

**Before the
Rural Utilities Service
Washington, D.C. 20250**

In the Matter of)
)
Rural Broadband Access Loans and) Docket No. RUS-06-Agency-0052
Loan Guarantees)
)

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
and the
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the Independent Telephone and Telecommunications Alliance (ITTA)² hereby submit these comments on the Rural Utilities Service’s (RUS) proposed amendments to the regulations of the Rural Broadband Access Loans and Loan Guarantee Program (Broadband Loan Program).³ OPASTCO and ITTA appreciate the efforts of the RUS to balance the need to extend

¹ OPASTCO is a national trade association representing over 520 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² ITTA represents mid-size local exchange companies that provide a broad range of high quality wireline and wireless voice, data, Internet, and video telecommunications services to more than 14 million customers in 49 states.

³Rural Broadband Access Loans and Loan Guarantees, 72 Fed. Reg. 26,742 (2007) (to be codified at 7 C.F.R. pt. 1738) (proposed May 11, 2007) (Proposed Rule).

broadband loans and loan guarantees in a timely manner, while also ensuring that taxpayer-supported financing is allocated judiciously to qualified borrowers with viable business plans and adequate equity. OPASTCO and ITTA are therefore supportive of RUS endeavors to improve the usefulness of the Broadband Loan Program, while at the same time retaining adequate risk-mitigation measures designed to guard against default.⁴

The RUS can achieve these twin goals by adjusting some of the proposed rules to streamline the application process for previous RUS borrowers that have exemplary repayment histories.

II. STREAMLINED APPLICATION PROCEDURES FOR BORROWERS WITH PROVEN REPAYMENT HISTORIES WILL SPEED THE DEPLOYMENT OF BROADBAND SERVICES TO RURAL AMERICA

Many well-established rural carriers that are past or current RUS borrowers⁵ are interested in utilizing the Broadband Loan Program to gain access to the capital needed to deploy broadband in their communities whether through a regulated entity, an affiliate, or possibly both. However, these carriers can be discouraged by an application process that is unnecessarily burdensome, considering their established credit history with the RUS.

As a result, carriers may turn to other lenders rather than become bogged down with time-consuming application procedures that are unique to the RUS loan process.

OPASTCO and ITTA appreciate that safeguards are clearly needed to avoid defaults.

However, all applicants need not be subject to identical application procedures.

⁴ According to a recent Department of Agriculture publication, the rural broadband pilot program lacked some risk-mitigation provisions, resulting in a 30 percent default rate. *See*, United States Department of Agriculture, Rural Development, *USDA Rural Development: Bringing Broadband to Rural America* (rel. May, 2007), p. 4 (<http://www.rurdev.usda.gov/rd/pubs/RDBroadbandRpt.pdf>).

⁵ In this context, the term “RUS borrowers” includes those that have received financing from RUS-related entities, such as the RUS’s predecessor agency, the Rural Electrification Administration, the Rural Telephone Bank, and the Federal Financing Bank.

Like any lender, the RUS can and should consider the repayment history of applicants, their affiliates, or parent companies that have previously borrowed from other RUS programs. Those applicants that have proven track records of on-time debt service to the RUS should be subject to a streamlined application process. Typically, these are also the same providers that have a proven history of making high quality telecommunications services available throughout their service territories. These are precisely the type of borrowers that will put RUS funding to its best use on behalf of taxpayers. By streamlining the application process for entities with a proven track record with the RUS, the agency will provide funding in a more expeditious manner to the most qualified providers, spurring faster deployment of broadband services in difficult-to-serve rural America.

What follows are several examples of proposed amendments that could be altered in order to reduce the burdens on established past and current RUS borrowers, while still guarding against the potential for defaults. Section 1738.34 in the Proposed Rule would eliminate the market survey requirement for applicants projecting less than 15 percent penetration.⁶ Rather than lifting the market survey requirement based on this benchmark, the RUS could lift it when the area has no broadband availability, or based on an applicant's (or its parent company's) repayment history with RUS. Carriers with demonstrably good credit histories have proven that they are familiar with their market and can execute a business plan successfully, which obviates the need for surveys in these instances.

⁶ Proposed Rule, 72 Fed. Reg. 26,755.

Also, Section 1738.37(c) of the Proposed Rule would require financial statements for affiliated operations that provide services to the applicant.⁷ OPASTCO and ITTA recommend granting exceptions to this requirement for those entities that have previously demonstrated the consistent ability to make timely payments on their RUS loans. Similarly, Section 1738.38(a)(3),⁸ which requires a cost estimate broken down by each community served, should be lifted for those with exemplary RUS credit histories.

In addition, the proposed quarterly build-out schedules found in Section 1738.38(a)(4),⁹ including timelines and descriptions of the work forces required to complete construction, should be lifted for those with a proven record of repayment. If not lifted altogether, streamlined requirements, such as annual schedules without detailed descriptions of the work forces, would be appropriate.

Further, Section 1738.41(b) of the Proposed Rule notes that the RUS generally requires an exclusive first lien “on all of the applicant’s property.” However, Section 1738.41(d), discussing broadband facilities that do not constitute self-contained operating systems or units, refers to “the mortgage and/or security lien on all of the applicant’s facilities *financed by the Agency...*”¹⁰ The RUS should not require a lien on all the property of applicants that have good RUS borrowing histories. At the very least, the RUS should clarify the language found in Sections 1738.41(b) and (d).

Finally, rural carriers are often discouraged by an application process that is insufficiently timely, resulting in uncertainty that undermines business plans. A

⁷ *Id.*

⁸ *Id.*, 72 Fed. Reg. 26,756.

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

requirement to process applications within 120 days would encourage more carriers to utilize the Broadband Loan Program.

III. CONCLUSION

The RUS is tasked with balancing the need to make funding available to those seeking to offer broadband services in rural areas with the need to limit its investment to sound companies with solid business plans. By streamlining some of its proposed procedures for carriers that have a solid repayment history with the RUS and that have demonstrated their commitment to serving rural areas, the RUS can strike that balance, and thereby expedite the availability of broadband services to rural consumers.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

**THE INDEPENDENT TELEPHONE AND
TELECOMMUNICATIONS ALLIANCE**

By: /s/ Joshua Seidemann
Joshua Seidemann
Director, Regulatory Policy

975 F Street, NW
Suite 550
Washington, DC 20004
(202) 552-5846

July 10, 2007

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by OPASTCO and ITTA was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 10th day of July, 2007, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
RUS-06-Agency-0052

Michele Brooks
Acting Director
Program Development and
Regulatory Analysis
USDA Rural Development
1400 Independence Avenue, SW
STOP 1522
Room 5159
Washington, DC 20250-1522

Jonathan Claffey
Deputy Assistant Administrator
Telecommunications Program,
Rural Development
US Department of Agriculture
1400 Independence Avenue, SW
STOP 1590
Room 4056
Washington, DC 20250-1590