

**Before the
Department of Agriculture
Rural Utilities Service
Washington, DC 20250**

In the Matter of)
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Rural Broadband Access Loans and Loan) RUS-06-Agency-0052
Guarantees)
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)
To: The Rural Utilities Service

COMMENTS OF PCIA-THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA—The Wireless Infrastructure Association (“PCIA”) respectfully responds to the Department of Agriculture Rural Development’s (the “Agency”) request for comment on proposed changes to the Agency’s Rural Broadband Access Loan and Loan Guarantee Program (the “Broadband Loan Program” or “Program”) rules and requirements.¹ In formulating its revised rules, PCIA urges the Agency to recognize consumers’ significant and expanding demand for *mobile* broadband services.

I. RURAL CONSUMERS DESERVE MOBILE BROADBAND

Nationally, mobile wireless broadband is by far the fastest-growing broadband delivery platform.² According to the Federal Communications Commission (“FCC”), in the twelve-month period between June 2005 and June 2006, mobile wireless high-speed lines grew from

¹ 72 FR 26742 (2007).

² *High-Speed Services for Internet Access: Status as of June 30, 2006*, FCC WCB IATD (January 2007) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf) at Table 1.

379,536 to 11,015,968 – an amazing 2,800%.³ There are now fully half as many mobile wireless high-speed connections as ADSL connections.⁴

Rural consumers and businesses, too, need access to the same technological options available to consumers in more urban areas. “Today’s technology gives [rural] communities and their citizens the ability to build businesses that provide jobs for our children.”⁵ As the FCC has found, “the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.”⁶

Wireless data applications can have very concrete impacts in rural areas. For example, Air Advantage, founded in 2002, provides high-speed wireless Internet service to Michigan’s “thumb” area. The company perceived a need for students to have broadband access. With the help of Program lending, Air Advantage now serves 3,500 customers in four counties in Michigan, with another 1,000 customers projected under a second Broadband Loan.⁷

In another example, the Sevier River Water Users Association in Delta, Utah, is creating a real-time river basin monitoring and control system for water management.⁸ Environmental sensors connected to a wireless network enable water users to better manage farms, increase crop

³ *Id.*

⁴ *Id.* (reporting, for June 2006, 11,015,968 mobile wireless high-speed lines and 22,575,010 ADSL connections).

⁵ Testimony of James Andrews, RUS Director, Before the House Committee on Agriculture, Subcommittee on Specialty Crops, Rural Development, and Foreign Agriculture (May 1, 2007).

⁶ *Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1576 ¶ 29 (2004).

⁷ USDA Rural Development, *Bringing Broadband to Rural America* (available at <http://www.rurdev.usda.gov/rd/pubs/RDBroadbandRpt.pdf>), at 6.

⁸ “Technology Enhances Rural Life,” U.S. Department of Commerce, NTIA (available at <http://www.ntia.doc.gov/top/publicationmedia/onepagers/TOPPrurallife.pdf>).

yields, and improve emergency response to floods. It provides real-time data including water levels, water rights, river operations, irrigation scheduling, and forecasting.

The FCC has also emphasized the importance of various mobile wireless broadband applications to rural communities. Such applications include public safety uses that provide weather and transportation system data to first responders, and private security applications.⁹ The FCC also observed that many wireless Internet service providers (“WISPS”) provide service in areas where no other broadband options are available.¹⁰

Thus, in formulating revised rules for the Broadband Loan Program, the Agency should develop lending policies that promote rural consumers’ and businesses’ access – not just to broadband – but to the same or better *mobile* broadband technology that is available in urban areas.

II. THE ELIGIBILITY REQUIREMENTS FOR FUNDING IN COMPETITIVE MARKETS MUST RECOGNIZE RURAL CONSUMERS’ NEED FOR MOBILE BROADBAND

The revised program rules should facilitate eligibility for mobile broadband projects for unserved communities. The Agency proposes to define Eligible Rural Communities – the areas in which Program loans can be made – as areas outside of a Census-defined Urban Area or incorporated cities or towns with a population over 20,000 in which there are fewer than four Existing Broadband Service Providers. The rules, in turn, would define an Existing Broadband Service Provider as an entity that is providing Broadband Service in the applicant’s proposed service territory, whose service is being subscribed to by at least 10 percent of the households

⁹ *Connected and On the Go: Broadband Goes Wireless*, Report by the Wireless Broadband Access Task Force, Federal Communications Commission (February 2005) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257247A1.pdf) at 39-40.

¹⁰ *Id.* at 31.

passed by its facilities. Broadband Service would be defined each fiscal year by the Agency, apparently by public notice without opportunity for comment,¹¹ though the narrative of the Public Notice describes the use of the Federal Communications Commission's ("FCC's") broadband definition.¹²

In order to ensure that consumers and businesses in rural areas have access to the mobile wireless broadband options available in urban areas,¹³ the Agency should modify its reform proposals slightly such that, where the applicant proposes to provide *mobile* wireless broadband service, an area shall qualify as an Eligible Rural Community for purposes of the mobile provider's application if there are no other mobile wireless broadband providers serving the area (irrespective of how many fixed-line Incumbent Service Providers may serve the area).¹⁴ This change will acknowledge the unique value of a mobile wireless broadband offering by ensuring that an entity proposing a mobile service is not excluded from loan eligibility simply because of the number of fixed-line services available in the area.

As with existing fixed-line broadband providers, a service test should be applied to ensure that applicants are not disqualified because of an existing provider that serves only a small portion of the area covered by the applicant's proposed project.¹⁵ In the fixed-line context,

¹¹ 72 FR at 26751.

