

**Before the
Rural Utilities Service
U.S. Department of Agriculture**

Rural Broadband Access)	Docket No. RUS-06-Agency-0052
Loans and Loan Guarantee)	RIN 0572-AC06
)	

COMMENTS OF CROSSROADS WIRELESS HOLDING, LLC

Crossroads Wireless Holding, LLC (“Crossroads or “the Company”) hereby files comments on the changes proposed by the Rural Utilities Services (“RUS”) to the Rural Broadband Access Loan and Loan Guarantee Program (“Broadband Loan Program”) rules. The proposed rules were published in the Federal Register on May 11, 2007.¹

I. INTRODUCTION

Although Crossroads is a newly formed entity, it has deep roots in rural America. Based on the many years of experience in telecommunications of its founders and principals, the Company is developing a large scale venture to construct and operate a network to offer wireless mobile voice and broadband services in underserved rural markets across the country. Target markets include less populated areas that have historically lacked infrastructure investment by other service providers. Working with its rural telephone company partners, the Company intends to provide broadband, high-speed data services to rural homes and businesses that generally had no such access previously. Crossroads currently has pending before the RUS an application for a broadband loan that will be used to fund, among other things, network infrastructure and

¹ 72 Fed. Reg. 26742 *et sequens* (“NPRM”).

build-out costs.

Broadband access provides a myriad of new applications and opportunities to rural America, including distance learning, telemedicine, e-commerce, telecommuting, voice over Internet protocol, local and long distance voice service. Broadband access acts as a bridge connecting rural areas to the rest of the country and to the world, thereby improving the quality of rural life. For example, broadband access can mitigate the isolation of rural communities by helping people to connect to other people and to resources nationwide and worldwide. It provides students in rural areas access to information and expertise that historically only has been available to residents of more populated communities. Broadband access also provides more opportunities for business owners to expand their markets as well as to increase their potential employee base through telecommuting. Broadband can provide health care workers in rural America access to advanced medical expertise and diagnostic tools. Mobile broadband service in rural areas, however, not only serves those who live there but also business persons and tourists who travel throughout rural America. Thus, Crossroads strongly supports the RUS Broadband Loan Program and all it can achieve by bringing the benefits of broadband access to more rural communities. In short, RUS can be a dynamic catalyst for bringing broadband to where rural consumers live, work and play.

In order to optimize these goals, the Broadband Loan Program should reorient itself to value mobility -- in the same way that rural consumers value mobility. RUS should modify its regulations to recognize the importance of mobile broadband by allowing funding in any rural community that does not have a mobile Existing Broadband Service Provider. To more effectively target broadband loans to communities that are

underserved, RUS also should raise the proposed penetration threshold of an Existing Broadband Service Provider from 10 percent of households passed to 17.5 percent of total households in the community. Crossroads also supports the RUS efforts to streamline the Broadband Loan Program and offers several other recommendations described below. Taken together, these changes can place RUS at the vanguard of rural broadband deployment by efficiently targeting and supporting those services that rural consumers value most.

II. THE RUS SHOULD REVISE THE BROADBAND LOAN ELIGIBILITY REQUIREMENTS AND PRIORITIES

The Broadband Loan eligibility requirements should be modified to better reflect the importance of mobile broadband to rural America. In the NPRM, RUS appropriately reaffirms its commitment to give priority to eligible rural RUS communities where no broadband service is available.² RUS proposes changes in eligibility that would prohibit funding within urban areas, regardless of population, and areas where a significant share of the market already is served by incumbent providers. In particular, RUS proposes to modify the definitions of “Existing Broadband Service Providers,” “Eligible Rural Community” and “Urban Area.”³ Under its new definitions, RUS proposes to prohibit funding for any community where there are four or more Existing Broadband Service Providers (proposed to be defined as an incumbent provider that certifies to the RUS that 10 percent of the households passed by their facilities are purchasing their broadband service).⁴ RUS also proposes to require applications from new market entrants, start-ups,

² NPRM at 26744.

³ *Id.* at 26748.

⁴ *Id.* at 26749.

or incumbent providers to enter areas where 40 percent of households either have no access to Broadband Service or access to only one Existing Broadband Service Provider.⁵

As described below, Crossroads urges RUS to modify its eligibility proposals to ensure that mobile broadband is accorded appropriate priority in loan eligibility and to broaden the eligibility of areas that can be served by the Broadband Loan Program by raising the penetration threshold of what constitutes an Existing Broadband Service Provider.

