

**Before the  
RURAL UTILITIES SERVICE  
UNITED STATES DEPARTMENT OF AGRICULTURE  
Washington, D.C. 20250**

In the Matter of	)	
	)	
7 C.F.R. Part 1738	)	RUS-06-Agency-0052
	)	
Rural Broadband Access Loans and Loan Guarantees	)	RIN 0572-AC06
	)	
Proposed Rules	)	

**COMMENTS OF THE**



**NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Howard J. Symons  
Angela F. Collins  
Mintz, Levin, Cohn, Ferris, Glovsky,  
and Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004  
(202) 434-7300

Lisa Schoenthaler  
Vice President, Association Affairs and the Office of  
Rural/Small Systems  
National Cable & Telecommunications Association  
25 Massachusetts Avenue, NW  
Suite 100  
Washington, DC 20001  
(202) 222-2445

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The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in the above-captioned proceeding. In this proceeding, the Rural Utilities Service (“RUS” or “Agency”) proposes to modify the rules that govern the Rural Broadband Access Loan and Loan Guarantee program (“Broadband Loan Program”).

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators, including small and mid-size operators, serving more than 90% of the nation’s cable television subscribers, as well as more than 200 cable programming networks and services. NCTA’s members also include suppliers of equipment and services to the cable industry. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing more than \$110 billion over ten years to build out a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to millions of American consumers.

NCTA’s member companies, including many small and mid-sized operators, have invested billions of dollars of private risk capital in small towns and rural communities all across

this country in order to provide a full array of advanced broadband services equal to the services being offered in urban and suburban markets. Some of the smallest towns in the United States have access to some of the most advanced digital services in the world because of the commitment and investments made by cable operators. These investments have created new jobs for American workers and new business opportunities for small entrepreneurs in rural America.

### **INTRODUCTION AND SUMMARY**

In this proceeding, the RUS is considering proposed rules to modify its Broadband Loan Program, which is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended.<sup>1</sup> The Notice recognizes that the RUS has encountered “significant challenges in administering the program, including the fierce competitive nature of the broadband market.”<sup>2</sup> The RUS also acknowledges that cable modem service and DSL are available today “in most rural communities.”<sup>3</sup> Particularly in markets where broadband is already available, there have been concerns about the Agency’s lending procedures and the lack of transparency with respect to its processes and the need for an opportunity for notice of and comment on proposed loans.<sup>4</sup>

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<sup>1</sup> Proposed Rule, Rural Broadband Access Loans and Loan Guarantees, Rural Utilities Service, USDA, 72 Fed. Reg. 26742 (proposed May 11, 2007) (to be codified at 7 C.F.R. pt. 1738) (hereinafter “Notice”).

<sup>2</sup> Notice at 26742. The National Telecommunications Cooperative Association’s 2006 Broadband/Internet Availability Survey confirms the competitiveness of the rural marketplace. Eighty-six percent of survey respondents report that they face competition in the provision of advanced services from at least one other service provider, with the typical respondent reporting that it competes with three national ISPs, two satellite broadband providers, two electric utilities and one cable company. See NTCA 2006 Broadband/Internet Availability Survey Report at 9 (rel. Aug. 2006), available at [www.ntca.org/content\\_documents/2006%20NTCA%20Broadband%20Survey%20Report.pdf](http://www.ntca.org/content_documents/2006%20NTCA%20Broadband%20Survey%20Report.pdf) (“Broadband/Internet Availability Report”).

<sup>3</sup> Notice at 26749.

<sup>4</sup> Notice at 26744.

NCTA appreciates the opportunity to comment in this proceeding and to assist the RUS as it seeks to modify the Broadband Loan Program to achieve its primary goal, which is to bring broadband service to areas of the country that are without such service today.<sup>5</sup> NCTA and its member companies support that goal, and seek to work creatively with the Agency to ensure that the Broadband Loan Program achieves its purpose without both penalizing and undermining the efforts of entrepreneurs who have deployed broadband service in rural America using private risk capital. The RUS itself recognizes that investment in rural communities where a competitor is already present is a risky endeavor and protects the Agency's investment by not allowing more than one RUS borrower in a community.<sup>6</sup> The Agency should likewise recognize the risks undertaken by entrepreneurs using their own capital to bring broadband to rural America focusing on unserved areas rather than forcing these entrepreneurs to compete against government-subsidized providers.

As discussed in more detail below, NCTA responds as follows to the Agency's proposals and respectfully suggests a number of further revisions to the rules to better conform the RUS Broadband Loan Program to these goals:

- NCTA agrees with the RUS's proposal to exclude urban and suburban communities from funding under the proposed rules and recommends that the rules be further modified to include unincorporated areas that may be classified as cities or towns.
- NCTA agrees with the RUS's proposed three-year build out rule.
- NCTA agrees that there should be a minimum number of unserved households in an area prior to that area being eligible for funding, but recommends that the minimum number be increased to 50% from 40%. If the applicant meets that minimum, it is eligible for

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<sup>5</sup> See, e.g., 148 CONG. REC. S4023, S4037 (daily ed. May 8, 2002) (statement of Sen. Dorgan) (the broadband loan provisions will "ensure Rural America has the same access to broadband service as its urban neighbors"); 152 CONG. REC. S6951 (daily ed. May 25, 2007) (statement of Sen. Roberts) ("In the 2002 farm bill, Congress created a loan and loan guarantee program to help build broadband out to rural areas that lacked this crucial service.").

<sup>6</sup> Notice at 26753 (proposing rule § 1738.19(b)). This rule exists today, but the RUS has proposed relocating the rule.

funding; if the applicant does not, it is not. Alternatively, NCTA proposes that an applicant be eligible for full funding only if 50% or more of the households in the project area are unserved. If less than 50% are unserved, funding would only be allowed to cover the cost of plant and facilities built to provide service to those unserved households.

- NCTA strongly disagrees with the RUS's view that an area is served if an RUS borrower has deployed broadband there, but is not if the entity deploying broadband has used private risk capital. The RUS should not treat publicly and privately funded entities differently. Subsidized competition imposes the same risk on both types of entities.
- NCTA strongly disagrees with the RUS's proposal to allow loans in eligible communities that have as many as three existing broadband service providers. No government subsidy is needed to bring broadband to these communities if even one provider is offering broadband service to, for example, 100% of the households in a community. Providing loans to new entrants in this case would be manifestly unfair to existing providers who have used risk capital to construct their networks and provide service. The RUS should instead consider whether a proposed project reaches a sufficient number of unserved homes in eligible rural communities to merit full funding.
- NCTA disagrees with the RUS's proposal to define an "Existing Broadband Service Provider" based on the provider's take-rate. The definition of "Existing Broadband Service Provider" should be defined as an entity offering broadband service to households in an eligible community, without regard to subscriber penetration in a community. A provider's take-rate is not relevant to whether residents have *access* to broadband, which is the goal of the Broadband Loan Program. If an entity is providing broadband service to a household, that household has access and should be counted as served.
- NCTA urges the RUS to allow funding for upgrades that do not extend beyond the applicant's current service territory *only if* the applicant meets the minimum unserved household requirement (*e.g.*, if it is the only provider in an area that currently does not have broadband service).
- NCTA recommends that the RUS take steps to improve its scrutiny of claims and the underlying factual assertions made in applications as part of its proposals to change the market survey and equity requirements.
- NCTA supports the RUS's efforts to increase public participation in the process, but recommends that additional information be publicly posted and the public, including existing broadband providers, be given the opportunity to comment on applications. The RUS should be required to take comments submitted by the public into consideration in making its loan decision.
- NCTA urges the RUS to give unserved areas the highest priority, with second priority going to applications proposing to deploy broadband to the most unserved households.

## **I. THE RUS'S PROPOSED RURAL DEFINITION CORRECTLY EXCLUDES URBAN AND SUBURBAN COMMUNITIES**

The RUS proposes to prohibit funding in communities that are located inside (1) the boundaries of an Urban Area<sup>7</sup> or (2) an incorporated city or town with a population of more than 20,000. NCTA supports this change. Targeting the areas where the RUS can offer funding is consistent with the September 2005 recommendations of the USDA's Office of the Inspector General ("OIG"), which found that the RUS's definition of rural areas was too broad and that the Agency had not maintained its "focus on rural communities without preexisting service."<sup>8</sup> The proposed definition goes a long way toward excluding larger metropolitan and suburban communities that were not intended to reap the benefits of the Broadband Loan Program. NCTA would also recommend that the rules be further modified to include unincorporated areas that may be classified as "cities" or "towns."

## **II. THE RUS MUST MODIFY ITS PROPOSED ELIGIBILITY RULES TO AVOID SUBSIDIZING SERVED AREAS**

In an attempt to target broadband loans to areas that lack service, the RUS proposes several eligibility "limitations." While NCTA strongly supports efforts to ensure that only unserved areas are subsidized through Federal funding, the rules proposed by the RUS do not achieve that goal and would do little if anything to prevent funding from going to markets that are "sufficiently served and do[] not warrant an additional market entrant subsidized through

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<sup>7</sup> The proposed rules would define "Urban Area" consistent with the definition used by the U.S. Census Bureau, meaning all territory, population, and housing units located within an urbanized area or an urban cluster. An urban area generally consists of a large central place and adjacent densely settled census blocks that together have a total population of at least 2,500 for urban clusters, or at least 50,000 for urbanized areas.

