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August 4, 2022

Mr. Steven Porch
Executive Broadband Manager
Arkansas Broadband Office
Commerce Way, Suite 601
Little Rock, AR 72201

Comments submitted via: broadband@arkansas.gov.

RE: AR Rural Connect – ARPA to administer the AR Rural Connect (ARC) Broadband Grant Program

Dear Director Porch;

On behalf of the National Association of Surety Bond Producers (NASBP)[1], a national trade association of firms employing professional surety bond producers licensed and conducting business in Arkansas and throughout the country, I am contacting you regarding the proposed rule to Addendum 2, "Arkansas Rural Connect Broadband Grant Program (ARC)," specifically the Key Point section, which requires "internet service providers (ISPs) to obtain irrevocable letters of credit (ILOCs) for 100% of the grant award amounts disbursed to the ISP."

Rural broadband Investments
Last year, the U.S. Department of Agriculture's (USDA) Secretary, Tom Vilsack, announced an additional $1 billion in funding for the expansion of access to high-speed internet, health care and educational services for millions of rural Americans nationwide. This was in an addition to $65 billion dedicated to broadband in the Infrastructure Investment & Jobs Act (IIJA). NASBP believes access to broadband is critical to rural communities for expanding commerce, access to telemedicine, and for long-distance learning and commends the Department for offering loan and grant opportunities to ISPs who otherwise may not have the financial wherewithal to bid on these contracts.

When small business ISPs bid on broadband auctions sponsored by federal agencies such as the Federal Communications Commission's (FCC) Rural Digital Opportunity Fund (RDOF), and the U.S. Department of Agriculture's Rural Utilities Service (RUS), Rural ReConnect Program, ILOCs are the only acceptable form of security required to protect the government's financial interest. However, surety bonds should be considered as an alternative source of security to ILOCs, hereafter referred to as letters of credit (LOCs), so small business ISPs working capital will not be tied up in an LOC. Furthermore, the procuring agency is financially protected in the event the ISP fails to perform its contractual obligations.

Current Form of Security for ReConnect Program's Loan/Grants
As described in the proposed rule, the AEDC Broadband Office would require ISPs to maintain an ILOC equal to 100% of the grant award amounts dispersed to the ISP and shall follow the same standards found in 47 C.F.R. 54.804(c)(2). As a form of security, an ILOC is certainly one way to protect the state of Arkansas' financial commitment. However, we cite several examples where small business ISPs are having difficulty in securing sufficient collateral to obtain an ILOC to meet security requirements.

In the spring of 2018, in a congressional hearing entitled the "Rural Broadband and the Business Case for Small Carriers," before the U.S. House of Representatives Small Business Committee, an executive for a small business ISP testified as to the difficulties posed by LOCs on his company's working capital. According to the witness, Paul Carliner, "onerous financial requirements for accessing federal funds such as large lines of credit, arbitrary operating margins

[1] The National Association of Surety Bond Producers is a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and its territories.

and debt to equity ratios are not the most important criteria in assessing an ISPs viability and do not offer guidance in judging future performance."[2] Carliner further added that "one option to ensure financial viability and protect taxpayer investment would be to simply require a performance or construction bond, rather than a complex set of financial requirements. This would ease the path to participate for the ISP, protect the taxpayer investment and reduce the workload on the federal government."[3]

Additional examples of small business ISPs securing LOCs included a January 16, 2020 letter to the FCC (*inserted below*) on behalf of various trade associations representing ISPs seeking to broaden the range of options for performance security to include a surety bond.[4] Further, a letter (*also inserted below*) delivered to then-FCC Chairman Pai in January 2020 by seven United States Senators noted that "potential participants in the auction share concerns regarding the need to significantly reduce the burdens of the letter of credit requirement."[5]

Surety Bonds Offer a Trusted, Alternative Form of Security

Small business ISPs, who may have difficulty in securing sufficient collateral to secure a LOC, can be negatively impacted in several ways: it may reduce the small ISP's business liquidity, force the ISP to set aside working capital to pay fees to obtain LOCs, and limit other potential business opportunities. As an alternative form of security, a surety bond provides value and benefits to the Arkansas Broadband Office, such as prequalifying the capabilities of the ISP, including its financial strength, that are not provided through a LOC, while allowing small business ISPs the opportunity to participate responsibly in the ARC. Furthermore, expanding performance security creates greater competition and participation, which may reduce overall project costs while still protecting the state's financial interest.

