



August 5, 2024

Submitted Electronically

Ms. Marlene Dortch
Secretary
Federal Communications Commission ("FCC")
45 L Street NE
Washington, DC 20554

Re: WC Docket Nos. 10–90, 18–143, 19–126, 24–144; AU Docket Nos. 17–182, 20–34;
GN Docket No. 20–32; FCC 24-64; FR ID 226925

Dear Secretary Dortch:

The Wisconsin Bankers Association ("WBA") is the largest financial trade association in Wisconsin, representing nearly 190 state and nationally chartered banks and savings institutions, and their 30,000 employees. WBA appreciates the opportunity to comment on the above referenced Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC")¹.

In the *Federal Register* publication², the FCC states that, among other matters, "the Commission seeks targeted comment on whether and how to change the sections of the letter of credit rules requiring a minimum safety rating for issuing financial institutions." While this comment letter focuses on the FCC's regulations implementing the Rural Digital Opportunity Fund ("RDOF") and the RDOF Auction relating to the eligibility of United States (U.S.) banks that may issue an irrevocable standby letter of credit ("LOC") to an RDOF provider applicant, WBA respectfully requests that the FCC consider these comments in the context of all its programs where a LOC is needed from a U.S. bank.

WBA urges the FCC to discontinue its requirement that a bank obtain a Weiss safety rating in order to be eligible to provide a LOC to recipients of the FCC's RDOF. WBA believes the existing bank regulatory structure and supervision of banks provides the FCC with strong assurance that banks that issue a LOC do not present risk of failure. Nonetheless, if the FCC insists on retaining some verification method as part of its bank eligibility rules, WBA presents two options that are superior to the Weiss rating system.

The FCC's Bank Eligibility Rules Must Eliminate the Current Weiss Safety Rating Requirement to Maintain a Broad Pool of Issuing Banks for Providers Participating in the RDOF and RDOF Auction.

Wisconsin is one of many rural states served by community banks with longstanding relationships with rural telecommunications ("telco") providers. The need for more broadband infrastructure across rural Wisconsin remains high so programs like RDOF for telco providers to

¹ 89 Fed.Reg. 55542, July 5, 2024 ("FR Release").

² *Id.* at 55443.

participate in are critical and meaningful. As WBA has previously communicated with the FCC earlier this year, WBA strongly objects for several reasons to the provision in FCC Regulation §54.804(c)(2)(i)(B) that an eligible U.S. bank must have a “bank safety rating issued by Weiss of B- or better”, and in general believes a rating requirement from any third party is unnecessary altogether.

Prior to the FCC issuing an Order on March 12, 2024³, partially waiving the requirement of a Weiss bank safety rating of B- or better, WBA received calls from some of its rural community bank members who suddenly discovered that they could not continue providing their telco providers with LOCs because their Weiss bank safety rating had inexplicably dipped below B- sometime in late 2023. Upon further investigation, WBA learned that 60% of its headquartered member banks (179 banks total at the time) were now ineligible, making it nearly impossible for telco providers to find another Wisconsin bank in their community that remained eligible and that also issued LOCs in these instances. Indeed, the FCC notes in the NPRM that of the 3,600 banks nationally qualified to issue LOCs when the FCC first adopted this rule, “nearly half of those banks have lost their eligibility to issue LOCs as they have seen their Weiss rating fall below a B-.” Consequently, WBA was very appreciative of the temporary relief provided through the FCC’s Order. However, since the Order is only temporary, this NPRM is important so that more permanent changes may be made to preserve the impactful funding received by telco providers and allow a broad pool of banks to participate in these transactions.

Until this year, WBA had not heard of the Weiss rating organization nor had its member banks. While WBA is unfamiliar with Weiss ratings, WBA notes that it is not a nationally recognized statistical rating organization (“NRSRO”) that is registered with the U.S. Securities and Exchange Commission (“SEC”). There is no transparency as to the formula used for generating their bank safety rating and several comments on their website raise concerns as to the reliability of their analysis. Indeed, WBA believes their ratings to be questionable at best, and irresponsible at worst.

For example, the Weiss website warns that 4,243 U.S. depository institutions could be vulnerable to failure. Among them, 1,210 (28.5%) received a red warning flag from Weiss, signaling risk of imminent failure. And 3,043 received a yellow warning flag from Weiss, indicating risk of failure in a financial crisis or recession. In sum, 45% of all banks and credit unions were deemed vulnerable by Weiss. As a point of reference, from 2018 through 2024, there have been a total of 13 bank failures across the entire country.

As another example, one of the Wisconsin banks with a recent drop in their rating by Weiss is reflected on their site with “weak” liquidity. For this bank, this indicator is actually the exact opposite. This bank runs a very clean balance sheet relying solely on local deposits to fund the bank. There are no wholesale borrowings or brokered deposits, something nearly unheard of in today's environment. This bank also has strong on-balance sheet liquidity as it runs a lower loan-to-deposit ratio than most banks. Again, of all the categories, liquidity for this bank would be one of their strongest categories.

Furthermore, Weiss rates bitcoin as an A- on their webpage as of July 26, 2024. It is difficult to rationalize how an unregulated cryptocurrency receives such a high rating while thousands of regulated financial institutions have a safety rating lower than B-.

³ Order Issued on March 12, 2024, *In the Matter of Connect America Fund; Connect America Fund Phase II Auction; The Rural Digital Opportunity Fund Auction*, DA/FCC #:DA-24-244, Docket Number: 10-90, 17-182, 20-34.

