



Michael Preston  
Secretary of Commerce,  
Executive Director  
Arkansas Economic Development Commission

## Summary of Public Comments and Agency Responses

### 1. Commenter's Name: Rick Hales

**Commenter's Business/Agency:** Mayor of Arkansas City/Director of Community Partnerships for Aristotle

**Summary of Comment:** The need for high-speed internet in Arkansas is great. Connectivity in the Arkansas City area was bad. The broadband grants have been a blessing to the town which is now being served. Residents were able to work from home during the pandemic and that has continued. It has been a game changer for the town. An issue of concern is the irrevocable letter of credit (ILOC) in the proposed rule could be prohibitive without a performance bond. I request that the Broadband office consider replacing the requirement of an ILOC with a performance bond.

**Agency's response to Comment:** The Broadband Equity, Access, and Deployment Program (BEAD), authorized under the federal Infrastructure Investment and Jobs Act (IIJA) requires an irrevocable letter of credit. Additionally, the letter of credit requirement provides financial security to the state in the event a recipient of ARC funding fails to perform its obligations under the grant agreement. A letter of credit is already required for recipients of grant funds under the federal Rural Digital Opportunity Fund. However, for the current grant round, a performance bond may be submitted in lieu of an irrevocable letter of credit. Future rounds may only allow for a letter of credit, depending on guidance from the federal government.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a performance bond to be submitted in lieu of an irrevocable letter of credit for this current grant round.

### 2. Commenter's Name: Howard Gorter

**Commenter's Business/Agency:** CT&T, Inc.

**Summary of Comment:** The process of bidding on projects in block groups could be a problem for disparate census block groups. A provider may be interested in a part of the group while a different provider may want to offer services to another part of the census block group. Providers should be able to determine the project area. Also, in my review of the broadband master plan, I found errors and missing information at the census block group level regarding coverage. This has created confusion on which areas are eligible and potential for project areas to be mismatched for interested providers.

**Agency's response to Comment:** In order for the ARC program to utilize a competitive grant application process, it will be necessary for the Broadband Office to determine the project area so that applications cover uniform project areas. In the event providers may not desire to service an entire area in the project footprint, multiple providers may form a partnership or a joint venture and submit a joint application. Providers may raise concerns about the accuracy of the master plan through the challenge process established in the proposed rule.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

### 3. Commenter's Name: Matthew K. Cashion, Jr.

**Commenter's Business/Agency:** Cashion Company and Chair of Contractors Licensing Board

**Summary of Comment** Accepting an irrevocable letter of credit from an unknown, out of state bank on their behalf as acceptable security seems a much riskier proposition than allowing a corporate surety bond

from an insurance company that has been vetted by the federal government as acceptable on the Treasury list of approved sureties.

**Agency's response to Comment:** The Broadband Equity, Access, and Deployment Program (BEAD), authorized under the federal Infrastructure Investment and Jobs Act (IIJA) requires an irrevocable letter of credit.

Additionally, the letter of credit requirement provides financial security to the state in the event a recipient of ARC funding fails to perform its obligations under the grant agreement. A letter of credit is already required for recipients of grant funds under the federal Rural Digital Opportunity Fund. The Broadband Office has no reason to believe that banks providing letters of credit are inherently more risky than the underwriter of a corporate surety bond. However, for the current grant round, a performance bond may be submitted in lieu of an irrevocable letter of credit. Future rounds may only allow for a letter of credit, depending on guidance from the federal government.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a performance bond to be submitted in lieu of an irrevocable letter of credit for this current grant round.

#### **4. Commenter's Name:** Larry LeClair

**Commenter's Business/Agency:** National Association of Surety Bond Producers

**Summary of Comment:** Surety bonds should be considered as an alternative source of security to letters of credit so that a small ISP's working capital will not be tied up in an LOC. Furthermore, the procuring agency is still financially protected under a surety bond in the event the ISP fails to perform its contractual obligations.