A. RUS REGULATIONS SHOULD RECOGNIZE THE IMPORTANCE OF MOBILE BROADBAND

The RUS should modify its proposed eligibility criteria by recognizing the necessity of promoting access to *mobile* broadband service in rural areas. Although RUS strives to achieve technological neutrality, to date of the 68 loan approvals described in the NPRM⁶ we understand that none of them have been for mobile broadband service; yet mobile broadband service will benefit individuals in rural areas in many ways. RUS regulations should promote mobile broadband by treating any rural community as eligible for a Broadband Loan that does not have a mobile Existing Broadband Service Provider.

Mobile broadband could transform rural development throughout the country. In America, business is becoming increasingly dependent on mobile technology; and rural areas should not be left behind. Rural health care and education will benefit from the range, low cost, and mobility that typify today's mobile networks. Rural mobile broadband means that individuals in rural areas who need to consult with medical

⁵ *Id.* At 26749 and 26753 (Section 1738.21 (a)(2)).

⁶ *Id.* at 26744.

specialists in the larger cities do not necessarily need to travel long distances but can connect with the medical specialists wherever they are on their family farms or ranches via mobile broadband service. New mobile broadband connections will benefit rural Americans who otherwise might have to travel hundreds of miles to gain access to the information, expertise, and markets they need. Finally, rural communities require mobile broadband to meet their essential homeland security needs. Mobile networks will allow rural first responders to communicate with law enforcement – and enable people to get help when and where they need it.

In recognition of the importance of mobile broadband, RUS should modify its rules so that any rural community without a mobile Existing Broadband Service Provider is eligible for funding, regardless of the number of Existing Broadband Service Providers that provide a fixed service (wireless or wireline). Thus, the first sentence of Section 1738.21 (a)(2) should be revised to read as follows:

- (2) Contain at least 40 percent of households with no access to Broadband Service or access to only one Existing Broadband Service Provider that provides a fixed Broadband Service.

Additionally, the definition of Eligible Rural Community in Section 1738.2 should be revised as follows so that subsection (3) of the definition does not exclude rural communities without a mobile broadband provider:

- (3) An area that has four or more Existing Broadband Service Providers (excluding the applicant), none of which is a provider of a mobile Broadband Service.

B. RUS SHOULD RAISE THE PENETRATION THRESHOLD FOR AN EXISTING BROADBAND SERVICE PROVIDER TO 17.5 PERCENT OF ALL HOUSEHOLDS

The definition of Existing Broadband Service Provider also should be changed. The penetration percentage threshold should be applied to the entire community and not just to households passed, and the percentage should be raised from 10 to 17.5 %.

In order to be considered an Existing Broadband Service Provider, an incumbent should be required to demonstrate that 17.5% of the households in the relevant community (not just households passed) purchase its broadband service. This higher threshold is necessary because otherwise a broadband loan would be blocked in rural communities that are not well served by incumbent broadband providers. For example, under the proposed definition that relies on homes “passed,” a wireline incumbent may serve only a handful of houses in a rural community, but still count as an Existing Broadband Service Provider. Indeed, four providers each serving 10% of homes that it individually passes may not be serving collectively more than a small percentage of the entire rural community; yet they each would qualify as an Existing Broadband provider and would bar the grant of an application for a Broadband Program loan.

Additionally, the threshold to be an Existing Broadband Provider should be increased from 10% to, at a minimum, 17.5%. The founders of Crossroads have substantial experience in providing telecommunications-related service to rural American and believe that only when at least 70% or more of rural households have subscribed to broadband service can a rural community be considered well-served. The RUS’s current proposed threshold of as low as 40% penetration (4 times 10%) to make a rural community ineligible for a RUS broadband loan is simply too low if the RUS is to

promote broadband access in rural America. Indeed, today 40% of all American homes already have broadband – thus 40% should hardly be characterized as sufficiently well served to meet our nation’s broadband goals that it should act as an absolute bar to an otherwise Eligible Rural Community. If the RUS is to promote symmetry of broadband access between rural and urban areas, it needs to raise the percentage threshold to the penetration levels typically achieved in urban areas, or at least 17.5% of all households by each of four providers.