<sup>8</sup> United States Department of Agriculture, Office of Inspector General Southwest Region, Audit Report 09601-4-Te, Audit Report: Rural Utilities Service Broadband Grant and Loan Programs at ii (September 2005) ("OIG Report"). The OIG Report also states that because the RUS's definition of "rural area" is "too broad to distinguish usefully between suburban and rural communities, the agency has issued over \$103.4 million in grants and loans (nearly 12 percent of \$895 million in total program funds) to communities near metropolitan areas." OIG Report at 6.

Federal funding.”<sup>9</sup> The flaws in the RUS’s proposed rules and NCTA’s suggested revisions are set forth below.

The RUS proposes to prohibit funding only in areas where there are four or more Existing Broadband Service Providers (“EBSPs”).<sup>10</sup> The RUS contends that this “limitation” will ensure that funding is not utilized for markets that are “sufficiently served,”<sup>11</sup> but NCTA believes that the “four or more limitation” would result in the subsidization of numerous served communities and that the definition of EBSP itself must be modified.

The relevant issue is not the number of providers in the area, but whether the households in the proposed project area have access to broadband service from any provider. There is simply no reason for the RUS to disregard even one existing broadband service provider in a community. The RUS would certainly treat that household as “sufficiently served” if the provider offering that service was an RUS borrower, since longstanding RUS policy is to protect the integrity of its investment by prohibiting broadband loans to applicants proposing to serve and compete in an area already served by an RUS loan recipient.<sup>12</sup> The RUS should not be allowed to treat an area served by a private broadband company, using its own risk capital, any differently.

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<sup>9</sup> Notice at 26749.

<sup>10</sup> Notice at 26751, Proposed Rule § 1738.2

<sup>11</sup> Notice at 26749.

<sup>12</sup> *See, e.g.*, 7 C.F.R. § 1738.20(g) (stating that under certain circumstances, the RUS will not make a broadband loan for an area receiving local exchange telephone service from an RUS telecommunications borrower); *id.* § 1738.20(h) (stating that the RUS will not approve loans for an applicant proposing to provide service in a community served by an existing borrower of broadband loans).



Nor should the RUS limit the definition of “EBSP” to an incumbent that provides evidence and certifies that 10% of the households it passes take its broadband service.<sup>13</sup> This rule would effectively disregard numerous existing providers and allow loans even in communities with *more* than three incumbents. There are many explanations for why an incumbent broadband provider may not meet a penetration threshold, none of which warrants the funding of a fourth or even a fifth provider in a market. For instance, the provider could be a new entrant still working to enroll subscribers; the provider could be engaged in a competitive market war with another provider for subscribers; or the provider’s low take-rate could reflect a community where relatively few homes have personal computers.

No matter what the explanation for a provider’s penetration rate, the proposed “four or more” rule coupled with the proposed definition of “EBSP” could easily lead to unintended, absurd results whereby every household and business in a community could have access to Broadband Service,<sup>14</sup> but the community would still be an eligible service territory for a new provider seeking a loan. For example, six companies could be providing broadband service in Community X: one with 60% penetration, one with 20% penetration and four with 5% penetration. Under this scenario where 100% penetration exists, the community would still be deemed an “Eligible Rural Community” for a loan under the RUS’s proposed rules.

Alternatively, if four companies (each with 10% penetration) serve a different community where only 50% of the total households have access to Broadband Service, an applicant seeking to

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<sup>13</sup> Notice at 26751, Proposed Rule § 1738.2. An EBSP would not include resellers or the applicant seeking a loan under the Broadband Loan Program.

<sup>14</sup> “Broadband Service” means any technology identified by the RUS as having the capacity to transmit data to enable a subscriber to the service to originate and receive high quality voice, data, graphics and video. To qualify as a broadband service, the project must offer data transmission services and may provide voice, graphics, video and other services. The Agency will publish a notice in the Federal Register defining the minimum rate-of-data

serve this community would be deemed ineligible for a loan under the RUS's proposed rules. Presumably, this is not what was intended by the proposed rules, and it is certainly not consistent with the underlying purposes of the statute.

To avoid such absurd results, NCTA proposes that the RUS instead define an EBSP as an entity offering Broadband Service to households within a proposed project area, without regard to take-rates.<sup>15</sup> Title VI of the Farm Bill refers to "Rural Broadband Access,"<sup>16</sup> not to the subscription rate of such services, and the Agency's priority is to provide funding to communities where such service is not available. If an incumbent provider, including the applicant,<sup>17</sup> is offering broadband service in an Eligible Rural Community, that incumbent should be counted. This more straightforward determination of served and unserved homes will best enable the RUS to determine whether an applicant meets an appropriate minimum "unserved household" service requirement, as described below.

Finally, under the RUS's proposal, any applicant seeking to go beyond its current territory must commit that the project will "contain at least 40% of households with no access to Broadband Service *or access to only one EBSP*."<sup>18</sup> The RUS labels the latter circumstances as "limited access."<sup>19</sup> As discussed above, the presence of one EBSP should eliminate an area from

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transmission criteria to qualify as broadband service during that year's fiscal year's funding period. 7 C.F.R. § 1738.2. That rate has been 200 kbps upstream and downstream since the Broadband Loan Program began.

<sup>15</sup> The RUS also could look to the records of the Federal Communications Commission ("FCC") to determine which entities provide broadband service. Broadband providers are required to file FCC Form 477 on a semi-annual basis, and the FCC publishes a yearly compilation of statistics resulting from those filings.

<sup>16</sup> Title VI, Rural Broadband Access, Rural Electrification Act of 1936, as amended (emphasis added).

<sup>17</sup> NCTA opposes the RUS's proposal not to count an applicant that is already providing Broadband Service in determining whether a community is served or not.

<sup>18</sup> Notice at 26753, Proposed Rule § 1738.21.

<sup>19</sup> Notice at 26753, Proposed Rule § 1738.21(a)(2) (describing limited access as "access to only one Existing Broadband Service Provider").

being deemed “unserved.” The RUS should be focused on bringing service to areas where there currently is none, rather than subsidizing competition.<sup>20</sup>

NCTA acknowledges that to be financially viable, a project for extending service to unserved areas may need to include service in more densely populated areas that are currently served. That said, any proposed project - including one within the applicant’s current territory - must include a substantial proportion of homes that lack service from *any* provider.<sup>21</sup> Consistent with pending legislation, moreover, NCTA recommends that this minimum unserved household requirement be at least 50%.<sup>22</sup> NCTA’s proposal is consistent with the OIG Report, which recommended review of loans in competitive markets in order “to determine if these loans have given funded providers an unfair financial advantage over those without RUS funds, or have otherwise adversely and materially affected the success of these loans.”<sup>23</sup> The same concern was voiced at a recent hearing of the House Agriculture Specialty Crops, Rural Development, and Foreign Agriculture Subcommittee, where Representative Pomeroy noted that the RUS may be encouraging “build-over rather than build out” under the existing Broadband Loan Program.<sup>24</sup>

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<sup>20</sup> Nor has the RUS adequately explained its proposed four at 10% threshold. While it is impossible to harmonize such a threshold with the goals of the Broadband Loan Program, for the reasons set out above, the RUS’s failure even to explain its origin is enough to render the threshold arbitrary and capricious. *See* 5 U.S.C. § 706 (rulemaking actions by federal agencies may be set aside if arbitrary and capricious); *see also Motor Vehicle Manufacturers Assoc. of the United States v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983). The RUS is an agency for purposes of the Administrative Procedure Act. *See* 5 U.S.C. § 551(1).

<sup>21</sup> An unserved household should be defined for this purpose as a household within an Eligible Rural Community where broadband is unavailable and is not under construction.

<sup>22</sup> *See* S. 1439, 110th Cong. (1st Sess. 2007); H.R. 2035, 110th Cong. (1st Sess. 2007). S. 1439 would allow loans to be granted in an area “for duplication of service” only when at least “75 percent of the total end users served by the proposed project to be funded by such loan or loan guarantee are without access to broadband service” and H.R. 2035 provides that full funding is allowed only “if at least 50 percent of the households in the eligible rural community to be served by the project are unserved at the time the entity applied for the loan or loan guarantee.” If the applicant proposes that less than this amount will be unserved, the applicant would get an amount proportional to the part of the project aimed at unserved areas.

<sup>23</sup> OIG Report at 17.

<sup>24</sup> *Congress Grills RUS Head about Broadband Loan Program*, COMMUNICATIONS DAILY, May 2, 2007.

Senator Roberts has likewise observed that making loans in areas that already have broadband service undermines the market by threatening the existence of broadband providers that invested in rural areas without an RUS loan and means that “truly unserved, rural areas for which this program was created continue to be neglected.”<sup>25</sup>

To the same end, NCTA believes that funding provided to an applicant that meets the minimum service requirement should be limited to the costs of plant and facilities that are used solely to bring service to unserved areas. As many members of Congress have explained,<sup>26</sup> the mission of the Agency is to assist in the process of bringing broadband to unserved areas, not to promoting the success of government-funded providers over private entrepreneurs. If one provider can deploy broadband in an Eligible Rural Community, that is proof that there is no market impediment to deployment.

If the RUS nonetheless determines that borrowers will not bring service to unserved areas, even with a subsidized loan, unless they are also permitted to use loan proceeds to serve competitive areas, full funding for a project (*i.e.*, funding that subsidizes a borrower in the served and unserved portions of its service area) should only be given when the borrower’s proposed service area meets or exceeds the minimum “unserved household” requirement. If the applicant does not meet this requirement, it should either get no funding or funding only to cover the cost of the plant and facilities targeted at the unserved areas.