Small business ISPs may have difficulty in securing sufficient collateral to obtain a LOC and can be negatively impacted in several ways: it may reduce the small ISP's business liquidity, force the ISP to set aside working capital to pay fees to obtain LOCs, and limit other potential business opportunities. As an alternative form of security, a surety bond provides value and benefits to the Arkansas Broadband Office, such as prequalifying the capabilities of the ISP, including its financial strength, that are not provided through a LOC, while allowing small business ISPs the opportunity to participate responsibly in the ARC. Expanding performance security creates greater competition and participation, which may reduce overall project costs while still protecting the state's financial interest. There are many instances where surety bonds are required as security to protect the government's interest.

**Agency's response to Comment:** See preceding agency responses concerning the requirement for a letter of credit imposed by the U.S. Department of Commerce under IIJA. Similar to the above comment concerning the due diligence that would be performed by a surety company, a bank's willingness to issue a letter of credit demonstrates that the ISP has adequate capital and credit to undertake broadband projects. However, for the current grant round, a performance bond may be submitted in lieu of an irrevocable letter of credit. Future rounds may only allow for a letter of credit, depending on guidance from the federal government.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a performance bond to be submitted in lieu of an irrevocable letter of credit for this current grant round.

#### **5. Commenter's Name:** David Avery

**Commenter's Business/Agency:** Windstream

**Summary of Comment:** Section 4 states an ISP shall maintain an irrevocable standby letter of credit equal to 100% of the grand award amounts disbursed to the ISP. While this rule is consistent with the letter of credit (LOC) provision contained in the NTIA Broadband Equity, Access, and Deployment (BEAD) Notice of Funding Opportunity

("BEAD Rules"), we believe requiring that 100% of award funds be secured with an LOC may hamper program

participation. The BEAD rules do not require that 100% of the award be secured. The BEAD rules require a minimum of 25% of the matching funds be secured with an LOC. Depending on the size of an applicant's bid a 100% LOC could be a deterrent to participation in the ARC Grant Program. The high expenses and opportunity costs of a larger LOC could result in less deployment.

A 100% LOC isn't necessary to ensure that providers bid on program funds in good faith and can fulfill their program obligations. A 25% LOC should act as a deterrent to irrational "gaming" of the program by ensuring that a financial institution has some awareness of the bidder's capability to complete projects. The AEDC Broadband Office also should conduct a careful review of applicants' technical and economic capabilities before any award determinations are made. 25% LOC should be a sufficient deterrent to bad faith applicants and maximize participation.

We recommend the Broadband Office consider allowing LOCs to be lowered upon reaching certain project milestones.

Windstream encourages the Broadband Office to consider changes to the rules concerning completion timelines and allowing companies to seek waivers where they face unforeseen project delays that are beyond their control by clarifying the circumstances under which program penalties may be waived for missed deadlines.

**Agency's response to Comment:** The proposed rule requires that as grant funds are disbursed the principal amount of the letter of credit equal the cumulative amount (100%) of grant funds disbursed. However, the grantee is not required to deliver a letter of credit for the full grant amount at the time the grant is awarded. Instead, the principal amount under the letter of credit will increase incrementally, over time, as work is performed, and funds are released. The proposed rule does allow for a reduction in the amount of the letter of credit from 100% to no less than 25% as a project satisfactorily progresses and defined milestones are met. The letter of credit is removed entirely upon completion of the project and satisfactory acceptance testing of installed facilities.

The proposed rule addresses penalty provisions only with respect to awardees that do not reliably deliver service within the project footprint for the required 10-year period. The deadline that work must be completed by no later than December 31, 2026 is required by federal law when using ARPA funds.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**6. Commenter's Name:** Angela DeLille

**Commenter's Business/Agency:** Cox Communications

**Summary of Comment:** Cox seeks clarification on the definitions of unserved and underserved for purposes of the Arkansas Rural Connect Broadband Grant Program. Since unserved and underserved are, by definition, not the same, Cox recommends defining unserved as "locations without access to reliable wireline connection of 25Mbps/3Mbps" and underserved as "locations without access to reliable wireline connection of 100Mbps/20Mbps but greater than 25Mbps/3Mbps".

