

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

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July 10, 2007

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

Re: Proposed Rules for the RUS' Rural Broadband Access Loans and Loan Guarantees Program (Docket No. RUS-06-Agency-0052)

Dear Ms. Brooks:

The U.S. Chamber of Commerce (Chamber) is pleased to submit its response to a request for comments by the Rural Utilities Service (RUS) on its proposed rules amending the regulations for the Rural Broadband Access Loans and Loan Guarantees Program (Broadband Loan Program).¹ The Chamber is the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region.

The rulemaking addresses the following proposed changes to the Broadband Loan Program: funding in competitive markets and new eligibility requirements; new equity and market survey requirements; and new legal notice requirements to increase transparency.

To effectively address the problems that confront the Broadband Loan Program, the Chamber urges the RUS to modify its proposed rules by: 1) placing a greater priority on applications seeking to provide service to unserved communities, rather than those seeking government subsidies to offer service in communities where there is already a privately-funded broadband provider; and 2) increasing the transparency of the loan process.

¹ Rural Utilities Services, Rural Development, U.S. Department of Agriculture, *Proposed Rule on the Rural Broadband Access Loans and Loan Guarantees Program*, 72 Fed. Reg. 26742 (May 11, 2007).

I. The Broadband Loan Program Must Favor Applications that Seek to Provide Service to Unserved Communities

The Chamber views telecommunications as the central nervous system of the U.S. economy. In particular, broadband applications and services have the power to transform the American economy by spurring investment and innovation in e-commerce, education, healthcare, communications, entertainment, government, and countless other sectors. Between 1995 and 2004, advances in telecommunications and information technology were responsible for as much as 75% of domestic labor productivity gains.² The Broadband Loan Program must be reformed if rural America is to benefit from this technology.

According to a September 2005, audit report issued by the U.S. Department of Agriculture's Inspector General on the RUS' Broadband Grant and Loan Programs (IG Report), RUS' "current system for prioritizing underserved communities cannot guarantee that communities without broadband access will be preferred to those already with access."³ In other words, to avoid excluding rural communities located in the same county as large cities, the definition of "rural area" is extremely broad resulting in areas near urban locations being considered eligible for funding.⁴

At the time of the IG report, RUS had issued over \$103.4 million in grants and loans, or nearly 12% of the program's available funds, to communities near metropolitan areas.⁵ For example, the RUS provided a loan of nearly \$22.9 million to a company to provide broadband service to 12 undeveloped subdivisions on the edge of Houston—the largest city in Texas and the fourth largest in the United States.⁶ Conversely, in the proposed rule, the RUS acknowledges that "in the history of the [Broadband Loan Program], the Agency has certified as complete only one application to serve a rural area completely without

² Thomas W. Hazlett, Coleman Bazelon, John Rutledge, and Deborah Allen Hewitt, *Sending the Right Signals: Promoting Competition Through Telecommunications Reform*, Report to the U.S. Chamber of Commerce at p. xix. (Sept. 22, 2004). Available at <http://www.teleconsensus.com/portal/teleconsensus/041006telecommstudy.htm>.

³ Office of the Inspector General, Southwest Region, U.S. Dept. of Agriculture, *Audit Report on the Rural Utilities Service Broadband Grant and Loan Programs*, 09601-4-Te. (September 2005). P. ii. ("IG Report").

⁴ *Id.* at 6.

⁵ *Id.*

⁶ *Id.* at 8.

broadband service. Uniquely, that application was for an Indian reservation with a very different competitive environment.”⁷

The proposed rules attempt to ensure that funds from the Broadband Loan Program are better distributed to unserved areas by defining an Eligible Rural Community as a community that contains less than four Existing Broadband Service Providers (EBSPs) and is not located in an “Urban Area.”⁸ The Chamber generally agrees with how the proposed rules demographically and geographically define an Eligible Rural Community.⁹ The population restriction, however, should be expanded to include unincorporated communities, so that to be eligible for funding, a community should not be located within an incorporated or *unincorporated* city or town of more than 20,000. By identifying and excluding communities that are located within an “Urban Area,” the new rule should reduce the number of urban-like communities that have previously qualified for funding strictly based on population-size, but are urban in all other characteristics.

However, the Chamber opposes defining an eligible community as one that is not located within an area that has four or more EBSPs, excluding the applicant.¹⁰ If the area is served by at least one private-sector provider, then the community should not be eligible for funding from the Broadband Loan Program. Private-sector companies that decide to risk capital by investing in and serving rural communities should not be penalized by the government, which is what happens when a government-subsidized provider enters an already served market. By prohibiting loans in a community already served by an RUS-backed provider, the RUS recognizes that government subsidies distort the market and harm the ability of current providers to offer service. The RUS should expand this prohibition to include instances where there is private-sector competition.

Moreover, the Chamber opposes defining an EBSP as a broadband provider able to certify that 10% of the households passed by their facilities are purchasing their broadband service.¹¹ The issue is not about who has subscribed to the service, but whether there is access to broadband service. A community should be defined as served if a company provides broadband service or has begun construction of facilities to provide such service.

⁷ 72 Fed. Reg. 26742, 26748.

⁸ *Id.* at 26749.

⁹ *Id.* at 26751.

¹⁰ *Id.*

¹¹ *Id.* at 26749.

Under the proposed rules, minimum service requirements are established. Specifically, to receive funding in an area not currently served by the applicant, the project must contain at least 40% of households with no access to broadband service or access to only one EBSP.¹² The Chamber urges the RUS to adopt a more stringent requirement that would require at least 50% of households to be unserved.

While the Chamber appreciates the attempt by RUS to better prioritize applications in its proposed rules, the Chamber opposes how this is accomplished. The proposed rules state that applications seeking to serve areas with one EBSP should be treated with equal priority as those with no EBSPs.¹³ This approach should be rejected. The order of priority should be: 1) applications seeking to operate in only unserved areas; and 2) applications seeking to serve the most number of unserved households.

II. The Application Process for the Broadband Loan Program Needs to be Made More Transparent

The Chamber applauds the RUS for recognizing that the application process for the Broadband Loan Program needs to be made more transparent.¹⁴ The following revisions to the proposed rules would further the RUS' goal of making the program more transparent.

The RUS should create a section on its website where applications for funding from the Broadband Loan Program would be posted and made available for public inspection. A formal notice-and-comment period should be established. The notice period would start with the publication of a Public Notice that would be posted to the same section of the RUS website. The Public Notice would include all relevant information about the application (proprietary data could be excluded). Such information would include, among other things: the applicant's name and address, the loan amount requested, a geographic description of the area sought to be served, a description of the services sought to be offered, and an analysis of the unserved population and area that would gain broadband access at the completion of the project.

Upon the issuance of the Public Notice, a comment period of 30 – 60 business days would commence, which would be followed by a reply comment period of 15 – 30 business days. All comments and reply comments would be posted to the designated section on the

¹² *Id.* at 26753.

¹³ *Id.* at 26745.

¹⁴ *Id.* at 26750.

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RUS website. Any modifications to the application would also have to be posted. If the application is approved, the RUS must indicate the number of unserved households as well as the total number of households that would be served.

The Chamber appreciates this opportunity to comment on the proposed rule changes to the Broadband Loan Program. Thank you for your attention to the matters raised in these comments. Please feel free to contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs", written in a cursive style.

William L. Kovacs