

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 seventy-five (75) undersigned state banking associations, the American Bankers Association<sup>1</sup> and the Independent Community Bankers of America<sup>2</sup> (“Associations”) represent financial institutions of all sizes located across the United States. We appreciate the opportunity to comment on the above referenced Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC”)<sup>3</sup>, which seeks comment on whether the FCC should retain use of the Weiss safety rating for determining whether a bank is eligible to extend a letter of credit (“LOC”) to a recipient of the FCC’s Rural Digital Opportunity Fund (“RDOF”).

We urge 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. We believe 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, we present two options that are superior to the Weiss rating system.

**Background**

Banks across the country represented by our Associations have longstanding relationships with rural telecommunications (“telco”) providers for their banking services including providing LOCs when needed. There continue to be many geographic areas across the nation that are unserved or underserved when it comes to broadband, which make grant programs like the FCC’s RDOF and the RDOF Auction critical to help telco providers achieve their deployment milestones. It is in the context of these programs that the Associations are submitting comments for the FCC’s consideration as part of its NPRM.

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<sup>1</sup> The ABA is the voice of the nation’s \$24 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$19 trillion in deposits and extend \$12.4 trillion in loans.

<sup>2</sup> With nearly 50,000 locations nationwide, community banks employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, more than \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America.

<sup>3</sup> 89 Fed.Reg. 55542, July 5, 2024 (“FR Release”).

Currently, the FCC rules require in §54.804(c)(2)(i)(B)<sup>4</sup>, which is contained in Subpart J of Part 54 of Subchapter B of Chapter 1 of Title 47 of the U.S. Code of Federal Regulations, that a U.S. bank have a “bank safety rating issued by Weiss of B- or better” in order to be eligible as an issuing bank for providers participating in the RDOF and RDOF Auction. Earlier this year, many of our Associations’ members discovered that they could not continue issuing LOCs to their telco providers, and existing LOCs could no longer be relied upon, because their Weiss bank safety rating had dipped below B- in late 2023 for no transparent reason. The FCC’s Order issued on March 12, 2024<sup>5</sup>, partially waiving the requirement of a Weiss bank safety rating of B- or better, was critical to allowing existing issuing banks to continue to provide these LOCs to their telco customers without interruption despite the unexpected and unexplained change in their Weiss safety rating. The Associations appreciate the FCC’s careful consideration of our comments herein related to a long-term change in the FCC’s current rules around bank eligibility for the RDOF and RDOF Auction, among other programs.

### The FCC Must Eliminate the Weiss Safety Rating Requirement for Bank Eligibility

For reasons set forth below, the Associations strongly object to the provision in the 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.” We believe the specific reference to a Weiss rating should be eliminated altogether from the rules.

The Weiss rating organization 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 ratings and several comments on their website raise concerns as to the reliability of their analysis.

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.

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-.

Given the questionable reliability of the Weiss safety ratings, the Associations are concerned that the continued use of any Weiss safety rating requirement excludes qualified banks, notably community banks in rural communities, that are best positioned to provide banking services to an RDOF provider applicant in such communities. 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, the Associations believe the Weiss rating requirement should be eliminated altogether in the FCC’s final rule.

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<sup>4</sup> 47 CFR §54.804(c)(2)(i)(B)

<sup>5</sup> 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.

## Alternative Comments on Ascertaining a Bank's Economic Health

While the Associations understand 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, we believe this goal is accomplished through the fact that participating banks are FDIC-insured and robustly regulated. As a result, there is no need for a bank's eligibility to be contingent upon any third-party rating service.

Specifically, banks are already regulated by one of the prudential federal banking regulators, 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 are also 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 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, many banks issuing these LOCs to telco providers are doing so in a manner that mitigates their own risk, which should provide further confidence to the FCC regarding its ability to recoup funds in the event that an RDOF or RDOF Auction recipient fails to complete its deployment obligations. It is typical for banks to ask for some type of guaranty or collateral as a condition to issuing the LOC. Sometimes, this may take the form of a certificate of deposit, the pledge of other assets, or a separately signed guaranty. This practice mitigates the issuing bank's own risk and provides important protection for the FCC as well.

If the FCC concludes that it must retain some verification method as part of its bank eligibility rules for telco providers participating in the RDOF and RDOF Auction, the Associations strongly recommend that the FCC adopt two options for all banks as an alternative to the current requirement of a Weiss safety rating.

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.

The Associations suggest 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 Associations appreciate the FCC's issuance of this NPRM in support of a permanent

change to the current bank eligibility rules requiring a certain Weiss safety rating so that our member banks may continue to serve as an integral partner with their telco providers in helping expand needed broadband infrastructure across our country.

The President and CEOs of the undersigned Associations further appreciate the FCC's careful consideration of our comments.

Sincerely,

Alabama Bankers Association  
Alaska Bankers Association  
Arizona Bankers Association  
Arkansas Bankers Association  
Arkansas Community Bankers Association  
California Bankers Association  
California Community Banking Network  
Colorado Bankers Association  
Independent Community Bankers of Colorado  
Connecticut Bankers Association  
D.C. Bankers Association  
Delaware Bankers Association  
Florida Bankers Association  
Community Bankers Association of Georgia  
Georgia Bankers Association  
Hawaii Bankers Association  
Idaho Bankers Association  
Community Bankers Association of Illinois  
Illinois Bankers Association  
Indiana Bankers Association  
Community Bankers of Iowa  
Iowa Bankers Association  
Community Bankers Association of Kansas  
Kansas Bankers Association  
Bluegrass Community Bankers Association  
Kentucky Bankers Association  
Maine Bankers Association  
Massachusetts Bankers Association  
Maryland Bankers Association  
Community Bankers of Michigan  
Michigan Bankers Association  
BankIn Minnesota  
Minnesota Bankers Association  
Mississippi Bankers Association  
Missouri Bankers Association  
Missouri Independent Bankers Association  
Montana Bankers Association  
Montana Independent Bankers Association  
Nebraska Bankers Association  
Nebraska Independent Community Bankers  
Nevada Bankers Association  
New Hampshire Bankers Association

New Jersey Bankers Association  
Independent Community Bankers Association  
of New Mexico  
New Mexico Bankers Association  
Independent Bankers Association of  
New York State  
New York Bankers Association  
North Carolina Bankers Association  
Independent Community Banks of  
North Dakota  
North Dakota Bankers Association  
Community Bankers Association of Ohio  
Ohio Bankers League  
Community Bankers Association of  
Oklahoma  
Oklahoma Bankers Association  
Oregon Bankers Association  
Pennsylvania Association of  
Community Bankers  
Pennsylvania Bankers Association  
Rhode Island Bankers Association  
Independent Banks of South Carolina  
South Carolina Bankers Association  
Independent Community Bankers of  
South Dakota  
South Dakota Bankers Association  
Tennessee Bankers Association  
Independent Bankers Association of Texas  
Texas Bankers Association  
Utah Bankers Association  
Vermont Bankers Association  
Virginia Association of Community Banks  
Virginia Bankers Association  
Community Bankers of Washington  
Washington Bankers Association  
Community Bankers of West Virginia  
West Virginia Bankers Association  
Wisconsin Bankers Association  
Wyoming Bankers Association  
  
American Bankers Association  
Independent Community Bankers of America