Page 2 of the proposed rule states applicants with at least one low-cost option that meets the listed criteria in the rule may receive extra points on the scoring rubric. Data caps are not on the list of criteria. Cox would prefer data caps not be a consideration in the grant program and appreciate the Broadband Office's approach in limiting impact to the scoring rubric.

Cox recommends the Broadband Office use the same definition for "broadband" in the Arkansas Rural Connect Broadband Grant Program Rule, promulgated in 2020, in the proposed Addendum 2 Arkansas Rural Connect Connect – ARPA rule for consistency.

Grant applicants are required to include a narrative demonstrating their proposed pricing is affordable for consumers in the proposed project service area. Applicants with at least one low-cost option, defined as less than \$50/month, and meeting the listed criteria will be awarded extra points in the scoring rubric. Cox views these

provisions as a form of interstate rate regulation which falls under the authority of the FCC.

**Agency's response to Comment:** The proposed rule establishes that eligible areas for the ARC grant program are those areas without access to a reliable wireline connection of 100/20 Mbps. The Arkansas State Broadband Office does not feel there is a need to define further additional speed thresholds.

The Arkansas State Broadband Office does not consider an optional application scoring metric included within an optional grant application program as a form of rate regulation. Since the objective of the ARC program is to increase the number of Arkansans who have broadband service, and affordability is a factor affecting broadband adoption, it is proper for the office to take affordability into account as one of the factors in determining grant awardees. As noted on p. 65 of the broadband master plan published by the Broadband Development Group, 44.66% of Arkansans surveyed considered broadband affordable if it cost less than \$50/month.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**7. Commenter's Name:** L. Elizabeth Bowles

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:**

Regarding the proposed new rule's requirement that ISPs shall maintain an irrevocable standby letter of credit (LOC) equal to 100% of the grant award amount disbursed to the ISP, the stated justification for the requirement is "recent federal guidance as related to dispensing of ARPA funds for broadband infrastructure and the Notice of Funding Opportunity from the U.S. Dept of Commerce regarding the Broadband Equity, Access, and Deployment Program (BEAD Rule). However, the BEAD rules require the LOC to have a minimum value of 25% of the subaward grant, not 100% as is proposed in the proposed rule. The BEAD rules allow states to allow a lower value upon verification that the recipient has met service milestones. The state is not bound to the federal guidelines. Rather, it is in the state's interest to determine the best way to protect its own investment in broadband and to give itself flexibility to adjust those requirements when and if needed to meet federal mandates.

LOCS are expensive and have several negative financial consequences for providers. Every LOC has a carrying cost, and banks charge between 1% -5% of the face value of the LOC for this purpose. LOCs during the last round of ARC awards would have cost between \$1.25M and \$6.24M annually (\$3.7M - \$18.3M over 3 years). Shifting broadband funds towards LOC carrying costs means entire projects will not be funded. This will prevent some Arkansans from receiving broadband at all. We do not believe this outcome can be what the state intends.

The LOCs in the proposed rule are standby LOCs that will only be called in the event of default. This provides no financial benefit to the ISPs who are required to maintain them. The banks that issue standby LOCS make no distinction between a LOC that secures a contingent obligation and a LOC that can be drawn on by a 3rd party. An entity that issues a LOC will require 100% collateralization of the value. Many issuers will not accept non-liquid collateral and require 100% cash collateralization. This creates several issues: Cash and other collateral cannot be used for construction or for additional financing It must be reported on the company's balance sheet as a liability, making the company less attractive to investors and limits borrowing power Issuing bank often will take a first lien on the company's assets Providers without significant cash assets may not be able to obtain the LOC even if they have other non-liquid collateral. This disproportionately affects smaller providers and cash-poor but asset-rich providers. Performance bonds can serve as collateral for a federally required LOC. Most banks require cash collateral for LOCs and many will accept a performance bond as collateral. Although the BEAD program currently requires letters of credit, that provision may change for future funding streams. Many federal programs do not require LOCs at all. Arkansas should not follow guidance from a single federal program that may change in the future.