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<sup>25</sup> 153 CONG. REC. S6951 (daily ed. May 25, 2007) (statement of Sen. Roberts).

<sup>26</sup> See, e.g., *Congress Grills RUS Head about Broadband Loan Program*, COMMUNICATIONS DAILY, May 2, 2007 (quoting Representative Pomeroy stating “I’m concerned about damage to providers competing against someone with government subsidies” during the May 1, 2007 hearing).

### III. LOANS SHOULD NOT BE MADE AVAILABLE FOR THE SOLE PURPOSE OF UPGRADING EXISTING FACILITIES

NCTA also urges the RUS to modify its proposal to allow an incumbent service provider to obtain a loan to upgrade its facilities to “enhance the existing level of Broadband Service” *without extending service at all*, even where there are as many as three other incumbent broadband service providers in the market.<sup>27</sup> The RUS states that this proposed rule “will benefit rural residents by allowing incumbents to keep pace with the changing needs of their customers through continued advancement in technologies and services.”<sup>28</sup> NCTA disagrees.

While NCTA does not object to loan money being used to upgrade an existing entity to broadband capability in an eligible community where there is no Broadband Service, there is absolutely no rationale for a government agency to support one provider over another in what the RUS itself acknowledges is a fiercely competitive marketplace, *especially* when the loan would not fulfill the statute’s overarching goal of deploying broadband to unserved areas.<sup>29</sup> The draft rule should be rewritten to allow the funding of upgrades only if the applicant meets the minimum unserved household service requirement described above. For example, the applicant could be the only provider in the market, and currently offering service at speeds that do not qualify as “Broadband Service” under the RUS’s definition. Grant of the application in this case would serve the purpose and the intent of the Broadband Loan Program.<sup>30</sup>

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<sup>27</sup> Notice at 26753, Proposed Rule § 1738.21(b).

<sup>28</sup> Notice at 26749.

<sup>29</sup> *Cf.* Letter from Americans for Tax Reform and The Media Freedom Project, to the Honorable Mike Johanns, Secretary of Agriculture (Aug. 29, 2006) (“When the RUS Broadband Access Program subsidizes broadband deployment in an area already receiving broadband service, government is in effect picking winners and losers, and both taxpayers and free markets suffer.”).

<sup>30</sup> Notice at 26742.

#### **IV. NCTA SUPPORTS THE REVISED MARKET SURVEY, EQUITY, COMPETITIVE ANALYSIS, AND BUSINESS PLAN REQUIREMENTS IF COUPLED WITH CHANGES TO THE RUS ELIGIBILITY REQUIREMENTS**

The RUS proposes to modify its market survey and equity requirements to speed up loan processing and to make the process less costly and burdensome for companies applying for loans.<sup>31</sup> NCTA does not object to these efforts to streamline the rules, so long as the RUS concurrently improves its eligibility and loan requirements with respect to areas that are already served, as described above.

NCTA suggests, however, that the RUS take steps to improve the level of scrutiny of market and service representations made by the applicant, taking into account the information it receives from EBSPs as it improves transparency and creates greater opportunities for notice and comment. In reviewing Freedom of Information Act (“FOIA”) responses, NCTA member companies have found a number of instances in which representations made by the applicant were simply inaccurate, not just with respect to the incumbent in particular, but about business and market projections generally.<sup>32</sup> If, for example, the RUS is going to consider an applicant’s chance of success in offering the triple play of telephone, video, and Internet services in a community, especially when that community is already served by other existing broadband service providers, the RUS must be sure it has the necessary information to make this determination. Additionally, the RUS staff must have the expertise required to assess all of the information underlying the application, including the projected penetration rates, the challenges related to acquiring, paying for, and offering video programming to the public in light of contract

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<sup>31</sup> Notice at 26749-50.

<sup>32</sup> See, e.g., *Iowa Cable and Telecomm. Assn. and Mediacom Comm. Corp. v. United States Dep’t of Agriculture*, Case No. 06-C-256, Complaint for Declaratory and Injunctive Relief (filed S.D. Iowa May 30, 2006) (arguing that the RUS granted a broadband loan to an applicant with significant misstatements in its application).

and channel placement requirements, and the status of the marketplace where service is proposed. Without adequate and accurate information and the expertise to analyze such information, as noted in the attached Kane Declaration,<sup>33</sup> there is no way the RUS can properly determine a loan's feasibility.

In this regard, one of NCTA's member companies learned, after reviewing the information it received in response to its FOIA request, that RUS had granted an application for a broadband loan based on misstatements contained in the application.<sup>34</sup> The application contained inaccurate and incomplete information regarding the services provided by NCTA's member company, which was already providing broadband service in the area for which the applicant sought the loan. Granting broadband loans based on factual inaccuracies and missing information does not serve the underlying purposes of the Broadband Loan Program, which had already experienced \$30.4 million in loan defaults as of September 2005.<sup>35</sup> Instead, doing so increases the risk of granting infeasible loans, as evidenced by the attached Kane Declaration.

**V. THE PROPOSED LEGAL NOTICE RULE SHOULD BE MODIFIED TO PROMOTE GREATER TRANSPARENCY, TO CREATE MORE OPPORTUNITY FOR NOTICE AND COMMENT, AND TO IMPROVE THE RUS'S DECISION-MAKING PROCESSES**

The RUS proposes to require the applicant to prepare a legal notice to be published on the Agency's webpage stating the applicant's intent to offer Broadband Service in a particular

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<sup>33</sup> See generally Attachment 1, Declaration of John E. (Jack) Kane, Principal and President of Kane Reece Associates, Inc. ("Kane Declaration"). As the Kane Declaration states, at least two applications granted by the RUS were granted based on faulty information regarding the true extent of competition and broadband availability in the markets the applicants sought to serve. In each case, the applicant was the third (or sometimes fourth) company to offer broadband service in the area.

<sup>34</sup> *Iowa Cable and Telecomm. Assn. and Mediacom Comm. Corp. v. United States Dep't of Agriculture*, Case No. 06-C-256, Complaint for Declaratory and Injunctive Relief (filed S.D. Iowa May 30, 2006).

<sup>35</sup> OIG Report at i.

community.<sup>36</sup> The legal notice will remain on the webpage for 30 working days. The notice would identify other services proposed to be offered, set forth the applicant's total proposed service area, and provide a service area map.

The RUS also proposes to require incumbent service providers to submit, within 30 days to the RUS: (1) the number of residential and business customers they have that are capable of receiving Broadband Service in the applicant's proposed service area; (2) the number of residential and business customers purchasing Broadband Service in the applicant's proposed service area, including data transmission rates and the cost of each level of Broadband Service; and (3) the number of customers receiving other services that will be offered in the applicant's proposed service area and the rates for those services. The incumbent would also be required to submit a map of its service territory.<sup>37</sup> The RUS suggests that an incumbent service provider will not be considered an EBSP unless it files comments in response to the public notice.<sup>38</sup> NCTA does not believe there is any reason not to count a company as an EBSP if the RUS can independently determine that another incumbent is competing in the marketplace or if another entity can provide information about other broadband providers in a market and the households they serve.

**A. The RUS Should Increase Transparency by Posting Non-Proprietary and Non-Confidential Information Submitted by the Applicant for Public Comment**

While the RUS's proposals represent an improvement over the current procedures, they do not address the current lack of information necessary for the RUS to evaluate whether the applicant meets the minimum service requirement and whether the loan is feasible. To date, the

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<sup>36</sup> Notice at 26750.

<sup>37</sup> Notice at 26750, Proposed Rule § 1738.33(a).



only way incumbent broadband service providers have been able to access any information submitted by the applicant is through a FOIA request that the RUS routinely does not respond to until long after the Agency has acted on the application.<sup>39</sup>

Although the RUS recently created a webpage to address FOIA requests, much of the information is posted significantly after the RUS grants an application, and when the information is timely, it is heavily redacted and generally not useful to EBSPs.<sup>40</sup> Consequently, EBSPs have been unable to rebut inaccurate factual information about their company and the service they provide in an applicant's proposed service area. This has hobbled the RUS in its loan determination and allowed loans to be made on the basis of faulty information.<sup>41</sup> If the RUS intends to improve transparency and its decision-making process on loans, it must correct this problem and require that non-proprietary and non-confidential information<sup>42</sup> provided by applicants, and especially information about EBSPs, be made available for public inspection and response in a timely manner.

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<sup>38</sup> See Notice at 26750.

<sup>39</sup> For example, one of NCTA's members submitted a FOIA request to the RUS in early November 2006 requesting information on broadband loans granted in the State of Ohio. In late November 2006, the RUS responded that a backlog existed and the request would be fulfilled on a first-come, first-served basis. See FOIA U07-23. After more than *eight months* and numerous follow-up inquiries, the company was recently informed that it should be receiving some information responsive to its request by mid-July 2007.

<sup>40</sup> See Freedom of Information Requests, *available at*: <http://www.usda.gov/rus/index2/RDUPFOIAInfo.html>.

<sup>41</sup> See, e.g., *Iowa Cable and Telecomm. Assn. and Mediacom Comm. Corp. v. United States Dep't of Agriculture*, Case No. 06-C-256, Complaint for Declaratory and Injunctive Relief (filed S.D. Iowa May 30, 2006).

