

**Before the
RURAL UTILITIES SERVICE, USDA
Washington, D.C. 20554**

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

To: Michele Brooks
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**COMMENTS OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND THE
UTILITIES TELECOM COUNCIL**

The National Rural Electric Cooperative Association (“NRECA”) and the Utilities Telecom Council (“UTC”) appreciate this opportunity to offer comments in the above captioned proceeding.¹ The Rural Utilities Service’s (“Agency” or “RUS”) Notice of Proposed Rulemaking (“Notice”)² seeks comment on proposed regulations intended to promote broadband deployment to rural communities with little or no broadband service. Further, the new regulations propose to ensure that residents in funded rural areas get broadband access more quickly while restricting funding in urban areas and areas where incumbent providers already serve a significant share of the broadband market. NRECA and UTC support finding ways to improve the broadband loan program to ensure that the development and deployment of broadband Internet services to rural communities is expedited. Therefore, NRECA and UTC support proposed rule changes to limit funding in competitive markets, and to reduce the equity requirement for new entrants and

¹ *In re Rural Broadband Access Loans and Loan Guarantees*, 72 Fed. Reg 26742 (released May 10, 2007)(hereinafter Notice).

² *Id.*

eliminate the market survey requirement for applicants proposing to serve less than 15 percent of the market. However, NRECA and UTC believe that certain aspects of the proposal for new legal notice requirements are potentially anti-competitive and burdensome to incumbents and should be reconsidered.

BACKGROUND

NRECA is the not-for-profit, national service organization representing nearly 930 rural electric member systems, which serve 40 million customers in 47 states. Many of these NRECA member systems provide not only electric service to rural communities, but also provide telecommunications, Internet and broadband services to these same rural consumers. NRECA strongly encourages widespread broadband availability, which will enable new and improved consumer products and services as well as business opportunities to reach the communities served by its member rural electric cooperatives.

UTC is a non-profit trade association representing the telecommunications and information technology interests of the nation's electric, gas and water utilities, pipeline companies and other critical infrastructure industries ("CII"). Its members include large investor-owned utilities that serve millions of customers and smaller municipal and cooperative utilities that serve thousands of customers. Many of these members serve remote areas and they all own, manage and operate communications systems that support the safe, reliable and efficient delivery of essential services to the public at large. Many of these members also provide commercial communications services to their communities. UTC supports policies that promote the deployment of communications systems by utilities and other CII, particularly to rural and underserved areas.

Today, rural communities run the risk of being technologically left behind.

Electric cooperatives still average fewer than seven customers per mile of electric distribution line and this low population density continues to preclude the rapid deployment of broadband Internet service to rural America. Low population densities coupled with the issue of traversing vast expanses of remote and often rugged topography presents unique financial and technological barriers for the deployment of broadband and high speed Internet connections to rural communities. Therefore, we applaud the Agency's efforts to more effectively promote the deployment of broadband networks in rural communities.

DISCUSSION

I. Funding in competitive markets and new eligibility requirements.

a. Definition of Broadband

As an initial matter, NRECA and UTC agree that the Agency should continue to use the Federal Communication Commission's ("FCC") current definition of broadband when determining the number of Incumbent Service Providers that are providing broadband service to a community's households. However, the FCC's broadband definition should not be limited solely to determining the number of Incumbent Service Providers. Rather, the FCC's definition should be applicable throughout the Broadband Loan Program in a technology neutral manner whether defining Incumbent Service Providers or considering new applications for RUS loans.

Until a higher percentage of the total US population enjoys dedicated Internet access in excess of that currently achievable by dial-up, the FCC's current definition should continue to apply in all instances. Several NRECA members provide WildBlue satellite broadband service to Americans who do not have access to traditional wireline

broadband networks. The definition of Broadband should not be rewritten to incorporate a faster transmission standard. Satellite broadband services, such as WildBlue, merit the support of the Broadband Loan Program but their providers may be precluded from eligibility if the speed standard is increased. Maintaining the current FCC definition of broadband keeps satellite broadband providers' eligibility for funding assistance intact. If satellite services are disqualified from Broadband Loan Program eligibility, many rural consumers will have no other choice for Internet access outside of dial-up service.