Please note the many instances where surety bonds are required as security to protect the government's interest. Below is a non-exhaustive list of various federal agencies, including regulatory citations, which require a grant recipient to follow state or federal bonding requirements when receiving federal loans and/or grant funds.

1. The Office of Management and Budget (OMB) 2 CFR § 200.325 - Bonding requirements.

In accordance with 2 CFR 200.325 Subtitle A, OMB Guidance for Grants and Agreements, for construction or facility improvement in contracts that exceed the simplified acquisition threshold, the federal agency can accept the bonding policy and requirements of the non-federal entity recipient if the federal agency determines they are sufficient to protect federal interests. If such bonding policy is not acceptable, a 5% bid guarantee and a performance and payment bond for 100% of the contract price is required.

2. U.S. Federal Aviation Administration (FAA) Title 2 CFR Part 200

Subtitle D—Airport Improvement Program Modifications (AIP) of the 2012 FAA Modernization and Reform Act (PL 112-95) addressed federal grants for commercial service and general airports. The current National Plan of Integrated Airport Systems (NPIAS) has identified over 3,300 commercial service and general aviation airports that are eligible to receive federal grants under the AIP for infrastructure development projects. Procurement and contracting for AIP projects must adhere to the provisions outlined in Title 2, CFR part 200, Subpart D, §200.304, Bonding requirements.

3. U.S. Department of Housing and Urban Development (HUD)--24 CFR PART 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments § 85.36 Procurement, **(h) Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency determines the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows: a bid guarantee from each bidder equivalent to five percent of the bid price; a performance bond on the part of the contractor for 100 percent of the contract price; a payment bond is

[2] Rural Broadband and the Business Case for Small Carriers: Hearing before the House Small Business Joint Subcommittees on Health and Technology and Agriculture, Energy, and Trade. 115th Cong. 3 (2018) (testimony of Paul Carliner).

[3] Ibid.

[4] 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 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*.

[5] 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*.

one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

4. U.S. Department of Transportation (DOT) 49 CFR Title: Part 18—"Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments" (§18.36 Procurement, (h) Bonding requirements) Title 49 - Transportation. Subtitle A - Office of the Secretary of Transportation

The U.S. Department of Transportation regulations contain a surety bond requirement for transportation projects involving federal grant funds for state highway construction projects at 49 CFR Part 18. These requirements specifically address bonding for state-level construction projects financed partly by federal grants, establishing performance and payment bonds for 100% of the construction amount is the minimal standard for such partially federally financed projects.

USDA currently requires bonds for loans/grants for Water and Waste Disposal

Finally, USDA has already recognized the usefulness of a surety bond requirement for loans and grants in its Water and Waste Disposal Loan and Grant Program. Section 1780.75, mandates specific contract provisions that the recipient of Agency funds must include surety bonds are specifically noted: “In all contracts for construction or facility improvements exceeding the Simplified Acquisition Threshold, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds.”

Final Considerations

Surety bonds have long protected taxpayers, subcontractors, and workers in construction and other sectors and should be strongly considered as an acceptable form of security option for recipients which receive federal loans and/or grants dedicated for the development of rural broadband in the ARC Program. Rural ISPs will be critical for connecting rural communities to the Internet, and surety bonds offer a trusted means of protecting taxpayer funds while facilitating greater competition for broadband infrastructure projects from interested ISPs.

Thank you for your consideration of our concerns. Please feel free to reach out to me should you have questions or wish further information.

Respectfully submitted,

Larry LeClair

Larry LeClair
Director, Government Relations NASBP

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

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[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

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St., SW
Wahsington, 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.
United States Senator

Roy Blunt
United States Senator

Susan Collins
Member of Congress

Angus King
United States Senator

Ben Sasse
United States Senator