August 23, 2023

The Honorable Alan Davidson
Assistant Secretary of Commerce for Communications
National Telecommunications Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 2023

Re: Alternatives to Irrevocable Standby Letters of Credit Requirements in the BEAD Program

Dear Assistant Secretary Davidson:

NTCA–The Rural Broadband Association ("NTCA") is writing to request consideration of narrowly tailored alternatives to the irrevocable standby Letter of Credit ("LOC") requirements for subrecipients of funding through the Broadband Equity, Access, and Deployment ("BEAD") program. NTCA represents approximately 850 family-owned and community-based broadband providers who are dedicated to offering cutting-edge connectivity to consumers, businesses, and anchor institutions throughout rural America. NTCA members have been among the most active participants in recent broadband grant deployment programs administered by the U.S. Departments of Commerce and Treasury, and we therefore expect that many of them will seek to participate in the BEAD program as well.

Under the current BEAD requirements, subrecipients must obtain a LOC issued by a U.S. bank that is insured by the Federal Deposit Insurance Corporation and has a Weiss rating of B- or better for 25% of the subaward amount. Some NTCA members have expressed concern that, given the potential for large BEAD awards, lending sum restrictions of local and regional banks may hinder their ability to participate in the program and deliver much-needed broadband service to the most remote and unserved or underserved members of neighboring rural areas. Furthermore, given the massive outlay of capital necessary to achieve fiber deployment in unserved areas that tend to higher cost to reach, it is particularly challenging for smaller operators with limited financial reserves to secure a LOC in an amount necessary for a substantial BEAD project. NTCA is aware from press reports and various BEAD stakeholder forums that other smaller and community-based entities share these concerns.

At the same time, NTCA recognizes and shares the government's commitment to ensuring that the government's interest in funded networks is protected, and that BEAD funding should be directed only to broadband providers that have demonstrated financial viability and clear commitment to the long-term sustainability of the deployment. It is critical to strike a balance between providing reasonable flexibility to maximize participation and ensuring accountability from those awarded funds. Therefore, NTCA recommends the following narrowly tailored alternatives to the LOC requirement:

- Performance bond. Typically issued by a bank or an insurance company for construction projects, a performance bond is issued against the failure of one party to the contract to meet its contractual obligations. Bond issuers have every incentive to ensure that applicants are financially viable and qualified to perform their duties. Permitting grant subrecipients the ability to obtain performance bonds and/or leverage the performance bonds of their contractors and operators as an alternative to a LOC would protect the government's interest, while allowing smaller qualified broadband providers greater opportunity to participate in the BEAD program.

- Local government guarantee. Similar to a performance bond, a local government could guarantee the subrecipient's obligation to fulfill its contract. A local government is likely to have, or to obtain, sufficient information about an applicant such that it can assess the applicant's qualifications and determine its risk tolerance.

To reiterate, NTCA shares NTIA's concerns about fiscal accountability and agrees that reasonable protections are necessary to help set proper incentives and guard against waste and abuse in the BEAD program. Well-defined parameters within which qualified applicants will be considered are essential to prompt effective performance and to ensure that the public can recover funds provided to applicants who nonetheless fail to fulfill their subaward obligations. However, a strict LOC obligation represents a hurdle too high for many well-qualified and well-financed providers who are otherwise ready, willing, and able to meet the broadband deployment challenge. Adding the options of obtaining a performance bond or a local government guarantee as acceptable alternatives to a LOC appropriately balances the needs of the government to protect its interests on the one hand against the public policy goal of promoting potential BEAD participation from among a wide range and diverse pool of qualified applicants, including small and rural broadband providers.

Sincerely,

Shirley Bloomfield

Shirley Bloomfield
Chief Executive Officer

SAB/jc

cc: Mr. Kevin Gallagher, U.S. Department of Commerce
Mr. Evan Feinman, NTIA