The Broadband Office should reconsider the requirement of a 100% LOC and instead allow providers to meet federal requirements through performance bonds and other mechanisms that protect the state.

The following individuals submitted letters to the Broadband Office in support of Aristotle's comment: Louis E. Peraertz, Vice President of Policy, WISPA, James Black, Mayor of Dewitt, Jeff Arey, Saline County Judge, Richard Tindall, Desha County Judge, Mike Skarda, Prairie County Judge, Larry Taylor, Monroe County Judge

**Agency's response to Comment:** See preceding agency responses concerning the requirement for a letter of credit imposed by the U.S. Department of Commerce under IJA. Aristotle's verbal and written comments assert that the BEAD letter of credit requirement may be rescinded by the U.S. Department of Commerce at some point in the future.

Aristotle provides no basis for this assertion, and the Broadband Office, which is in regular communication with the NTIA within the U.S. Department of Commerce, is unaware of any plans to change the letter of credit requirement. However, if in the future the requirement were to change, the Broadband Office would promulgate a revised rule to conform to the new requirements. Several ISP's participating in the ARC program also participate in the federal RDOF program. The ARC letter of credit requirement mirrors the RDOF letter of credit requirement. However, for the current grant round, a performance bond may be submitted in lieu of an irrevocable letter of credit. Future rounds may only allow for a letter of credit, depending on guidance from the federal government.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a performance bond to be submitted in lieu of an irrevocable letter of credit for this current grant round.

**8. Commenter's Name:** James Campbell

**Commenter's Business/Agency:** Vice President – Government Affairs, Altice USA, Inc.

**Summary of Comment:** Altice USA, Inc. submits these comments on the Arkansas Broadband Offices proposed Addendum 2 to Arkansas Rural Connect (Addendum).

- Altice supports prioritizing projects that will deploy fiber-optic infrastructure capability of delivering 100+ Mbps symmetrical speeds.
- Altice agrees with the proposed rule requiring applicants to contribute at least 25% matching funds ensures that applicants are financially secure and adequately incented to make efficient use of Program funds.
- Altice strongly supports the Broadband Office making enrollment in the FCC's Affordable Connectivity Program (ACP) a requirement. Altice encourages the Broadband Office to consider incorporating other adoption-related efforts into this and future broadband funding programs.
- Altice supports the recognition that areas adjacent to private, state, or federally-funded deployments should be considered served—and thus ineligible for project funding—if a challenger demonstrates plans to expand to the adjacent area.
- Altice recommends clarification that a project will be presumed affordable if the prices to be offered in the project area are consistent with those generally available in non-subsidized areas of the state.
- Altice encourages the Broadband Office to include local letters of support as an option rather than a condition of funding eligibility.
- For the challenge process, the Broadband Office should refrain from relying upon user speed test data generated by third parties or consultants using third party tools. Altice recommends the Broadband Office, in evaluating whether an area is already served, to exclusively consult current FCC broadband availability mapping data, information provided by existing providers concerning more recent deployments, and evidence of enforceable federal funding commitments to deploy broadband service. At a minimum, the Broadband Office should provide greater clarity about the types of speed tests that it will consider "verified" in reviewing challenges. Providers submitting challenges should be permitted to submit a shapefile or a list of serviceable locations consistent with FCC's new broadband data collection program.
- Altice requests greater clarity and guidance on how the Addendum's various scoring metrics will be used to evaluate applications. Additionally requests clarification to what length of project time would earn an applicant all the points for the scoring metric or what other method(s) that will be used to score a proposed project deployment timeline. Should the Broadband Office offer a more detailed scoring rubric, Altice requests that the

Broadband Office provide another opportunity for public input.