The Agency should not lose sight of the fact that basic 256-Kbps service may not sound fast to most urban broadband users, but it is a significant upgrade for rural areas with only a dial-up connection. The definition of broadband needs to remain such that program eligibility extends to providers of various technology platforms in keeping with the Agency's statutory directive to be technology neutral.

b. Loans to Incumbents for Upgrades

An important aspect of the Broadband Loan Program is the provision of loans to incumbent providers so they may keep pace with the increasing demands for new technology. The demand for increasingly higher bandwidth on the part of consumers is not likely to abate in the near future. Dial-up Internet was the access method of choice just a few short years ago. The financial ability of incumbent providers to continue to upgrade system performance and infrastructure to meet consumer demand will be extremely important to the success of any broadband business model. Incumbents will need to show ability to draw on private capital to keep pace with higher bandwidth demands from their subscribers. Broadband requirements change quickly and will continue to demand much higher access speeds. To the extent that RUS can streamline

the application process and dispense with filing requirements that would be duplicative for incumbents, we encourage RUS to do so as discussed below.

c. Eligibility Requirements

NRECA and UTC support the Agency's proposal to limit eligibility in areas that are currently served by four or more incumbent service providers and to require applications from new market entrants, start-ups or incumbent service providers that are expanding their service area to enter areas where 40 percent of households either have no broadband access or limited access to broadband services. NRECA and UTC believe that these changes are reasonable and appropriate to target funding to areas that are not currently served or inadequately served. While broadband deployment statistics show that the number of Americans within reach of high-speed lines continue to increase each year,³ in fact, there are still many parts of the country that are unserved or underserved, as many of the members of NRECA and UTC know firsthand. The proposed rule changes should promote the deployment of rural broadband by restricting scarce government funding to areas that are truly rural.⁴ This also will promote deployment by prioritizing applications for areas that do not have access or are only served by one provider. Therefore, NRECA and UTC are pleased to support the Agency's proposals in this regard.

II. New equity and market survey requirements.

a. Reducing the Equity Requirement

³ See, Federal Communications Commission reports on High-Speed Services for Internet Access. Most recent report is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf.

⁴ The current rules define rural as a community with a population of 20,000 or less. Using this definition alone encompasses many communities in urban areas. While these communities are rural-like, they should not be considered rural, unless there is some indication that they are not currently served or are underserved. As such, communities that are served by four or more providers or that do not have 40 percent of their population unserved or underserved should not be considered rural for purposes of receiving federal subsidies for broadband deployment.

NRECA and UTC also support the Agency's proposal to reduce the equity requirement. Reducing the equity requirements from 20 percent to 10 percent of the requested loan amount for applicants proposing to serve areas where at least 40 percent of the households have no or limited broadband access lowers one of the substantial hurdles that previous applicants have had trouble clearing, especially for applicants proposing to serve unserved or underserved areas.

However, this proposed change could have the arbitrary and unintended effect of discouraging broadband deployment to rural areas, if it is applied too strictly. The Agency acknowledges that for the broadband loan program to be successful, applicants must jointly serve both low cost, somewhat more-densely populated areas as well as low-density, high-cost rural areas.⁵ NRECA and UTC agree that as a practical reality, applicants will tend to deploy in both types of areas. Unfortunately, the proposed regulations are silent on the issue of which equity requirement would apply to an application proposing to serve areas of an Eligible Rural Community that do not meet the 40 percent benchmark. NRECA and UTC are concerned that an applicant may be limited or denied altogether from qualifying under the proposed 10 percent equity requirement if some of its proposed service territory does not meet the 40 percent benchmark within an Eligible Rural Community.

To encourage deployment of broadband networks to underserved areas, the 10 percent equity requirement should apply even if portions of the Eligible Rural Community do not meet the 40 percent benchmark. As long as the applicant proposes to serve areas with populations that are 40 percent unserved or underserved, the 10 percent equity requirement should apply. Otherwise, strict application of the rule would create

⁵ Notice at 26748

market distortions (e.g. arbitrary service territories designed to meet the 40 percent benchmark) and overly burdensome administrative requirements (e.g. separate applications for the same community). In other words, serving a higher-density population to achieve efficiencies and economies of scale that enable the deployment of broadband access to low-density populations should be encouraged by permitting applicants to obtain the reduced equity requirement for the entire Eligible Rural Community.

b. Elimination of Credit Support

NRECA and UTC welcome the replacement of the credit support requirement with a straight forward equity requirement.⁶ The new provisions would allow NRECA and UTC members, as well as other applicants, the choice of satisfying the equity requirement by either an investor's infusion of additional capital to raise the equity levels of their affiliated broadband companies or by obtaining an unconditional, irrevocable letter of credit acceptable to the Agency. This is important for NRECA and UTC members as well as smaller businesses, many of which are start-ups, as the cost of infusing additional capital is likely to be a more expensive option than obtaining a letter of credit. Given their existing customer relationships and commitment to community service, measures that encourage rural electric cooperatives to broaden their services would be consistent with the goals of the Broadband Loan Program.