III. BY STREAMLINING ITS RULES, RUS WILL PROMOTE RURAL BROADBAND DEPLOYMENTS

As a recent applicant in the Broadband Loan Program, Crossroads has familiarized itself with the RUS’s current regulations and procedures. The Company agrees with RUS that modifications to its rules would accelerate the deployment of broadband service to the rural areas of the country. RUS should modify its public notice regulations, expressly exclude commercial-off-the-shelf technology from its surety bond requirement, eliminate the market survey requirement, and reduce the loan applicant’s equity requirement from 20 to 10%.

RUS’s proposed modification to the legal notice rule (Section 1738.33), by which a single notice will be prepared and be placed on the RUS web site for 30 work days, will provide more effective and transparent notice to the public for the purpose of identifying the number of Existing Broadband Service Providers in an area. The Company supports replacing the current requirement of publishing legal notice in a local newspaper in each community to be served, accompanied by the burdensome requirement for a legal opinion from an attorney on the sufficiency of the local notice. Adoption of the proposal will

increase transparency, while reducing the burden on applicants, especially those who propose to serve multiple communities.

RUS, however, should reconsider the amount of information that it will request incumbent providers to submit under Section 1738.33(a)(3). Although RUS states that it will not release proprietary and confidential information submitted by the incumbent in the event of a Freedom of Information Act (“FOIA”) request, the proposed requirement that incumbents submit information about the types and rates of their non-broadband services is still burdensome.⁷ Information on incumbents’ non-broadband services does not appear necessary for RUS to determine the area’s eligibility for a loan. Moreover, the competitive information is proprietary, and if a FOIA request for the proprietary information is filed the incumbent providing the sensitive information would incur expenses opposing the request; and there is no guarantee that RUS would be able to protect it from disclosure in the event of a FOIA court challenge.

RUS also should revise its surety bond regulations. In many cases, applicants for a loan to provide mobile Broadband Service will propose to rely on commercial-off-the-shelf (“COTS”) technology. Such equipment purchases should be expressly excluded from RUS Rule Section 1788.49, which currently states that, for construction contracts of \$250,000 or more, the contractor must secure a surety bond in the amount of the entire contract price, including all “labor and materials.”⁸ The purpose of a bond is to protect RUS from non-performance by a contractor. That is not an issue with COTS technology

⁷ *Id.* At 26750 (Incumbent Service Provider will be requested to submit information on “other services that will be offered in the applicant’s proposed service area and the associated rates for these services.”).

⁸ 7 CFR 1788.49

that not only has been previously tested and proven in the field but is under a manufacturer warranty. COTS equipment, therefore, should be expressly excluded from the bond requirement, and RUS should review other ways to reduce the burden of the bond requirement on applicants and their contractors while still protecting RUS's financial interests.

Crossroads strongly supports the RUS proposal to eliminate the requirement of a market survey in those instances where an applicant is proposing to serve less than 15 percent of the market. In fact, Crossroads urges RUS to eliminate the market survey requirement for all applications. The requirement imposes significant expense on the applicant, while much of the information to be collected is redundant (for example, information about existing service providers and their broadband rates also is to be collected through the Section 1738.33 legal notice procedures) or irrelevant (a telephone survey regarding the amount of Internet usage in a community without broadband will not yield reliable data about potential broadband usage). Most telling is the fact that once the expensive "market" survey is submitted to RUS, it generally serves no commercial marketplace purpose of the applicant.

Finally, Crossroads supports the RUS proposal to reduce the equity requirement from 20 percent to 10 percent of the requested loan amount. Under current RUS loan eligibility rules, applicants must have a credit support contribution equal to 20 percent of the requested loan amount and in some instances cash equal to the first full year's operations. These requirements are not consistent with commercial lending practices with which most applicants are familiar and present formidable obstacles to funding, especially for a start-up company.

IV. CONCLUSION

Crossroads strongly supports RUS's efforts to accelerate the deployment of broadband service to the rural areas of the country and urges RUS to modify its rules as proposed herein.

Respectfully submitted,

CROSSROADS WIRELESS HOLDING, LLC

A handwritten signature in black ink, appearing to read "Tom Riley", written over a solid horizontal line.

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