<sup>42</sup> Under the USDA's rules, information may be deemed confidential if the submitter demonstrates that the information may be withheld under FOIA, which permits trade secrets and commercial or financial information to be withheld. See 7 C.F.R. § 1.27(d); 5 U.S.C. § 552(b)(4).

To this end, NCTA recommends that the RUS make each application available for public inspection by posting it on an area of its website designated for this purpose. NCTA also recommends that at the time of filing, the RUS post for public notice on its website:<sup>43</sup>

- the applicant's name and address;
- a description of the area proposed to be served along with a service map, including the geographic boundaries and legal jurisdictions covered by the proposed project, and a geographical representation and numerical estimate of the households within the service area that the applicant believes are served and unserved;
- a geographical representation and numerical estimate of the unserved households within the service area that the applicant believes will be served upon completion of the project;
- information about the data transmission rates and the cost of each level of Broadband Service it proposes to offer;
- the total loan amount requested; and
- statements made in the application about the presence of EBSPs in the service area and information about the provision of existing service, including information about the EBSPs' service availability, transmission speeds and rates.

During the public notice period, the RUS should accept competing applications from EBSPs or other entities for the area the applicant seeks to serve. If another application filed in response to the original application sets forth proposals to build out to unserved homes in a more economic and efficient fashion that is less costly to the taxpayer, the RUS should grant the other application rather than the original one. The RUS should make its funding decisions on the premises of cost, quality, and overall commitment to expanding services, not on a first-come basis.

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<sup>43</sup> Information also could be made available to EBSPs by registered mail or another verifiable delivery process.

**B. The RUS Should Institute a Meaningful Public Notice and Comment Process, Publish Its Decisional Criteria, and Be Required to Take Public Comments into Account in Making Loan Determinations**

Related to the lack of meaningful information on a timely basis, the Agency's current regulations do not provide any method for incumbent broadband providers or the public to intervene, comment on, or otherwise participate in the loan application process, even when material misstatements and omissions have been made about the incumbent's service. NCTA believes that definitive steps are necessary to promote transparency and improve the RUS's ability to make an accurate feasibility determination, as recommended by the OIG Report.<sup>44</sup> Such modifications would increase transparency, reach a broader range of interested parties, and provide more detailed information on broadband deployment.<sup>45</sup> Specifically, NCTA recommends that concurrent with the filing of the application, the applicant should also serve notice of its application on each EBSP in the service area<sup>46</sup> and that the public, including EBSPs, be given 60 days after the date of public notice to comment and provide the following information:

- the EBSP's or other commenter's name and address;

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<sup>44</sup> OIG Report at 19 ("RUS has not developed and implemented specific written procedures for approving and servicing broadband grants and loans" and "the management controls necessary to ensure that communities receiving broadband funds are, in fact, those needing it most, and that those receiving grants and loans use those funds as agreed").

<sup>45</sup> Notice at 26750.

<sup>46</sup> In an analogous situation, the FCC has established a procedure that ensures a company knows when its presence in a market is being used by another company as the basis for regulatory relief. Specifically, an incumbent local exchange carrier ("ILEC") may petition the FCC for pricing flexibility for its special access services based on a showing that certain competitive triggers have been met. Section 1.774 of the FCC's rules, which sets forth the procedures applicable to such proceedings, requires that the ILEC serve a copy of its pricing flexibility petition on those companies whose presence it relied on to make the competitive showing. Moreover, while the ILEC may generally seek confidential treatment of its application, it must provide unredacted information to each competitor mentioned in the petition so that the competitor can review the data and challenge any errors. *See* 47 C.F.R. § 1.774(e)(1)(ii).

- in the case of an EBSP, a description of the area they serve along with a service map, and a geographical representation and numerical estimate of the total number of households within the service area, along with the number of households that the EBSP serves;
- information about the data transmission rates and the cost of each level of Broadband Service it offers;<sup>47</sup> and
- any other assessments they may have made about the community proposed to be served and the impact of subsidized competition on that community.

Once comments are received, NCTA believes that the RUS should be required to take all public comments into account in making its decision whether to grant the broadband loan. This information would assist the RUS in making an independent determination regarding the number of unserved households that are present in a proposed service area and about the feasibility of the loan given the marketplace realities. NCTA also recommends that the RUS not only notify the applicant of its decision,<sup>48</sup> but in the interest of transparency, that it post its decision regarding the loan, along with its determination of how many unserved homes will be reached. The RUS should also publicize its overall decisional criteria. The public should understand the RUS's specific findings about the presence of EBSPs and the level of competition in the community either proposed to be or actually funded.

## **VI. THE RUS'S PRIORITY SCHEME SHOULD REFLECT THE AGENCY'S FOCUS ON BRINGING BROADBAND TO AREAS THAT ARE UNSERVED**

In addition to increased transparency, the RUS proposes to give the following priority in processing loans: (1) applications for service areas that include only households that have no

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<sup>47</sup> NCTA understands why the RUS would require information about the incumbent's Broadband Service and the number of households with access to such service, but does not believe information about the number of customers receiving such service should be required. The RUS needs to know how many households have access to service, and the proposed data provides that information. It is also not clear why the RUS needs to know how many customers are receiving other services, such as video and voice, to determine whether a broadband loan is appropriate. To the extent such information may be required, it most certainly would be considered proprietary and confidential, and not available for public inspection.

<sup>48</sup> Notice at 26758, Proposed Rule § 1738.52.

broadband access or receive Broadband Service from only one EBSP; (2) applications for service areas that include only areas where 40% of households have no access to Broadband Service or access to only one EBSP; and (3) all other applications.<sup>49</sup>

In keeping with its recommended revisions to the proposed rules, NCTA suggests that this priority scheme should be modified as follows: (1) first, to applications proposing to deploy broadband to unserved areas only; and (2) second, to applications proposing to deploy broadband to the most unserved households. As emphasized above, the number of broadband providers in the market should not be relevant; the relevant question in prioritizing should be how many unserved households will be reached.

## **VII. THE THREE-YEAR BUILD OUT RULE IS CONSISTENT WITH THE GOALS OF THE BROADBAND LOAN PROGRAM**

The RUS proposes that all applicants demonstrate in their application that the proposed project will be complete within three years from the loan contract date, and that construction must start within six months from the date the RUS signs the loan documents.<sup>50</sup> NCTA supports this requirement. Imposing such a rule will prevent applicants from only serving densely populated areas in the community for a long period before taking the necessary steps to build out to all areas of the community.

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<sup>49</sup> Notice at 26758, Proposed Rule § 1738.61.

<sup>50</sup> Notice at 26756, Proposed Rule § 1738.38(4).

## CONCLUSION

The RUS's proposed rules represent a good first step to ensure that only those applicants seeking to provide broadband services in unserved areas are eligible for funding under the Broadband Loan Program. The eligibility requirements under the proposed rules, however, must be revised to recognize the significant investment by existing broadband providers when determining whether to fund additional providers. Likewise, additional transparency and public participation in the process are needed so that all stakeholders have the opportunity to review, comment, and contribute to the funding process. The revisions to the proposed rules as outlined by NCTA would ensure that the goals of the Broadband Loan Program and the underlying statute are achieved in a timely and efficient manner.

Respectfully submitted,

**NATIONAL CABLE &  
TELECOMMUNICATIONS ASSOCIATION**

Howard J. Symons  
Angela F. Collins  
Mintz, Levin, Cohn, Ferris, Glovsky,  
and Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004  
(202) 434-7300

/s/ Lisa Schoenthaler

Lisa Schoenthaler  
Vice President, Association Affairs and the Office  
of Rural/Small Systems  
National Cable & Telecommunications Association  
25 Massachusetts Avenue, NW  
Suite 100  
Washington, DC 20001  
(202) 222-2445

Dated: July 10, 2007

Attachment 1  
Kane Declaration

Declaration of John E. (Jack) Kane  
Principal and President  
Kane Reece Associates, Inc.

Qualifications and Introduction

1. My name is John E. (Jack) Kane and I am a Principal and President of Kane Reece Associates, Inc., a firm I cofounded in 1986. I have conducted or managed numerous valuations, management consulting, and financial advisory engagements. My areas of expertise include cable television, broadcast television and radio, filmed entertainment and programming, wireline and wireless telecommunications, publishing, and sports teams and venues.
2. I have been accepted as an expert in the media/communications industry in Federal Courts, U.S. Bankruptcy Courts, various trial courts, various administrative hearing boards, and the American Arbitration Association. I have personally conducted enterprise valuations and appraisal studies of real, personal, and intangible assets of properties and interests with aggregate values well over \$800 billion. The clients I serve number among the largest in these industries.
3. Prior to my current position, I was the Chief Operating Officer of Frazier, Gross & Kadlec, Inc., a Washington, DC communications consultancy and was Executive Vice President of Valuation Research Corporation in Princeton, New Jersey. While at these firms, I was responsible for all media and communications clients.
4. I have been actively involved in the communications industry for over thirty years, gaining experience as a Vice President of Group W Cable (at one point the largest cable television company) where I was involved with acquisitions, divestitures, strategic planning, and capital investments. In that position, I was responsible for the analysis, approval, and monitoring of capital expenditures. Prior to Group W, I was Director of Financial Analysis for RCA Corporation and later, Director of Corporate Planning for the RCA Communications Group. While at RCA, I was intimately involved in the start-up of RCA's domestic satellite communications business (now SES Americom).
5. I received an undergraduate degree from Upsala College and an M.B.A. in Finance from St. Johns University where I was elected to the National Business Honor Society, Beta Gamma Sigma and the National Economics Honor Society, Omicron Delta Epsilon. I also have an Advanced Professional Certificate (APC) in valuation and investment analysis from New York University's Graduate School of Real Estate and Stern School of Business. I am a Chartered Financial Analyst Charterholder (CFA), as well as a member of the New York Society of Security Analysts and the Association for Investment Management and Research. I am an Accredited



Senior Appraiser of the American Society of Appraisers (ASA), certified in business valuation and the firm's representative to the ASA Affiliate Firm Committee.