¹² 72 FR at 26748-49.

¹³ *See supra* Section I.

¹⁴ Proposed rule 1738.2.

¹⁵ *See* proposed rule 1738.3 (definition of Existing Broadband Service Provider). In any context, this rule should refer to the number of households potentially served by the service, not the number of households actually served compared to those passed. As proposed, applicants could be excluded by existing providers that make service available to only a small fraction of the applicant's proposed service area.

the Agency proposes a 10 percent test for four providers.¹⁶ Because PCIA proposes that mobile broadband applicants could be excluded by a single other mobile broadband provider (assuming the other disqualifiers for an Eligible Rural Community obtain), PCIA proposes that an existing mobile wireless broadband provider must make service available to 40 percent of the households in the area the applicant proposes to serve in order to count as an existing mobile wireless broadband service provider.

Similarly, the requirement that applicants are only permitted to enter areas where 40 percent or more of households have no access, or only limited access, to Broadband Service should reflect the unique value of mobility. Thus, the service requirements for proposed mobile wireless broadband projects should allow projects to be approved as long as 40 percent or more of the households in the area have no access to *mobile wireless* broadband offerings, or access to only one such offering.¹⁷

In addition, the definition of Broadband Service should be clarified to reflect that, consistent with the FCC's definition, mobile wireless service offerings at speeds of 200 kilobits per second in at least one direction shall qualify as Broadband Service.¹⁸ Mobile wireless broadband offerings bring the significant added benefit of mobility, and the broadband speeds they offer are increasing rapidly. Each type of technology brings particular advantages and disadvantages. The 200 kilobits per second standard should not be increased in the immediate term or without adequate consideration of the unique benefits of mobility.

¹⁶ Proposed rule 1738.2. *See also* 72 FR at 26749.

¹⁷ Proposed rule 1738.21.

¹⁸ Proposed rule 1738.2.

Of course, the definition of “broadband” is an evolving concept, and the Agency should have flexibility to modify the definition in the future if warranted. Given its limited experience with mobile wireless broadband services, however, the Agency should not modify the definition applicable to such service providers without first seeking public comment. PCIA therefore suggests that the rules memorialize the 200 kilobits per second initial speed requirement, and reflect a requirement that the Agency will seek public comment before changing that standard in the future.

III. THE EQUITY REQUIREMENTS SHOULD CONFORM TO COMMERCIAL LENDING REQUIREMENTS AS MUCH AS POSSIBLE

The Agency proposes to replace its existing credit support requirement, which is “unique to the Agency and has been a source of confusion for many applicants,”¹⁹ with a straightforward equity requirement, mirroring that used in private industry. PCIA supports conforming the Program’s requirements to commercial lending standards to the greatest extent possible. Broadband service providers of all types are generally corporations that have some degree of experience with standard commercial lending practices. The Agency can make the Program more accessible by allowing its own requirements to track commercial lending practices, and eliminating unique and idiosyncratic requirements. This, in turn, will increase the likelihood that a broader array of potential broadband service providers will apply for loans under the program, ultimately increasing the benefit to rural communities.

Finally, PCIA commends the Agency for proposing to eliminate market survey requirements where appropriate, and for proposing more useful legal notice requirements. These

¹⁹ 72 FR 26749.

proposals will streamline and facilitate the application process, increasing the Program's potential for improving rural service.

IV. RUS SHOULD USE ITS EDUCATIONAL ROLE TO ENCOURAGE BROADBAND-FRIENDLY ZONING REQUIREMENTS

In its role as an information clearinghouse and advocate for rural America, the Agency should make efforts to share information and best practices in rural communities that will encourage, rather than discourage, rural wireless broadband deployment. Currently, in many parts of the country, state and local zoning ordinances make it difficult or impossible to place new wireless tower facilities. Although the state laws and local wireless ordinances at issue differ in their particulars, the objectionable requirements often include some or all of the following: (1) automatic rejection provisions; (2) technological mandates/prohibitions; (3) excessive fees; (4) renewal limitations; (5) forced rent-free access requirements; (6) radiofrequency exposure requirements; (7) collocation mandates/prohibitions; (8) universal structural requirements; (9) undue planning board discretion.²⁰

Regulations of the types described above deter infrastructure investment, inhibit deployment, and thus constrain the provision of broadband service. In many cases, the requirements imposed by states and localities simply render new tower construction infeasible, either economically, technologically, or both. Even where state and local mandates do not erect an *absolute* bar on infrastructure, however, burdens of the sort described here will render facilities investments less attractive *vis-à-vis* alternative projects. In a competitive industry, capital can be expected to flow away from ventures characterized by uncertainty and

²⁰ See generally Comments of PCIA-The Wireless Infrastructure Association, FCC GN Docket No. 07-45 (filed May 16, 2007) (available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519411354).

burdensome requirements. Thus, even where construction remains *possible* in the face of intrusive state and local requirements, such requirements will undercut investment in new wireless facilities and will undermine the expansion of broadband service offerings.

Given widespread recognition of the critical role played by wireless offerings in the broadband market and rural development, these regulations are deterring investment in the very infrastructure necessary to the continued economic viability of rural America. As it educates policy makers regarding rural development issues, the Agency should include overly burdensome tower siting ordinances on its list of barriers to rural development.

CONCLUSION

PCIA applauds the Agency for its efforts to increase the benefits of its Rural Broadband Loan Program, and urges the Agency to consider the unique benefits to rural communities from mobile wireless broadband offerings in formulating new Program rules.

Respectfully submitted,

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