



## NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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April 21, 2021

Mr. Chris McLean  
Acting Administrator  
Rural Utilities Service (RUS)  
U.S. Department of Agriculture (USDA)

Comments submitted via [www.regulations.gov](http://www.regulations.gov).

### **RE: RIN 0572–AC51 Rural eConnectivity Program**

Dear Acting Administrator McLean;

*The National Association of Surety Bond Producers (NASBP) <sup>1</sup>support public and private efforts to make broadband more consistently available across the country. As states and Congress design and implement construction of these projects, we want to underscore our support for the inclusion of performance and payment bonds as a form of security for the construction portion of rural broadband infrastructure projects.*

### **NASBP Supports Infrastructure Investment and Rural Broadband**

NASBP recognizes the need for significant investment in the nation's infrastructure, which includes the development of a reliable and comprehensive rural broadband network. Access to broadband is critical to rural communities for expanding commerce, access telemedicine and for long-distance learning. Moreover, NASBP commends the Agency for offering loan and grant opportunities to internet service providers (ISPs) who otherwise may not have the financial wherewithal to bid on these contracts.

### **Current Form of Security for loan/grants**

As described in § 1740.1, "the Rural eConnectivity Program, hereinafter referred to as Program, provides funding in the form of loans, grants, and loan/grant combinations for the costs of construction, improvement, or acquisition of facilities and equipment needed to facilitate broadband deployment in rural areas." Our comments pertain to Section 1740.44, (c)(2) Grants, "For grant-only applications, applicants may request that standard grant security arrangements be replaced with an Irrevocable Letter of Credit (ILOC), to ensure that the project is completed. The ILOC must be for the full amount of funding requested and must remain in place until project completion."

NASBP understands that the Agency requires an ILOC to ensure project completion as a means to protect the government's financial commitment. However, it has come to our attention that rural ISPs are having difficulty in securing sufficient collateral to obtain ILOC, hereafter referred to as letters of credit (LOCs), to meet security requirements, an issue which was emphasized in a January 16, 2020 comment letter to the Federal Communication's

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<sup>1</sup> 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.

Commission regarding the Rural Digital Opportunity Fund (RDOF) seeking to broadening the range of options for performance security to include a surety bond.<sup>2</sup>

Additionally, NASBP would like to cite a letter (attached below) sent to then FCC Chairman Pai in January 2020 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 describe that "potential participants in the auction share concerns regarding the need to significantly reduce the burdens of the letter of credit requirement."<sup>3</sup>

### **Surety Bonds Offer an Alternative form of Security**

A surety bond would provide value and benefits to the Agency 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. Letters of Credit impacts small business ISPs, who may have difficulty in securing sufficient collateral to secure an LOC and may reduce the small ISP's business liquidity, force them to set aside working capital to pay fees to obtain LOCs, and limit other business opportunities.

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 Agency 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.

### **Performance and Payment Bonds when Federal Grants are Provided**

As noted in Section § 1740.2, for all Awardees the term "grant recipient" in 2 CFR 200 shall also be read to encompass "loan recipient" and "loan/grant recipient", such that 2 CFR 200 shall be applicable to all Awardees under this part. The federal government recognized the importance of surety bond requirements for construction projects involving the issuance of federal resources or grant funds (see [2 CFR 200.325](#)) to address bonding for state-level construction projects financed partly by federal grants.

This public policy established that performance and payment bonds in 100% of the construction amount is the minimal standard for such partially federally-financed projects. Thus, performance and payment bonds should be utilized when states and/or localities receive federal grant funds for rural broadband infrastructure projects. Surety bonds have long-protected U.S. taxpayers, subcontractors and workers in other construction sectors and should be expanded to protect the design and construction of rural broadband infrastructure projects that receive federal grants.

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<sup>2</sup> 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*.

<sup>3</sup> 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*.

The Administration's Build Back Better proposal includes a \$100 billion commitment to build high speed broadband infrastructure and provide internet access to all Americans. Rural ISPs will be critical to achievement of this ambitious goal. Surety bonding is a sound option for small businesses and a solid risk management tool to protect substantial taxpayer resources. NASBP looks forward to working with you and your team to ensure that any unintended consequences are avoided as you strive to develop the most effective solution to the challenges facing the Agency.

Respectfully submitted for your consideration,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" being more prominent than the last name "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.<sup>1</sup> 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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<sup>1</sup> 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 12<sup>th</sup> 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