



N A R U C
National Association of Regulatory Utility Commissioners

January 22, 2020

VIA ECFS

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

RE: *NARUC Request to revise the “RDOF” Letter of Credit requirements to assure maximum participation in the auction and avoid diverting critical funds away from construction of broadband infrastructure.*

Written Ex Parte filed in the proceeding captioned: *In the Matter(s) of the 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:

There isn’t a single member of the National Association of Regulatory Utility Commissioners that does not understand the need for access to reliable broadband networks in our rural communities. We are still studying the draft *Report and Order Establishing the Rural Digital Opportunity Fund (RDOF)* set for your January Agenda meeting and looking for additional opportunities for federal and state cooperation.

But one aspect of the draft decision should be re-examined.

A number of parties have pointed out – accurately and repeatedly¹ – that the letter of credit (LOC) requirements are not optimal and should be revised to provide for the most effective and

¹ *Notice of Oral Ex Parte filed by Mike Saperstein, Vice President, Policy & Advocacy, USTelecom*, (filed January 21, 2020) WC Docket Nos. 19-126 & 10-90, at 2 (“[T]he letter of credit (LC) requirements . . . must be revised in order to ensure a successful auction. . . . [W]ithout substantial reform, the current LC requirements will prevent . . . potential bidders . . . from participating meaningfully in the RDOF auction.”); *Notice of Oral Ex Parte filed by Louis Peraertz, Vice President of Policy, WISPA*, (filed January 21, 2020) WC Docket Nos. 19-126 & 10-90, at 2 ([P]roposal creates an imbalance by imposing direct and indirect costs that exceed the reasonable assurances the Commission should require . . . for many small broadband providers, the LOC requirements would preclude their participation . . . WISPA has estimated that the cost of an LOC is typically at least five percent of the value of the LOC. In addition to these direct costs . . . RDOF recipients would incur indirect costs because LOCs are treated as debt that harms the recipient’s ability to borrow funds for investment to support faster buildout and network expansion. Further, banks may require RDOF

efficient use of the funds available. The success of this program is contingent upon the participation of broadband providers, both large and small, and on the assurance that these support dollars are dedicated to broadband expansion and not unnecessarily diverted from infrastructure investments.

The record in this proceedings clearly indicates that if modifications to the LOC requirements are not made, many companies could be effectively barred from participation in the auction and/or will not be able to bid on the full amount of locations they might otherwise be able to address. Moreover, several commenters have estimated the current LOC requirements will result in over \$1 billion in RDOF support (6-7 percent of the total Phase I funding) going to financial institutions rather than being invested in the construction of broadband infrastructure.

NARUC requests you reconsider the LOC provisions in the draft order. The desire to protect the investment is understandable; however, we would ask you to consider other mechanisms that do not divert critical funds away from the central goal of the fund and assure maximum participation in the auction. The FCC could, e.g., consider adopting lower LOC requirements that would still provide protections against default.

If you adopt this draft order next week, I encourage you to move forward in a manner that will ensure that broadband providers, both large and small, are able to participate in the program to bring service to unserved areas.

Sincerely,

Brandon Presley
NARUC President

cc: *Preston Wise, Rural Broadband Advisor to the Chairman*
Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly
Joseph Calascione, Legal Advisor to Commissioner Carr
Travis Litman, Chief of Staff, Senior Legal Advisor Wireline to Commissioner Rosenworcel
Austin Bonner, Legal Advisor for Wireline and Public Safety to Commissioner Starks

recipients to post cash collateral as a condition of receiving an LOC, which would tie up the RDOF recipient’s cash. This is universal service support that benefits banks, not buildout – and the cost to the fund is likely to be several hundred million dollars over the 10-year support term.”); ***Letter from USTelecom - The Broadband Association, NTCA - The Rural Broadband Association, Wireless Internet Service Providers Association, INCOMPAS, NCTA - The Internet & Television Association, National Rural Electric Cooperative Association, WTA - Advocates for Rural Broadband to Chairman Pai and Commissioners O’Rielly, Carr, Rosenworcel, and Starks***, (filed January 16, 2020) WC Docket Nos. 19-126 & 10-90, at 1 (“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.”); ***Notice of Oral Ex Parte filed by Karen Brinkmann for Consolidated Communications***, (filed January 15, 2020) WC Docket Nos. 19-126 & 10-90, at 1, (“[T]he letter of credit (“LOC”) requirement and related penalties described . . . would be significant disincentives for price cap ILECs to bid in the auction . . . The LOC itself would severely cramp the price cap ILECs’ access to capital, requiring as much as 4.6 times the total annual support amount be available under the LOC, which in turn would restrict their ability to extend broadband to new locations.”) ***Compare, 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, at 44 (filed Sept. 20, 2019); ***Comments of Geolinks***, WC Docket Nos. 19-126, 10-90, at 9-11 (filed Sept. 20, 2019).