6. I am also a Certified Business Appraiser (CBA), a designation conferred by the Institute of Business Appraisers. In addition, I am a member of the American Economic Association, National Cable & Telecommunications Association, the Broadband Tax Institute, National Association of Broadcasters, Broadcast Cable Financial Management Association, International Licensing Industry Merchandisers' Association, The ESOP Association, and the Urban Land Institute. I also received the 1993 President's Award from the Broadband Tax Institute.
7. I have been asked by the National Cable & Telecommunications Association to review copies of two Rural Utilities Service ("RUS") Forms 532 and schedules that have been released by the United States Department of Agriculture ("USDA") under Freedom of Information Act ("FOIA") requests and to address any inaccuracies in the data provided and render a professional opinion as to the status of these loans. The loan applications I reviewed were for Local Internet Service Company ("LISCO") and C-TURN. As an expert who is engaged to perform "feasibility studies," I am able to render a professional opinion regarding the assumptions of the proposed business models. As noted below, however, much of the pertinent data included in the loan applications has been redacted.

### **LISCO application**

8. I reviewed a copy of Rural Utilities Service ("RUS") Form 532 and schedules filed on April 19, 2005 by Local Internet Service Company ("LISCO") and Local Telephone Data Services Company ("LTDS"). LISCO and LTDS will be collectively referred to as the Applicants. The Applicants through this filing sought and received \$9.5 million under the Rural Broadband Access Loan and Loan Guarantee Program (the "Program") to finance another broadband communications system or overbuild in Fairfield, Iowa.
9. Although major portions of the application were redacted, it clearly contained a number of inaccuracies that would typically be caught if an independent review of the data was performed. For example, the Applicants do not list digital or high definition television pricing – even though these services were available at the filing date. A simple request from incumbent providers of channel line-ups and rate cards would have clearly demonstrated that these services were already available in Fairfield, IA. (See attached channel line-up and rate card for the incumbent cable operator, Mediacom Communications ("Mediacom")).

10. Likewise, the Applicants stated that Mediacom would not provide pricing. As noted above, all pricing is widely available public information. Potential customers can call a toll free number to receive pricing information and additional pricing data is available at Mediacom offices and via their website at <http://www.mediacomcc.com>. Publicly available Fairfield services, rate, and channel information as of the Applicant's filing date and at present are attached.
11. The Applicants misstate the extent of video competition in the market by only referring to Mediacom's 78 analog channels when in fact it offered 194 video and 46 audio, analog and digital channels.
12. The Applicants mentioned Iowa Telecom's many outages without quantification or substantiation. This claim should not have been considered in assessing the need for an additional service provider in Fairfield. Moreover, the Applicants, to my knowledge, did not provide any evidence that the facilities they planned to construct would reduce outages for customers in Fairfield.
13. The Applicants understated Mediacom's Internet access speed. Today, Mediacom's Fairfield customers have access to 15 Mbps service.
14. The Applicants claim there are homes unserved by Mediacom in Fairfield. It is possible that a handful of homes are below the Franchise's density requirements. Often, a cable company will offer to serve less densely populated areas (those homes beyond which a cable company is required to serve) if the customers or town will pick up all or part of the construction cost. Although the Applicants assert that not all homes in Fairfield are provided service at the time of the applications, the Applicants apparently offered no guarantee that their company would offer service to these very rural homes. In my opinion, if it is not economically feasible for Mediacom to reach these homes, it is highly unlikely that the Applicants will be in any better position to provide service.
15. The Applicants stated that their customers will be able to download VOD "many times faster" than the incumbent cable provider. VOD, however, is not downloaded but streamed from a server.
16. In an attempt to ascertain the feasibility that the Applicants will be able to pay back the loan, I looked at the current state of competition in the markets in which the applications are attempting to offer service. The following currently provide service in the town of Fairfield, IA.
17. Based on information from public sources, I was able to identify four Multichannel Video Program Distributors (MVPD) serving Fairfield and I estimate that MVPD penetration is currently at 86%. The MVPDs include:

- Mediacom is a publicly traded company (NASDAQ: MCCC). According to its December 31, 2006 SEC annual report, Mediacom served 1.36 million basic video customers making it the 8<sup>th</sup> largest US cable operator. Mediacom is focused on serving the smaller cities and towns in the US. It, along with the rest of the cable industry, had expended and continues to expend large amounts of capital to upgrade its facilities and continues to roll out advanced services such as high definition video (“HDTV”), video-on-demand (“VOD”), digital video recorders (“DVR”), voice over internet protocol (“VoIP”) and high speed data offerings with even faster down and up-load speeds. These services coupled with an ever increasing number of digital video and audio channels are the most compelling broadband product suite available today.
- DirecTV and Echostar are well known MVPDs. Both companies are multi-billion dollar publicly traded concerns (NYSE: DTV and NASDAQ: DISH, respectively). Based on DMA data obtained at [www.tvb.org](http://www.tvb.org), I would estimate that 39% of Fairfield homes currently subscribe to a DBS service.
- Iowa Telecom Systems (DBS reseller) is a New York Stock Exchange Company (NYSE: IWA) according to its SEC Form 10K annual report (December 31, 2006). It is the largest provider of wireline local exchange telecommunications services into residential and business customers in rural Iowa and is the second largest local exchange carrier (“LEC”) in the state serving 440 communities and operating 288 telephone exchanges as the incumbent LEC. Together with its competitive local exchange carrier (“CLEC”) subsidiaries, the company serves 252,000 access lines in Iowa. At December 31, 2006 Iowa Telecom had total assets of \$864.5 million.

Combined these four firms had a Market Cap of nearly \$50 billion as of July 1, 2007.

18. High Speed Data service is provided by three companies:

- Iowa Telecom Systems
- Mediacom
- LISCO (non facility-based reseller)

19. In Fairfield, IA, consumers have access to telephone service from three providers:

- Iowa Telecom Systems
- Mediacom
- LTDS (non facility-based reseller)

20. Management of broadband facilities requires a very different skill set than those required to be a “reseller.” Given the Applicants’ current lines of business, it is not clear from the available information that they will manage the technical infrastructure, provide customer service, installation and repair services, negotiate with the many vendors and program suppliers, etc. in order to provide service packages in a manner that is, as they assert, at least comparable or, as they claim, vastly superior to the way these packages are offered by the current providers.

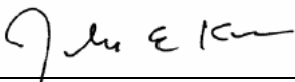
21. A cursory view of the economics of the market leads one to question the feasibility of the Applicants' ability to repay the loan. According to the Applicants' filing it has only 4,063 households. Thus, the loan of \$9,475,000 equates to \$2,332 per household. This debt level compares to \$588 and \$1,123 per home passed for Comcast and Mediacom. Comcast and Mediacom are publicly traded broadband communications companies and the debt levels per home passed were calculated based on public information. In finance, the higher the level of leverage, the riskier the investment and the lower the probability that the company will be able to repay its loan.
22. It is Kane Reece's opinion that given the leverage and the competition factors discussed above, that no third party market participant from outside Fairfield's market would pay \$2,332 per home. At 33% customer penetration this equates to over \$7,000 per subscriber to acquire the hypothetical LISCO overbuild. It is also our opinion that even a "subsidized" loan is highly risky given the extent of competition.
23. Even if the Applicants were to be able to meet or exceed the redacted levels of penetration and succeed as a business enterprise, the viability of their competitors (who did not use Government money but rather private risk capital in order to build their infrastructures) would be placed at great risk.

#### **CTURN Application**

24. I reviewed a copy of Rural Utilities Service ("RUS") Form 532 and schedules filed on March 26, 2006 by CTURN Corporation. CTURN applied for a \$36.5 million loan to serve 389,187 homes in RUS communities in Oregon and Washington and an additional 84,795 non-RUS homes.(See CTURN at Schedule D-1.)
25. For the CTURN application, I attempted to ascertain the current state of competition in Oregon Cluster 1. The ability to project penetration of services is dependent not only on the number of competitors currently in a market at the time a business model is planned but also on the effects of potential competitors. At the time of the applications, CTURN claimed that all four communities in this cluster (Boardman, Hermiston, Pendleton and Umatilla) were RUS eligible.
26. CTURN also claimed that there was no competition in the communities of Boardman, Hermiston and Umatilla and only QWEST provided competition in Pendleton. While these facts may or may not be accurate, this is not the state of broadband competition in these markets today.
27. I used two public sources (<http://www.whitefence.com> and <http://cpss.go2broadband.com/> ) to determine what broadband service providers offer high-speed Internet access in these four communities today.