- Altice supports the scoring weights proposed in categories of “speed of service” (10% of total score), “future-proof” (10% of total score), and “quality of coverage, i.e. reliability and scalability of service” (15% of total score). Altice recommends that the Office assign additional weight to categories of “qualifications/experience/financial strength” and an applicant’s “contribution toward project costs” to ensure the selection of applicants with proven track records and the ability to complete and maintain the Program-funded projects.
- Altice requests clarification on how the Broadband Office will identify verified customer complaints and how verified complaints would influence or preclude participation and whether an applicant will have the opportunity to review and respond to the complaint.
- Altice requests clarification on how local officials’ endorsements will be evaluated in the event of a scoring tie. It is unclear how the Broadband Office will differentiate the tied applications. Altice recommends that ties would be broken by a comprehensive evaluation of the level of community support demonstrated by an applicant, or by the extent to which the project would meet community needs.

**Agency’s response to Comment:** The Arkansas State Broadband Office (ASBO) understands that adoption is an important element in eliminating the digital divide and will work to address it.

The ASBO will continue to focus on affordability and work to ensure that all Arkansans can afford reliable, high-speed internet access. The ASBO anticipates significant funding becoming available to Arkansas under IJA that will be used to address affordability.

The ASBO has designed the ARC program to include endorsement from units of local government, as it believes that collaboration between local governments and awardees produces positive outcomes.

The proposed rule lists required information as part of the challenge process. Verifiable planned expansion into a project area is a basis for sustaining a challenge under the proposed rule.

It is the intention of the ASBO to release publicly the scoring rubric ahead of the opening of the application period.

Verified customer complaints will need to demonstrate evidence of a consistent pattern of behavior that is counter to what would be considered by a reasonable person as quality customer service.

Specific to the evaluation of local officials’ endorsements relative to tiebreakers, local officials will be able to list preferences if the officials endorse more than one application.

**Were any changes made to the Proposed Rules as a result of this Comments? If so, please describe.** No.

**9. Commenter’s Name:** Terry Sandefer

**Commenter’s Business/Agency:** Lee County Judge

**Summary of Comment:** This letter of support is to emphasize the importance of creating the program that that will maximize the amount of funding available our rural communities and the unserved areas of our state. With my support I am urging the state to utilize the least expensive and most cost-effective methods. To be sure we can provide broadband to those areas in the greatest need.

**Agency’s response to Comment:** The Arkansas State Broadband Office is committed to connecting all unconnected Arkansans through the most efficient, cost-effective process that provides affordable, reliable, high-speed internet access.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**Agency's response to Comment:** The Arkansas State Broadband Office is committed to connecting all unconnected Arkansans through the most efficient, cost-effective process that provides affordable, reliable, high-speed internet access.

**\*Additional comments from the October 6, 2022, public hearing are listed below:**

**10. Commenter's Name:** Rick Hales

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** Will comments from today's meeting be merged with comments from the prior meeting? Is the prior meeting and this meeting the entirety of the comment period?

**Agency's response to Comment:** Yes.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**11. Commenter's Name:** Rick Hales

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** Is there a summary of the changes from the prior proposed rule to the newly revised proposed rule?

**Agency's response to Comment:** Changes to the proposed rule are noted in redline in the rule text and made available on the agency's web site.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**12. Commenter's Name:** Holly Larkin

**Commenter's Business/Agency:** The Circumference Group

**Summary of Comment:** Could you review how the letter of credit disbursement process is expected to work? For instance, if it's a \$5 million project, the letter of credit would need to cover 75% of that, initially? Or 100% of the project cost?

**Agency's response to Comment:** A letter of credit, or performance bond in lieu thereof, would need to cover the financial proportion of the project that is funded through the state. For instance, if an applicant matches the minimum 25%, then the letter of credit or the performance bond would need to cover the remaining 75% of the project cost. If an applicant matched an amount greater than 25%, the letter of credit or performance bond would need to cover the remaining cost of the project funded through the state (for instance, if the applicant matched 40%, the letter of credit or the performance bond would need to cover the remaining 60% of the project cost).