III. New legal notice requirements to increase transparency.

NRECA and UTC have serious concerns with the proposal to require applicants to post detailed information about their deployments to the RUS website, and to require incumbents to respond to those postings within a 30-day timeframe. These requirements

⁶ Notice at 26749

are alternatively anticompetitive for new entrants and administratively burdensome for incumbents. Although the Agency's proposed regulations to increase transparency of the application process are well intended, NRECA and UTC urge the agency to adopt less intrusive means to accomplish its goals to: (i) identify areas with no existing broadband service for priority consideration, (ii) notify communities of the potential entrant of a new service provider and (iii) provide incumbent service providers an opportunity to describe their current service territory.

Specifically, NRECA and UTC are concerned that if a new entrant is required to post more detailed deployment information than presently required to the RUS website, it may encourage existing broadband service providers to deploy identical services in the same area for at least long enough to pre-empt competition from the new entrant (i.e. by the presence of more incumbents, even temporarily, in a given area). This gamesmanship may preclude more efficient competitors from entering the market, and force customers of incumbents to pay higher rates and receive lower quality service to fend off competition. NRECA and UTC question how RUS will maintain a system for timely posting of legal notices on the website. The proposal notes that notices will be published on the website "after the application has been received in the Agency's national office" but there is no indication regarding how long after receipt before the notice would be published. Currently, applicants must include copies of the published notices with their applications.

NRECA and UTC also are concerned that the proposed reciprocal obligation upon the incumbent to check the RUS website within an applicable time frame and submit a response to legal notices would also shift improperly to the incumbent the burden of

proving applicant eligibility. Currently, the regulations allow but do not require incumbents to respond to submitted applications. Before an Incumbent Service Provider is required to submit applicable information to the Agency, there should be some form of actual notice, other than a website posting. If, after receiving some legally recognized form of actual service, an Incumbent Service Provider fails to provide the Agency with the appropriate information, then – and only then – should the provider not be considered an Existing Broadband Service Provider for purposes of determining applicant eligibility.

If the Agency decides to adopt the proposed process of posting public notice to its website, it should consider modifications to address the above noted concerns and allow applicants the option of providing public notice through a local newspaper instead, in accordance with the existing rules. That way, the RUS would ensure that effective public notice would be provided, while at the same time providing applicants or incumbents with additional flexibility. If an applicant opted to provide public notice through a newspaper, incumbent providers could still be permitted to respond via the website, in accordance with the proposed rules. NRECA and UTC recognize that this option may be particularly preferable to wireless broadband Internet providers, including satellite providers that tend to cover large areas compared to terrestrial wireline providers.

IV. Additional Considerations

Five years from today, broadband speed requirements are likely to be even greater and will require reinvestment by incumbent broadband providers in order to keep pace with the market. Thus, it will become increasingly important for RUS to streamline not only initial applications for the Broadband Loan Program, but also loan applications from

incumbent providers seeking to upgrade existing broadband service. Perhaps more importantly, the Agency should consider further streamlining the application process for current RUS borrowers in good standing in order for incumbents to remain competitive, and to keep their business plans viable in the fast changing broadband market. Specifically, for current RUS borrowers, certain descriptive information and certifications required to be submitted as part of the application likely duplicates information that RUS already has on file. It should not be necessary to collect duplicative information.

CONCLUSION

Congress originally appropriated funds to the U.S. Department of Agriculture's Rural Utilities Service to offer a multi-billion dollar grant and loan program to help fund rural broadband deployments. Competition and active participation in today's economy requires dedicated, high-speed, broadband access to information and data on the Internet. The Internet is changing the way the world is now doing business and rural communities will lose out on jobs and economic development because of inadequate broadband access to the Internet. NRECA and UTC commend RUS for its efforts to expedite the deployment of broadband Internet access to those rural communities that most need it and appreciate the opportunity to provide these comments to the Agency.

Respectfully submitted,

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Dated: July 10, 2007