28. According to public data, Pendleton is served by three high-speed service providers today, rather than one as noted in the CTURN Application. Homes in Pendleton have the choice of QWEST (DSL service), ClearWire (wireless service), WildBlue (satellite service), and HughesNet (satellite service).
29. In Hermiston, OR, a community for which CTURN reported that there were no competitors, consumers can purchase high-speed Internet service from QWEST (DSL service), ClearWire (wireless service) and Charter Communications (cable modem service).
30. Likewise in Umatilla, another community in which CTURN reported no competitors, broadband Internet service is available from QWEST (DSL service) and HughesNet (satellite service).
31. The ability to meet the forecasted penetration level in these communities, and thus generate sufficient revenues to meet loan repayment obligations, has been greatly diminished given the extent of competition that has developed within the marketplace.
32. I would also note that even CTURN itself acknowledged that in many of the markets it plans to serve, there were already one or more competitors offering service. In Oregon Cluster 3, for example, CTURN reported that three of the four RUS eligible communities in the cluster already had **two** competitors and the fourth community in the cluster already had a broadband service provider. Therefore, for this cluster, the RUS loan would be used to subsidize the **third** (or second) firm entering the market and would not be used to bring broadband service to communities where it was not available.
33. In my professional opinion, after reviewing the redacted applications of LISCO and CTURN and observing the true extent today of competition and broadband availability in the market, I find these loans to be at risk. Both of these firms will be the third (or fourth in some cases) company to offer broadband service. It is not clear whether these firms (or their privately-financed competitors) have the wherewithal to sustain in the long run.

Attested to this 10<sup>th</sup> day of July, 2007

  
\_\_\_\_\_  
John E. Kane

# Fairfield Channel Lineup

Effective April 1, 2005

## Family Cable

2	KGAN (CBS 2) Cedar Rapids	B
3	KTVO (ABC 3) Kirksville	B
4	KCRG (ABC 9) Cedar Rapids	B
7	WHBF (CBS 4) Rock Island	B
8	KYOU (FOX 15) Ottumwa	B
9	Local Access	B
10	WGEM (NBC 10) Quincy	B
12	KIIN (PBS 12) Iowa City	B
13	WHO (NBC 13) Des Moines	B
14	PAX TV	B
15	HSN	B
16	C-Span	B
17	C-Span 2	B
18	WB	B
19	TV Guide Channel	B
21	WGN	B
22	Mediacom Connections	B
23	The Weather Channel	
24	ESPN	
25	ESPN2	
26	FSN Midwest	
27	FX	
28	Lifetime Network	
29	ABC Family	
30	USA	
31	TBS	
32	TNT	
33	AMC	
34	CMT	
35	VH-1	
36	MTV	
37	Court TV	
38	History Channel	
39	A&E	
40	Discovery Channel	
41	TLC	
42	Animal Planet	
43	Nickelodeon	
44	Cartoon Network	
45	Disney Channel	
46	E!	
47	Spike TV	
48	Hallmark Channel	
49	CNBC	
50	CNN	
51	Headline News	
52	FOX News Channel	
53	MSNBC	
54	HGTV	
55	Food Network	
56	Travel Channel	
57	Sci-Fi Channel	
58	TV Land	
59	Comedy Central	
60	WE	
61	EWTN	
62	Inspiration Network	
63	Fit TV	
64	Bravo	
65	TBN	
66	Speed Channel	
67	Telemundo	

68	National Geographic
69	RFD-TV
70	Univision
72	Outdoor Life
78	BET

## Digital Plus

201	Discovery Kids
202	Science Channel
203	Discovery Health
204	Discovery Home
205	Discovery Times
206	Military Channel
210	G4
211	The Golf Channel
212	FOX Soccer Channel
213	Outdoor Channel
214	style
215	American Life TV
216	Wisdom
217	Inspirational Life
218	BBC America
219	Independent Film Channel
220	Lifetime Movie Network
221	FOX Movie Channel
230	Noggin
231	Nick Games & Sports
232	Nick Toons
240	MTV 2
241	MTV Hits
243	VH1 Classic
250	Biography Channel
251	History International
254	fuse
255	Trio
256	Bloomberg News
258	Game Show Network
259	TCM
262	VH1 Country
264	VH1 Soul
265	Newsworld International
266	Ovation
267	Toon Disney

## Digital Premium Groups

<b>HBO Group</b>	
301	HBO
302	HBO West
303	HBO 2
304	HBO 2 West
305	HBO Family
306	HBO Family West
307	HBO Signature
308	HBO Signature West
309	HBO Latino
310	HBO Latino West
311	HBO Comedy
313	HBO Zone
880	HBO HD*

## Cinemax Group

325	Cinemax
326	Cinemax West

327	MoreMAX
328	MoreMAX West
329	ActionMAX
330	ActionMAX West
331	ThrillerMAX
333	WMAX
335	@MAX
337	5StarMAX
339	OuterMAX

## Showtime/TMC Group

351	Showtime
352	Showtime West
353	Showtime Too
354	Showtime Too West
355	Showtime Showcase
356	Showtime Showcase West
357	Showtime Extreme
358	Showtime Extreme West
359	Showtime Beyond
360	Showtime Beyond West
380	TMC
381	TMC West
382	TMC Xtra
383	TMC Xtra West
390	Sundance
391	Sundance West
392	Flix
393	Flix West
890	Showtime HD*
892	TMC HD*

## Starz/Encore Group

401	Starz
402	Starz West
403	Starz Edge
405	Starz in Black
407	Encore WAM
408	Starz Comedy
409	Starz Kids & Family
411	Starz Cinema
412	Starz Cinema West
420	Encore
421	Encore West
422	Encore Love
423	Encore Love West
424	Encore Mystery
425	Encore Mystery West
426	Encore Westerns
427	Encore Westerns West
428	Encore Drama
429	Encore Drama West
430	Encore Action
431	Encore Action West
885	Starz HD*

## Digital Pay-Per-View

501-514	Mediacom PPV
531-536	ESPN PPV
550	Spice
551	Spice 2
552	Playboy

553	Pleasure
555	TEN
556	TEN Clips

## Digital Music

700	Showcase
701	Today's Country
702	Classic Country
703	Bluegrass
704	R&B Hip Hop
705	Classic R&B
706	Smooth R&B
707	R&B Hits
708	Rap
709	Metal
710	Rock
711	Arena Rock
712	Classic Rock
713	Alternative
714	Retro Active
715	Electronica
716	Dance
717	Adult Alternative
718	Soft Rock
719	Hit List
720	Party Favorites
721	90s
722	80s
723	70s
724	Solid Gold Oldies
725	Singers and Standards
726	Big Band & Swing
727	Easy Listening
728	Smooth Jazz
729	Jazz
730	Blues
731	Reggae
732	Soundscapes
733	Classical Masterpiece
734	Opera
735	Light Classical
736	Show Tunes
737	Contemporary Christian
738	Gospel
739	Radio Disney
740	Sounds of the Seasons
741	Musica Urbana
742	Salsa y Merengue
743	Rock 'en Espanol
744	Pop Latino
745	Mexicana

## High Definition Television (HDTV) Tier

830	ESPN HD*
840	Universal HD*
841	Discovery HD Theater*
850	HDNet*
851	HDNet Movies*

B = Broadcast Basic  
\* Requires Hi-Definition Converter  
Channels are subject to change.



## How to Contact Us

www.mediacomcable.com  
Call Center (24 hours a day / 7 days a week) . . . 1-800-332-0245

9400/210, 220

# Fairfield Rates & Services

Effective April 1, 2005

## Cable Service†

Broadcast Basic . . . . .	\$16.75
Family Cable (includes Broadcast Basic) . . . . .	\$45.95

## Digital Star Paks†

All packages include a Digital Converter and Digital Gateway (Interactive Guide, Digital Music and PPV Access)

Mediacom One Star* . . . . .	\$9.95
<i>Includes Starz!</i>	
Mediacom Two Star Showtime* . . . . .	\$17.95
<i>Includes Starz! and Showtime (Add Cinemax for only \$8.00)</i>	
Mediacom Two Star HBO* . . . . .	\$21.95
<i>Includes Starz! and HBO (Add Cinemax for only \$8.00)</i>	
Mediacom Three Star* . . . . .	\$29.95
<i>Includes Starz!, HBO and Showtime (Add Cinemax for only \$8.00)</i>	
Mediacom Four Star* . . . . .	\$42.95
<i>Includes Starz!, HBO, Showtime, Cinemax and Digital Plus</i>	

## Digital Programming† Requires Digital Converter and Digital Gateway

Digital Plus* . . . . .	\$8.00
<i>Includes up to 40 Special Interest Channels</i>	
Pay-Per-View Movies** . . . . .	\$3.99 per movie

## A la carte Premium Services†

HBO* . . . . .	\$13.95
Starz!* . . . . .	\$8.00
Showtime* . . . . .	\$9.95
Cinemax* . . . . .	\$9.95
Cinemax* (when added to Two Star or Three Star Paks) . . . . .	\$8.00

## Advanced Products†

HDTV Tier . . . . .	\$9.95
Digital Video Recorder Service . . . . .	\$4.95

Digital Video Recorder (DVR) service and HDTV service (where available) require an HDTV/DVR capable digital converter. Premium HDTV feeds (where available) require an HD capable digital converter and a subscription to the respective premium service.

