

# The Surety & Fidelity Association of America

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## NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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September 19, 2019

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission (Commission)  
445 12th Street SW  
Room TW-A325  
Washington, DC 20554

Comments submitted via: <https://www.fcc.gov/ecfs/>

**RE: Rural Digital Opportunity Fund, WC Docket Nos. 19-126, 10-90, FCC 19-77, Document Number: 2019-17783.**

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 majority of bonds that secure contracts are provided by SFAA members. Members of the National Association of Surety Bond Producers (NASBP) are bonding agencies that 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.

The proposed rule establishes the Rural Digital Opportunity Fund and the Commission specifically seeks comments on its overall approach. NASBP and SFAA comments will address specifically questions 82 and 115 pertaining to applicable performance security alternatives to letters of credit (LOC).

Question 82 ..."Are there viable, less costly viable alternatives that still "minimize risk to public funds"?"

Question 115, For support recipients that do not meet their Rural Digital Opportunity Fund obligations, ... that are required to meet defined service milestones and to the process the Commission adopted for drawing on letters of credit for the Connect America Fund (CAF) Phase II auction ... The Commission seeks comment on alternatives to this proposal.

As noted in the proposed regulations, the Commission required letters of credit (LOC) in the CAF Phase II auction to secure the obligations to repay the support already paid for which there is a compliance shortfall (i.e., failure to meet a milestone). However, it is our understanding that rural internet service providers (ISPs), which are often small businesses, may not have sufficient collateral to secure an LOC. ISPs that *are* able to secure LOCs generally obtain them at a high and cumulative cost.

Subsequently, this issue was described by a small business internet service provider (ISP) at a hearing entitled the “Rural Broadband and the Business Case for Small Carriers,” on March 6, 2108 before the House Small Business Joint subcommittees on Health and Technology and Agriculture, and Energy and Trade. According to the testimony, “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” (Carliner, 2018). The witness 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” (Carliner, 2018).

To address questions 82 and 115 in the proposed rule, 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 LOC, while allowing small business ISPs the opportunity to participate in these business opportunities as their working capital will not be tied up in an LOC. Furthermore, expanding performance security options creates greater competition and participation in the Rural Digital Opportunity Fund, which may reduce costs while still protecting the government’s financial interest.

The benefits of surety to the FCC and its stakeholders are multiple. 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 the obligation. Thus, the FCC directly benefits from this prequalification. In comparison, a LOC is secured by a specific liquid asset(s), has a specific expiration date (generally, one year; bonds remain in force for the duration of the contract), and simply does not provide the same financial guarantee to the government. Lastly, in the event the carrier defaults on its performance obligations, the surety is obligated to step in and finish the work. Under a LOC, the bank is *only* obligated to release funds.

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 or maintain 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 that provides effective protection to the FCC can be established, presents a reasonable risk to the sureties and should serve to maximize competition among responsible carriers seeking to participate in the Rural Digital Opportunity Fund. 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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