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Via FCC Electronic Comment Filing System

Comments from The Surety & Fidelity Association of America and the National Association of Surety Bond Producers
The Uniendo a Puerto Rico Funds and
The Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications
Proposed Rule
WC Docket Nos. 18-143, 10-90 and 14-58

The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the United States. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The vast majority of bonds that secure contracts are provided by SFAA members. Members of the National Association of Surety Bond Producers ("NASBP") 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.

In the captioned proposed rule, the Federal Communications Commission ("FCC") seeks comment on how to structure the second stage of the Uniendo a Puerto Rico and Connect USVI Funds to speed longer term efforts to rebuild fixed and mobile voice and broadband networks in Puerto Rico and the U.S. Virgin Islands. We specifically respond to the question posed in paragraph 45:

> The Commission also seeks comment on whether successful applicants must obtain a letter of credit by way of security, as must winning bidders in the CAF Phase II auction. If so, how should the letter of credit be structured? Should it be for the full amount

> awarded, or some lesser amount that will nevertheless protect the USF? Should an alternative to a letter of credit be considered, such as a performance or payment bond?

We understand that FCC currently requires a letter of credit ("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) having difficulty in securing sufficient collateral to obtain a LOC to meet security requirements under CAF Phase II, we support broadening the range of options for performance security to include a surety bond. A surety bond would provide value and benefits to the FCC that are not provided by a letter of credit, while allowing small business ISPs the opportunity to participate in the second stage of awards under the Uniendo a Puerto Rico and Connect USVI Funds. 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, including full performance of the building and repair of the network and deployment. 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 FCC benefits from this prequalification. In comparison, a letter of credit is secured by a specific liquid asset(s), has a specific expiration date (generally one year, bonds remain in force until the duration of the contract), and simply does not provide the same financial guarantee to the government

That being said, in order to assure a reasonably available market for surety bonds, particularly for smaller ISPs the obligations being secured by the bond should be focused on the building and repair of the system (rather than the requirement to meet certain performance criteria). In addition, the obligations under the bond should be conditioned on a default of performance (with respect to construction and repair) rather than premised on a demand for payment.

SFAA and NASBP believe that a workable bond requirement can be established that provides effective protection to the FCC, presents a reasonable risk to the sureties and enhances competition among responsible carriers. We would be happy to discuss with you the parameters of a workable surety bond requirement.

Respectfully submitted for your consideration,

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