## Mediacom Online<sup>SM</sup>† Cable Modem Required

### Monthly Residential Rates

Mediacom Online <sup>SM</sup> Service with Modem Rental . . . . .	\$45.95
<i>(Includes \$10 savings when subscribing to both Online and Video services.)</i>	
Mediacom Online <sup>SM</sup> Service with Modem Rental . . . . .	\$55.95
Mediacom Online <sup>SM</sup> Service – Modem supplied by customer . . . . .	\$42.95
<i>(Includes \$10 savings when subscribing to both Online and Video services.)</i>	
Mediacom Online <sup>SM</sup> Service – Modem supplied by customer . . . . .	\$52.95
Additional Dynamic IP Address . . . . .	\$5.00

### Online Installation Fees

Standard Installation . . . . .	\$59.95
<i>(Installation of cable modem to one existing outlet)</i>	
Self Activation (Current Video Subscribers Only) . . . . .	\$29.95
Premium Installation . . . . .	\$99.95
<i>(Installation of cable modem, computer setup and additional outlet, if required)</i>	
Premium Installation with Ethernet card (NIC) . . . . .	\$124.95

## MediaMax† (Digital Service plus Mediacom Online)

MediaMax Two Star* . . . . .	\$54.00
<i>(Includes a discount when you subscribe to both Online and Digital Video services)</i>	
MediaMax Four Star* . . . . .	\$76.95
<i>(Includes a discount when you subscribe to both Online and Digital Video services)</i>	

\* Does not include Family Cable. \*\* Adult and special event prices may vary. † Per month fee. Rates are subject to change.

## Monthly Equipment Rental & Fees†

Digital Converter with Remote . . . . .	\$5.00
<i>(Does not include Interactive Guide, Digital Music and PPV access)</i>	
Advanced (HDTV/DVR) Converter with Remote . . . . .	\$7.50
<i>(Does not include Interactive Guide, Digital Music and PPV access)</i>	
Digital Gateway (Digital Converter Required) . . . . .	\$3.00
<i>(Includes Interactive Guide, Digital Music and PPV access)</i>	
Cable Modem . . . . .	\$3.00

## Cable Installation and Service

Prewired Home Installation* (one outlet) . . . . .	\$27.50
Unwired Home Installation* (one outlet) . . . . .	\$41.99
Installation of Additional Outlet (same trip) . . . . .	\$13.49
Installation of Additional Outlet (separate trip) . . . . .	\$19.99
Field Reactivation of Account . . . . .	\$27.50
Electronic Reactivation of Account . . . . .	\$1.99
Transfer of Service (one outlet) . . . . .	\$14.50
Hourly Service Charge . . . . .	\$29.00
Field Change of Service . . . . .	\$15.99
Electronic Change of Service . . . . .	\$1.99
Connection of Consumer Owned Equipment** (same trip) . . . . .	\$5.99
Connection of Consumer Owned Equipment** (separate trip) . . . . .	\$12.99
Purchase A/B Switch . . . . .	\$5.00
Install A/B Switch During Initial Home Installation . . . . .	\$13.95
Install A/B Switch Requiring Separate Installation . . . . .	\$21.95
Unreturned Cable Modem . . . . .	\$139.00
Unreturned Standard Digital Converter . . . . .	\$300.00
Unreturned Advanced Digital Converter . . . . .	\$500.00
Unreturned Standard Converter/Addressable Converter . . . . .	\$100.00
Unreturned Converter Remote Control . . . . .	\$25.00

\* Applies to all standard installations up to 150 feet from main cable line. Some installations require custom work and prices may vary. Charges for any non-standard installations will be quoted in advance of work. Full payment is due prior to commencement of work. Relocation of existing wiring and wall fishes is not included.

\*\* This is a per item charge, including such items as a VCR, DVD player, home stereo, game equipment, etc.

## Billing Policies

Services are billed one month in advance. Payments are due by the tenth day after the "bill from" date. All accounts not paid by the due date may be assessed a \$5.00 late payment processing fee on the next statement. A \$20 field collection charge will be applied to all accounts with unpaid balances sent to the field for collection. The customer's continued acceptance of service will be deemed an agreement to pay in accordance with this schedule of rates and charges. A \$20 handling fee will be charged to accounts for any check returned for insufficient funds. Seven days advance notification is required for termination of service. All leased equipment must be returned. Failure to return will result in unreturned equipment charges up to \$500 per unit.

## Taxes and Fees

The rate schedule does not include franchise fees, FCC fees, copyright taxes, or other associated surcharges.

## How to Contact Us

Call Center (24 hours a day / 7 days a week) . . . 1-800-332-0245



## Monthly Equipment Rental & Fees†

Digital Converter with Remote (Does not include Interactive Guide, Digital Music and PPV access)	\$6.00
Advanced (HDTV/DVR) Converter with Remote (Does not include Interactive Guide, Digital Music and PPV access)	\$6.00
Digital Gateway (Digital Converter Required) (Includes Interactive Guide, Digital Music and PPV access)	\$4.00

## Cable Installation and Service

Prewired Home Installation* (one outlet)	\$27.50
Unwired Home Installation* (one outlet)	\$41.99
Installation of Additional Outlet (same trip)	\$13.49
Installation of Additional Outlet (separate trip)	\$19.99
Field Reactivation of Account	\$27.50
Electronic Reactivation of Account	\$1.99
Transfer of Service (one outlet)	\$14.50
Hourly Service Charge	\$29.00
Field Change of Service	\$15.99
Electronic Change of Service	\$1.99
Connection of Consumer Owned Equipment** (same trip)	\$5.99
Connection of Consumer Owned Equipment** (separate trip)	\$12.99
Purchase A/B Switch	\$5.00
Install A/B Switch During Initial Home Installation	\$13.95
Install A/B Switch Requiring Separate Installation	\$21.95
Unreturned Cable Modem	\$139.00
Unreturned Standard Digital Converter	\$300.00
Unreturned Advanced Digital Converter	\$500.00
Unreturned Standard Converter/Addressable Converter	\$100.00
Unreturned Converter Remote Control	\$25.00

\* Applies to all standard installations up to 150 feet from main cable line. Some installations require custom work and prices may vary. Charges for any non-standard installations will be quoted in advance of work. Full payment is due prior to commencement of work. Relocation of existing wiring and wall fishes is not included.

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## Taxes and Fees

The rate schedule does not include franchise fees, FCC fees, copyright taxes, or other associated surcharges.

## How to Contact Us

Call Center (24 hours a day/7 days a week) ..... **1-800-332-0245**

Local Office: 850 Gateway Dr., Ottumwa, IA

Hours: 8am-5pm M-F, 9am-1pm Sat.

\* Does not include Family Cable. \*\* Adult and special event prices may vary. † Per month fee. Rates are subject to change.

## Channel lineup continued

303	HBO 2
304	HBO 2 West
305	HBO Family
306	HBO Family West
307	HBO Signature
308	HBO Signature West
309	HBO Latino
310	HBO Latino West
311	HBO Comedy
313	HBO Zone
880	HBO HD*

### Cinemax Group

325	Cinemax
326	Cinemax West
327	MoreMAX
328	MoreMAX West
329	ActionMAX
330	ActionMAX West
331	ThrillerMAX
333	WMAX
335	@MAX
337	5StarMAX
339	OuterMAX

### Showtime/TMC Group

351	Showtime
352	Showtime West
353	Showtime 100
354	Showtime Too West
355	Showtime Showcase
356	Showtime Showcase West
357	Showtime Extreme
358	Showtime Extreme West
359	Showtime Beyond
360	Showtime Beyond West
380	TMC
381	TMC West
382	TMC Xtra
383	TMC Xtra West
390	Sundance
391	Sundance West
392	Flix
393	Flix West
890	Showtime HD*
892	TMC HD*

### Starz Encore Group

401	Starz
402	Starz West
403	Starz Edge
405	Starz in Black
407	Encore WAM
408	Starz Comedy
409	Starz Kids & Family
411	Starz Cinema
412	Starz Cinema West
420	Encore
421	Encore West
422	Encore Action
423	Encore Action West
424	Encore Love
425	Encore Love West
426	Encore Mystery
427	Encore Mystery West
428	Encore Drama
429	Encore Drama West
430	Encore Westerns
431	Encore Westerns West
885	Starz HD*

### Digital Pay-Per-View

501-507	Mediacom PPV
531-536	ESPN PPV
550	fresh!
551	SPICE:XCCESS
552	Playboy
553	TENReal
555	TEN
556	TEN Clips

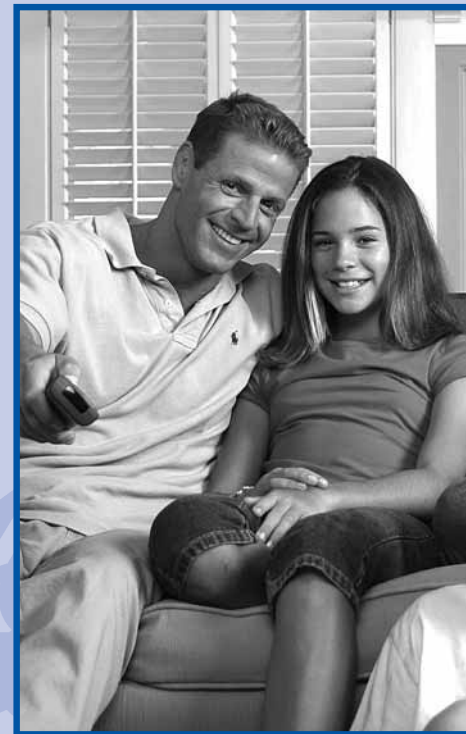
### Digital Music

700	Showcase
701	Today's Country
702	Classic Country
703	Bluegrass
704	R&B Hip Hop
705	Classic R&B
706	Smooth R&B
707	R&B Hits
708	Rap
709	Metal
710	Rock
711	Arena Rock
712	Classic Rock
713	Alternative
714	Retro Active
715	Electronica
716	Dance
717	Adult Alternative
718	Soft Rock
719	Hit List
720	Party Favorites
721	90s
722	80s
723	70s
724	Solid Gold Oldies
725	Singers and Standards
726	Big Band & Swing
727	Easy Listening
728	Smooth Jazz
729	Jazz
730	Blues
731	Reggae
732	Soundscapes
733	Classical Masterpiece
734	Opera
735	Light Classical
736	Show Tunes
737	Contemporary Christian
738	Gospel
739	Radio Disney
740	Sounds of the Seasons
741	Musica Urbana
742	Salsa y Merengue
743	Rock 'en Español
744	Pop Latino
745	Mexicana

