NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS
7735 Old Georgetown Road, Suite 900
Bethesda, MD 20814
Tel: 240.200.1270
Fax: 240.200.1295
www.nasbp.org

February 2, 2022

National Telecommunications and Information Administration (NTIA)
U.S. Department of Commerce (Commerce)
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Gov Document Number NTIA-2021-0002, RIN 0660-ZA33

Comments submitted via Federal e-Rulemaking Portal at *http://www.regulations.gov.*

Dear Sir or Madam:

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 bonds. NASBP members engage in contract and commercial surety production throughout the United States, Puerto Rico, Guam, and a number of other countries. Our members support and recognize 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, accessing telemedicine, and for long-distance learning.

As states and Congress design and implement construction of these projects, we want to underscore our support for the inclusion of surety bonds as an acceptable form of security for guaranteeing the performance of rural broadband infrastructure projects.

For your consideration, NASBP will respond to the following General Questions:
- Question 4 (pg. 1124) re: NTIA's efficient use of federal funds;
- Question 7 (pg. 1124) re: Small business participation;
- Question 13 (pg. 1124) re: Criteria for grant recipients; and
- Question 14 (pg. 1124) re: Construction utilizing taxpayer funds.

Responses to Questions 4 and 7 – Form of Security and Inclusion of Small Businesses
Currently, the Federal Communication Commission's ReConnect 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," as described in § 1740.1. Section 1740.44, (c)(2) Grants, states that "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." As a form of security, an ILOC is certainly one way to protect the government's financial commitment. However, NASBP has found that **rural ISPs are having difficulty in securing sufficient collateral to obtain an ILOC**, hereafter referred to as letters of credit (LOCs). In comparison, a surety bond provides an alternative way to satisfy security requirements for a broader pool of participants while protecting the government's financial stake.

As described by a small business internet service provider (ISP) at a congressional hearing entitled the "Rural Broadband and the Business Case for Small Carriers," "onerous financial requirements for accessing federal funds such as large lines of credit, arbitrary operating margins 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."[1] The witness added that "one

[1] 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).

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."[2]

This issue was noted in a January 16, 2020 comment letter to the FCC (attached below) regarding the Rural Digital Opportunity Fund (RDOF) seeking to broaden the range of options for performance security to include a surety bond.[3] Furthermore, a letter (attached below) was delivered to former FCC Chairman Pai in January 2020 by seven United States Senators emphasizing the Commission's leadership in supporting broadband deployment throughout the entire country, especially through the Rural Digital Opportunity Fund, but describing that "potential participants in the auction share concerns regarding the need to significantly reduce the burdens of the letter of credit requirement."[4]

Responses to Questions 7 and 14 – Policy Reasons why Bonds Provide an Alternative to Assist Small Business Participation

Small business ISPs, who may have difficulty in securing sufficient collateral to secure an LOC, can be negatively impacted by a letter of credit requirement in several ways: it 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. As an alternative form of security, a surety bond would provide value and benefits to the Department 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, as the surety evaluates the carrier's qualifications in order to merit surety credit. Second, the bond serves as a valuable third-party guarantee in the event the carrier fails in its performance. The first form of protection, prequalification, is the result of the surety's review of the financial strength, experience, equipment, 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 the entire obligation. Thus, the Department would benefit from this thorough prequalification. In comparison, a LOC is issued by a bank, which does not assess the overall capabilities of the carrier; rather, the bank simply assesses whether the carrier has the financial assets to meet the letter of credit obligation. A LOC simply is secured by a specific liquid asset(s), has a specific expiration date, and does not provide the same level of financial guarantee to the government.

To assure a reasonably available market for surety bonds, particularly for smaller ISPs, please note that 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.

Responses to Questions 13 and 14 – Surety Bonds Protection for Federal Grants

Surety bonds, specifically performance and payment bonds, also should be considered as a requirement to guarantee the construction portions of rural broadband infrastructure projects. Such requirements are prevalent in other federal loan and grant programs. 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.

Responses to Questions 13 and 14, Cont'd – Regulations Require Bonds for Loans/Grants

Commerce has recognized the usefulness of a surety bond requirement as a condition of receiving loans and grants in its Water and Waste Disposal Loan and Grant Program. In Section 1780.75, which dictates specific contract provisions

---

2 Ibid.

3 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*.

4 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*.

that any 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 U.S. taxpayers, procuring agencies, subcontractors, and workers, and they are security products that should be an important component of the NTIA's broadband program going forward, particularly if the Department is dedicated to ensuring small business participation. NASBP respectfully requests the consideration of surety bonds as an acceptable form of security to guarantee the performance obligations of ISPs. Additionally, NASBP would suggest that a bond requirement be placed on recipients of loans and grants intended for construction of rural broadband infrastructure to protect taxpayer funds and to ensure completion of such necessary projects.

NASBP appreciates your consideration of our request and would be happy to meet with you to answer any questions you may have.

Respectfully submitted,

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

[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
FEB 03 2020
FCC Mailroom

72

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

John Boozman
United States Senator

Kevin Cramer

Kevin Cramer
United States Senator

Bill Cassidy, M.D.

Bill Cassidy, M.D.
United States Senator

Roy Blunt
United States Senator

Susan M. Collins

Susan Collins
Member of Congress

Angus King
United States Senator

Ben Sasse

Ben Sasse
United States Senator