connected communities as the promise of broadband underpins the global digital economy.

With the FCC in the process of finalizing the rules for how it will distribute more than \$16 billion dollars in broadband support through the first phase of the Rural Digital Opportunity Fund (RDOF), we are encouraged by the FCC's initiative to advance rural broadband deployment through this groundbreaking program. While we appreciate the Commission's focused efforts to produce a timely order and the promise of a successful 2020 auction, it has come to our attention that potential participants in the auction share concerns regarding the need to significantly reduce the burdens of the letter of credit requirements. We are concerned the order as drafted would severely limit, and in some cases absolutely prevent, provider participation.

We share the FCC's goal to effectively manage risk in this program, however, the FCC should explore alternate risk management measures that would maximize responsible participation in this program, not inhibit it. Rural Americans are counting on the FCC to get this right.

We therefore respectfully request the FCC restructure the RDOF's approach to prudential risk management in a way that ensures providers are able to responsibly participate to the fullest extent possible in this historic, once in a generation program. We are on the cusp of extending valuable broadband service to the more than 6 million locations the FCC has made eligible for RDOF. Without changes to the FCC's LOC requirements, potentially millions of rural Americans, my constituents, will risk being left without access to the critical broadband services they need and the RDOF has the promise to deliver.

Sincerely,



John Boozman
United States Senator



Kevin Cramer
United States Senator

Bill Cassidy, M.D.

Bill Cassidy, M.D.
United States Senator

Roy Blunt

Roy Blunt
United States Senator

Susan M. Collins

Susan Collins
Member of Congress

Angus King

Angus King
United States Senator

Ben Sasse

Ben Sasse
United States Senator