### High Definition Television (HDTV) Tier

830	ESPN HD*
831	ESPN 2 HD*
840	Universal HD*
841	Discovery HD Theater*
850	HDNet*
851	HDNet Movies*

# Mediacom Customer Update



## Fairfield, IA



## Dear Valued Mediacom Customer:

Mediacom was founded with the vision of creating a company that would bring the latest communications technology and quality customer service to small and mid-sized communities across the nation. As each year passes, we see more of this vision come to life. Mediacom customers are receiving more channels and better value for their cable dollar than ever before.

But for us, it's not just about providing our communities with more programming choices and making sure they have access to the best technology. It's about the communities themselves. Our employees are active members of their hometowns – they're your neighbors and maybe even your friends. They care about what's happening in your town, and they're giving back through charitable contributions and volunteer service.

We're especially proud of our commitment to education. Through the Cable in the Classroom program, we provide public and private schools access to more than 540 hours of commercial-free educational programming and online resources every month. The Mediacom World Class Scholarship Program awards over \$50,000 every year in scholarships to deserving students in the Midwest.

Our commitment to you – today and in the future – is to offer the best products, with the highest level of service and reliability. Quality customer service will continue to be our top priority, and we're willing to prove it to you. Our On-Time Guarantee means that we install your cable products on time, or you won't be charged for the installation. If we're not on time for a service appointment, you'll receive a \$20 credit on your next bill.

A channel lineup card is included in this brochure. Please keep it for future reference. We value you as a Mediacom customer and appreciate the opportunity to serve you.

Sincerely,

Mediacom

Visit us on the Web: [www.mediacomcable.com](http://www.mediacomcable.com)



## Fairfield, IA Channel Lineup

Family Cable	
2	KGAN (CBS 2) Cedar Rapids B
3	KTVU (ABC 3) Kirksville B
4	KCRG (ABC 9) Cedar Rapids B
6	Local Access B
7	WHBF (CBS 4) Rock Island B
8	KYOU (FOX 15) Ottumwa B
9	Local Access B
10	WGEM (NBC 10) Quincy B
11	QVC B
12	KIIN (PBS 12) Iowa City B
13	WHO (NBC 13) Des Moines B
14	ION B
15	HSN B
16	C-Span B
17	C-Span 2 B
19	TV Guide Channel B
21	WGN B
22	Mediacom Connections B
23	The Weather Channel B
24	ESPN
25	ESPN2
26	FSN Midwest
27	FX
28	Lifetime Network
29	ABC Family
30	USA
31	TBS
32	TNT
33	AMC
34	CMT
35	VH-1
36	MTV
37	Court TV
38	History Channel
39	A&E
40	Discovery Channel
41	TLC
42	Animal Planet
43	Nickelodeon
44	Cartoon Network
45	Disney Channel
46	E!
47	Spike TV
48	Hallmark Channel
49	CNBC
50	CNN
51	Headline News
52	FOX News Channel
53	MSNBC
54	HGTV
55	Food Network
56	Travel Channel
57	Sci-Fi Channel
58	TV Land
59	Comedy Central
60	WE
61	EWTN
62	Inspiration Network
63	Fit TV
64	Bravo
65	TBN
66	Speed Channel
67	Telemundo
68	National Geographic
69	RFD-TV
70	Univision
72	VERSUS
76	Lifetime Movie Network
78	BET
Sports Pak	
171	College Sports TV (CSTV)
172	FOX College Sports Atlantic
173	FOX College Sports Central
174	FOX College Sports Pacific
175	Go!TV
176	Tennis Channel
177	Sportsman Channel
178	ESPN
179	FUEL TV
257	TVG
Digital Plus	
108	KCCI Weather Now
178	ESPN
179	FUEL TV
201	Discovery Kids
202	Science Channel
203	Discovery Health
204	Discovery Home
205	Discovery Times
206	Military Channel
209	G4
210	ESPNEWS
211	The Golf Channel
212	FOX Soccer Channel
213	Outdoor Channel
214	style
215	American Life TV
217	Inspirational Life
218	BBC America
219	Independent Film Channel
221	FOX Movie Channel
222	FOX Reality
230	Noggin
231	Nick Games & Sports
232	Nicktoons Network
240	MTV 2
241	MTV Hits
243	VH1 Classic
250	Biography Channel
251	History International
254	fuse
255	Sleuth
256	Bloomberg News
257	TVG
258	Game Show Network
259	TCM
262	CMT Pure Country
264	VH1 Soul
266	Ovation
267	Toon Disney
268	Lifetime Real Women
270	CCTV
390	Sundance
391	Sundance West
808	KCCI CBS HD*
811	KDIN PBS HD*
813	WHO NBC HD*
Digital Premium Groups	
HBO Group	
301	HBO
302	HBO West

B = Broadcast Basic  
\* Requires Hi-Definition Converter

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# Mediacom® Rates & Services

<b>Cable Service†</b>	
Broadcast Basic	\$19.95
Family Cable (includes Broadcast Basic)	\$51.95
Home Wire Maintenance (video and online service)	\$3.95
<b>Digital Star Paks‡</b>	
All packages include a Digital Converter and Digital Gateway (Interactive Guide, Digital Music and PPV Access)	
Mediacom One Star*	\$11.95
<i>Includes Starz</i>	
Mediacom Two Star Showtime*	\$20.95
<i>Includes Starz and Showtime (Add Cinemax for only \$9.00)</i>	
Mediacom Two Star HBO*	\$24.95
<i>Includes Starz and HBO (Add Cinemax for only \$9.00)</i>	
Mediacom Three Star*	\$33.95
<i>Includes Starz, HBO and Showtime (Add Cinemax for only \$9.00)</i>	
Mediacom Four Star*	\$48.95
<i>Includes Starz, HBO, Showtime, Cinemax and Digital Plus</i>	
<b>Digital Programming†</b> Requires Digital Converter and Digital Gateway	
Digital Plus*	\$9.00
<i>Includes up to 40 Special Interest Channels</i>	
Sports Pak*	\$3.95
Subscription On Demand Services* (COMING SOON)	
WWE 24/7	\$7.99
Here TV	\$5.99
Pay-Per-View Movies**	\$3.99 per movie
Video On Demand Movies** (COMING SOON)	\$3.99 per movie
<b>A la carte Premium Services†</b>	
HBO*	\$14.95
Starz*	\$8.00
Showtime*	\$10.95
Cinemax*	\$10.95
Cinemax* (when added to Two Star or Three Star Paks)	\$9.00
<b>Advanced Products†</b>	
HDTV Tier	\$9.95
Digital Video Recorder Service	\$8.95
<small>Digital Video Recorder (DVR) service and HDTV service (where available) require an HDTV/DVR capable digital converter. Premium HDTV feeds (where available) require an HD capable digital converter and a subscription to the respective premium service.</small>	
<b>Mediacom Online®†</b> Cable Modem Included	
<b>Monthly Residential Rates</b>	
Mediacom Online® Service	\$45.95
<small>(Includes \$15 savings when subscribing to both Online and Video and/or Phone services.)</small>	
Mediacom Online® Service	\$60.95
Additional Dynamic IP Address	\$5.00
Mediacom Online® MAX with Home Networking and Equipment	\$74.95
Mediacom Online® MAX with Home Networking and Equipment	\$59.95
<small>(Includes \$15 savings when subscribing to both Online and Video and/or Phone services.)</small>	
Home Networking – Must subscribe to Mediacom Online®	\$5.95
<b>Online Installation Fees</b>	
Standard Installation (Installation of cable modem to one existing outlet)	\$59.95
Self Activation (Current Video Subscribers Only)	\$29.95
Premium Installation (Installation of cable modem, computer setup and additional outlet, if required)	\$99.95
Premium Installation with Ethernet card (NIC)	\$124.95
Premium Installation with Home Networking (two devices)	\$149.95
Home Networking Installation (two devices)	\$149.95
Home Networking Installation per additional device (same trip)	\$39.95
Home Networking Installation per additional device (separate trip)	\$79.95
<b>Mediacom Phone Service†</b> (COMING SOON)	
<small>(Includes unlimited calling in United States, Puerto Rico, US Virgin Islands and Canada, plus 14 calling features including Voice Mail, Caller ID and Call Waiting)</small>	
Mediacom Phone Service*	\$49.95
Mediacom Phone Service (with Family or Online)*	\$39.95
Mediacom Phone Service (with Family and Online)*	\$29.95
Home Wire Maintenance	\$3.95
<b>Mediacom Phone Service Installation Fees</b>	
Standard Installation	\$39.95

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