As project milestones are complete, the letter of credit can be reduced over time, to not less than 25% of the total project cost. After project completion and satisfactory acceptance testing, the letter of credit or bond can be discontinued.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**13. Commenter's Name:** Holly Larkin

**Commenter's Business/Agency:** The Circumference Group

**Summary of Comment:** How will the disbursement process work? Will the state reimburse on a 30 or 60-day cycle?

**Agency's response to Comment:** The proposed rule does not address the timing of disbursements. This is already specified in Section 5 of the ARC Program Rule, as amended February 7, 2022.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**14. Commenter's Name:** Rick Hales

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** How long does the letter of credit have to last, and what is the proper dollar amount?

**Agency's response to Comment:** A letter of credit, or performance bond in lieu thereof, would need to cover the financial proportion of the project that is funded by the state. For instance, if an applicant matches the minimum 25%, then the letter of credit or the performance bond would need to cover the remaining 75% of the project cost. If an applicant matched an amount greater than 25%, the letter of credit or performance bond would need to cover the remaining cost of the project funded by the state (for instance, if the applicant matched 40%, the letter of credit or the performance bond would need to cover the remaining 60% of the project cost).

As project milestones are complete, the letter of credit can be reduced over time, to not less than 25% of the total project cost. After project completion and satisfactory acceptance testing, the letter of credit or bond can be discontinued.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**15. Commenter's Name:** Rick Hales

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** Regarding the matching component, will municipalities or counties have the opportunity to contribute to the 25%?

**Agency's response to Comment:** Yes. A municipality or county may contribute to the matching requirement. As a reminder, the matching component must meet the minimum requirement of 25%, and the state will fund a maximum of up to 75% of the total project cost.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**16. Commenter's Name:** Jonathan Duncan

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** Are there any stipulations as to how an applicant can provide the matching component? Is it required to be cash or in-kind contributions?

**Agency's response to Comment:** The matching component may include cash and in kind contributions. The value of in kind contributions must be substantiated through third party invoices.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** No.

**17. Commenter's Name:** L. Elizabeth Bowles

**Commenter's Business/Agency:** Aristotle

**Summary of Comment:** The State of Arkansas has an opportunity to create an incentive for providers to participate in ARC grants and to give those providers support and means to meet the requirements of Federal programs, such as BEAD. However, instead of creating a supportive program to maximize provider involvement, the Broadband Office has created a grant program so financially burdensome that it serves as a disincentive for participation.

The BEAD program requires a minimum 25% match and a 25% letter of credit to support grant applications. The Broadband Office has an opportunity to support providers as they seek to fulfill this letter of credit requirement by allowing bonding, which bonds would serve as collateral for the federal letter of credit. However, rather than doing this, the Broadband Office "quadrupled down" by requiring a letter of credit for 100% of the grant amount, which correspondingly requires providers to have four times as much collateral.



At the end of the day – and after taking into account the 25% match, fees for the 100% letter of credit (which continue until project completion), taxation of grant amounts, the length of time between incurring an expense and reimbursement (which in the previous round has been significant), and the fact that the provider is not allowed to serve any locations other than those designated by the project terms for 2 years – the Broadband Office expects a provider to deploy the network for a fraction of the actual cost while also requiring the provider to sustain that project for 10 years. Here is a concrete example: after taking into account all the expenses listed above – coupled with inflation and labor shortages – the Broadband Office expects providers to complete a \$10 million project for less than \$5 million while fronting all costs and tying up capital and assets to sustain a 100% letter of credit. In the end, these projects serve areas with a population density of less than 100 people per square mile. The added costs and burdens that would result from the Broadband Office’s rules changes make these projects far less sustainable, if at all.