As a result, WBA is concerned that the continued use of any Weiss safety rating requirement excludes the community banks in rural communities that are best positioned to provide (and are already providing) banking services to an RDOF provider applicant in such communities. Consequently, WBA believes the Weiss rating requirement should be eliminated altogether in the FCC's final rule.

Furthermore, No Third-Party Rating Requirement Is Needed in the FCC's Bank Eligibility Rules for Providers Participating in the RDOF and RDOF Auction.

The rating agencies that are more widely recognized for their independent and objective perspectives are NRSROs that are registered with the SEC. While it may seem logical to substitute the current Weiss rating organization with a rating from an NRSRO, such action by itself will eliminate all non-publicly traded banks from being able to participate as eligible issuing banks for telco providers participating in the RDOF and RDOF Auction. Most banks in Wisconsin (and around the country) are not publicly traded.

While WBA understands that the FCC must protect the expenditures from the RDOF and other funds by ensuring that telco providers and the FCC have LOCs that can be relied upon, WBA believes this goal is accomplished through the fact that participating banks are FDIC-insured and robustly regulated. Specifically, banks are already regulated by a federal banking agency (either the FDIC, the Board of Governors of the Federal Reserve, or the Office of the Comptroller of Currency) and, in the case of the many banks that are state chartered, they also are regulated by a state banking agency. Examinations conducted by regulators of banks occur every 12-18 months and are intensive in nature, typically lasting several weeks with a portion of that time on-site at the bank. The large, global banks have examiners on-site daily throughout the year. Indeed, the eight U.S. domiciled Global Systemically Important Banks are subject to higher safety and soundness standards by their regulators⁴. These banking regulators manage the oversight and safety and soundness of all banks so that other entities doing business with banks, including tangentially other federal agencies such as the FCC, do not need to duplicate this responsibility or rely on some other third party to determine the financial stability of banks.

Moreover, Wisconsin banks issuing these LOCs to telco providers are commonly doing so in a fashion that mitigates their own risk. It is typical for these banks to have some type of collateral or a guaranty as a condition to issuing the LOC. This may take the form of a certificate of deposit at the issuing bank, the pledge of other assets, or a separately signed guaranty from the telco provider. In addition to mitigating the issuing bank's own risk, this practice provides important protection for the FCC as well.

WBA believes any bank rating requirement is at cross-purpose with the stated objective of the RDOF which is to bridge the digital divide to efficiently fund the deployment of broadband networks in rural America because very often, the community banks that will be willing to issue LOCs to the telco providers already provide essential banking services in rural America. To cut them off because of an arbitrary rating from any non-NRSRO organization is both less than effective and unfair. Consequently, WBA respectfully urges the FCC to remove any third-party rating requirement altogether in its final rule.

⁴ See 2023 List of Global Systemically Important Banks (G-SIBS) at <https://www.fsb.org/2023/11/2023-list-of-global-systemically-important-banks-g-sibs/>.

If the FCC Determines It Must Retain Some Verification Method as Part of Its Bank Eligibility Rules for Providers Participating in the RDOF and RDOF Auction, WBA Urges FCC to Use a Two-Pronged Approach

As stated above, WBA does not believe that the Weiss rating organization is a reliable rating service and, therefore, it should be eliminated from the FCC's bank eligibility rules. Furthermore, WBA does not believe that any alternative to the Weiss safety rating is necessary given the practice issuing banks typically use in securing their letters of credit, and the robust regulation that all issuing banks undergo from their primary prudential federal and state banking regulators. Nonetheless, if the FCC concludes that some verification is needed to protect the expenditures from the RDOF fund and other funds, WBA strongly urges the FCC to provide a choice of two options for all banks as an alternative to the current requirements of a Weiss safety rating.

As mentioned above, since the rating agencies that are more widely recognized for their independent and objective perspectives are NRSROs that are registered with the SEC, one option should be that an eligible bank has a rating issued by an NRSRO that is equivalent to a BBB- or better rating by Standard & Poor's. This would be applicable for any publicly traded bank; however, none of the NRSROs provide ratings for non-publicly traded banks. As a result, another option must be given in order to allow as many banks as possible across the country to be eligible as issuing banks.

WBA recommends that the FCC accept, as a second option for all banks, an affidavit signed by an officer of the issuing bank stating that the bank is "adequately capitalized" or "well capitalized" as of the date the LOC is issued, along with a representation that the bank officer will promptly notify the telco provider customer if the bank's capital ratio changes such that it is less than "adequately capitalized." Capital ratios are an important objective measure of a bank's safety and soundness, so a document attesting that an issuing bank is at least "adequately capitalized" provides the FCC with another layer of confidence that the funds expended to a telco provider as part of the RDOF and RDOF Auction are protected.

Conclusion

The long-standing relationships that Wisconsin's banks have with their telco providers are important to preserve and maintain. The FCC's actions earlier this year in issuing the Order allowed existing issuing banks to continue providing these LOCs to their telco customers without undue disruption. A permanent change is needed, however, to ensure that Wisconsin banks remain an integral partner with their telco providers in helping expand needed broadband infrastructure across our state. Ultimately, WBA believes this is most effectively done by eliminating the need for any third-party rating requirement altogether from the FCC's rules for telco providers participating in the RDOF and RDOF Auction.

WBA appreciates the opportunity to submit these comments for the FCC's careful consideration.

Sincerely,



Rose Oswald Poels
President and CEO