The ARC program was originally designed to bring broadband to unserved and underserved areas. Any money that is siphoned away from this mission into the hands of banks or other third parties is money that can’t be spent on broadband. This, in turn, will necessarily result in fewer Arkansans receiving the high-speed internet they desperately need. By the same token, any policies that disincentivize providers of every size from participation will also result in fewer Arkansans being served.

At a bare minimum, we urge you to reconsider the 100% letter of credit requirement and instead to require a performance bond.

**Agency’s response to Comment:** For the current grant round, a performance bond may be submitted in lieu of an irrevocable letter of credit. Future rounds may only allow for a letter of credit, depending on guidance from the federal government.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a performance bond to be submitted in lieu of an irrevocable letter of credit for this current grant round.

**18. Commenter’s Name:** Holly Larkin

**Commenter’s Business/Agency:** The Circumference Group

**Summary of Comment:** The proposed ARC program revisions set forth in Addendum 2 explicitly state that all applicants must submit with their applications two years of audited financial statements. The proposal does not provide for any exceptions or alternatives to the audited financial statement requirement. The Arkansas Broadband Office has said the purpose of the requirement is to provide evidence of an applicant’s financial strength to meet the terms of the grant.

Under the ARC rules that have historically applied, audited financial statements are one of several options available to an applicant to evidence its financial viability to complete a project. For example, TCW applied, won and fully executed on its prior ARC grants based on documentation showing it had provided internet service to at least 1,000 subscribers in Arkansas for at least five years. The historical rules also include an option permitting an applicant to estimate the working capital needs of the sought-after project and submit a sworn statement by the CFO and a third party CPA that the applicant had at least that amount of unencumbered funds.

The proposed rule’s narrowing of permissible evidence of financial strength to only historical audited financials is a potential hindrance to otherwise viable applicants. Audited financial statements are not common in small and medium businesses. The cost and time to obtain an audit could eliminate such businesses from ARC participation. Additionally, under the narrow language of the proposed revisions, some entities, like the newly formed CG Computer Works LLC, could be excluded from participation in the ARC program due to unique circumstances that preclude historical audited financials, notwithstanding the availability of other evidence of sufficient capitalization, tenured business operations and successful participation in the ARC program.

We encourage the Arkansas Broadband Office to expand the proposed rules to permit applicants to submit, in the absence of two years of audited financial statements, other financial and operational information acceptable to

the Broadband Office to evidence the applicant's financial strength, capitalization, tenured operations and management experience. The objective of ARC is to extend broadband to rural unserved and underserved communities. Having a robust pool of applicants enhances the Arkansas Broadband Office's ability to achieve the ARC goal.

**Agency's response to Comment:** In lieu of audited financial statements, an applicant may submit alternative financial and operation documentation and information that demonstrates, to the satisfaction of the Arkansas State Broadband Office, the financial stability of the applicant.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. The rule was amended to allow a program applicant to submit alternative financial and operational documentation and information that demonstrates, to the satisfaction of the Arkansas State Broadband Office, the financial stability of the applicant.

**19. Commenter's Name:** Joe Molinaro

**Commenter's Business/Agency:** Arkansas Cable Telecommunications Association

**Summary of Comment:** The requirement that every applicant have the endorsement of the county judge and every mayor within the project area will have the effect of excluding applications and reducing competition. It will also allow the local officials to essentially pick the winner and avoid the competitive scoring process. Also, some local officials have declined to provide any endorsement, which will mean that those areas will lack any applications.

**Agency's response to Comment:** The intent of the original language was to ensure that the grant award process included feedback from local officials. However, the language was not intended to allow local officials to pre-select a single winner and by-pass the competitive scoring process. The agency has revised the rule to address this issue.

**Were any changes made to the Proposed Rules as a result of this Comment? If so, please describe.** Yes. Applications lacking the endorsement of a mayor or county judge within the project area may still be submitted, but the application must include a statement from the applicant documenting the efforts to obtain the endorsement and the reasons, if any, that the endorsement was not provided. No changes were made to the rule concerning the local official endorsement as a tie-breaker in the event of tie scoring of the applications.