

**Before the Rural Utilities Service
United States Department of Agriculture
Washington, D. C. 20250**

Comments of

iTown Communications, Inc.

in Response to

Notice of Proposed Rulemaking
Regulations for Rural Broadband Access Loan and Loan Guarantee Program
Docket ID RUS-06-Agency-0052

COMMENTS

iTown Communications, Inc. ("iTown") submits the following comments in response to the Rural Utilities Service ("RUS" or "Agency") Notice of Proposed Rulemaking ("NPRM"), Docket ID RUS-06-Agency-0052 regarding changes to the Rural Broadband Access Loan and Loan Guarantee Program ("RUS Program" or "Program"). The NPRM ostensibly is intended to increase the Agency's ability to bring broadband services to rural communities by addressing issues related to competition, problems in working with start-up companies and rapidly changing technology. But as iTown describes in its comments, the proposed rules will produce the opposite effect. They will reduce the Agency's ability to assist in addressing the broadband needs of rural America. What these rules do very effectively is respond to the complaints of Incumbent Service Providers that RUS loans are affecting existing local franchise operations.¹ iTown takes strong exception to the direction of these rule changes and suggests alternatives that are much simpler, less draconian in their impact, and that better serve the RUS Program and rural communities.

iTown has a keen interest in the outcome of this rulemaking. It was established to bring advanced broadband infrastructure to America's rural communities. Its efforts are focused on making available advanced broadband capabilities that dramatically exceed national standards through a network purposely designed for small markets. It employs

¹ See for example, Testimony of Tom Simmons, Vice President for Public Policy, Midcontinent Communications, before Senate Committee on Agriculture, Nutrition, and Forestry, May 17, 2006. Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association to the Honorable Mike Johanns, Secretary of the U.S. Department of Agriculture, May 16, 2006.

open network architecture to encourage development of competitive Internet, data, voice and video services. iTown's Local Community Public Use NetworkSM (LCPNSM) delivers 100 Mbps of symmetrical broadband capacity to each premise as an initial standard. An LCPN is capable of delivering 1 Gbps to any premise with simple changes to network electronics. This capability is in stark contrast to an out-of-date FCC definition of broadband as a service operating at a minimum speed of 200 kbps in one direction² and typical Incumbent Service Provider broadband offerings in rural areas operating at speeds in the range of several hundred kilobits per second to several megabits per second through their cable modem and DSL services.

iTown lauds the RUS effort to encourage more investment in areas that currently do not have service, but it views the proposed approach as unnecessary, draconian, impractical and contrary to current law. iTown believes the agency can address the issues that it indicates spurred the need for this Rulemaking by changes to its applications guidelines and better utilization of the discretion it already has in approving loans to achieve its stated objectives.³ As explained below, the practical impact of the Agency's proposed rules is to exclude thousands of communities that are truly rural, explicitly and implicitly discriminate against and discourage applications from all but the Incumbent Service Providers, and reduce what limited pressure exists on Incumbents to rapidly pursue enhancements to their current, limited broadband capabilities that are increasingly seen as substantially inferior to services available in major urban areas.

² See Local Competition and Broadband Reporting, CC Docket No. 99-301, FCC 00-114, Report and Order, Released March 30, 2000, pp. 22-23.

³ See Rural Broadband Loan and Loan Guarantee Application Guide, Rural Development Bulletin 1738-1, June 17, 2004. <http://www.usda.gov/rus/telecom/broadband/pdf/broadband-application-guide-9-16-2005-2.pdf>

iTown's own experience suggests that a loan program much more narrowly targeted to unserved areas, as will occur if the proposed rules are adopted, may simply be ineffective as tool to encourage deployment of broadband capabilities to the least dense areas of the country. As the Agency has itself noted from its own experience reviewing applications, many of these areas simply cannot overcome the business case requirement to substantiate the ability to repay the loan.⁴ Financial viability may not be obtainable without direct and perhaps substantial subsidy. That issue is a matter that only Congress can address.

If any modifications are deemed necessary, iTown urges adoption of rules that do not disqualify thousands of small cities and towns from loan eligibility. It further urges that the Agency remove the blatant discrimination written into the proposed rules favoring loans to Incumbent Service Providers.

Before turning to comments specifically addressing the proposed rule changes, a few comments are appropriate regarding the context of these changes which implicitly appear to be driven by a desire to respond to criticisms from Incumbent Broadband Providers, and in particular characterize broadband markets, improperly from iTown's perspective, as having a "fierce competitive nature" and being "highly competitive."⁵ This unwarranted characterization seems to be behind key proposed changes.

The broadband industry is characterized by a duopoly which is rarely, if ever, described as "highly competitive." Moreover, the duopoly derives from a voice network designed for voice services, a very low bandwidth application, and a separate network for

⁴ "The cost of building out a broadband system coupled with low rural population density in unserved areas has consistently yielded loan proposals which cannot be supported by project revenues." NPRM, Federal Register, May 11, 2007, p. 26748.

⁵ NPRM, pp. 26742 and 26743.

cable TV, originally a one-way video service. Each network has been retrofitted in efforts to provide broadband service, but neither serves the role particularly well. That is why major incumbents are now replacing or dramatically modifying those networks, at least in their largest markets, with networks designed specifically for broadband applications. These advanced networks are becoming the broadband standard. They are capable of allowing users to access much more sophisticated, bandwidth hungry applications and services. New capabilities in major metropolitan areas are creating some limited service level competition, but as iTown has learned through feasibility studies it conducted in small community markets it is pursuing, rural markets are much less competitive. iTown finds that where broadband services are available they are frequently offered at slower speeds and/or higher prices than services in metropolitan areas.

Rural markets are by definition small in scale, and that size by its very nature limits the degree of competition that can develop. The constraint on competition is further exacerbated by an FCC policy that implicitly requires every service provider to build its own network, creating a huge barrier to competitive entry. FCC rules for advanced service networks do not require incumbent broadband network owners to allow other service providers access to the local network infrastructure. In pursuing their own interests, Incumbent Service Providers close their networks in order to maintain their current market dominance. For rural America, a policy that essentially requires investment in multiple networks in order for service competition to exist is both economically inefficient and ineffective in achieving the development goals of the RUS. However, with technology advances one virtually unconstrained, ultra-high capacity

network purposely designed for use by multiple service providers (including incumbents) can now be deployed. Networks designed in this way clearly serve RUS goals.

The issue of competition appears to arise from complaints by Incumbent Service Providers about loans already granted by the Agency. The complaints are not so much about “fierce” competition; rather, they focus on unfair competition based on claims that RUS loans are provided at interest rates below commercial loans and because some loans have gone to areas that may not be considered rural.⁶ Notwithstanding these complaints, it is simply fact that in establishing the RUS program, Congress fully intended that loans be available even where services all ready exists. It originally mandated that loans to areas without service be given priority, but it explicitly defined as eligible all Census Bureau recognized communities outside of MSAs smaller than 20,000 inhabitants, whether incorporated or not. Two years later the Congress further broadened the eligibility criteria by explicitly removing the MSA restriction. So the RUS is fully within its authority to grant such loans and should not bow to industry pressures if it believes loan approvals serve the Program’s goals.

Furthermore, it is also fact that virtually every government program that promotes development impacts some commercial business interest. When the EDA provides a grant or loan to assist in providing a building structure, it impacts the real estate market in that area. If it supports the construction of a tourist hotel facility it impacts that value of other tourist facilities in the market area. If the HUD or even USDA funds low income housing in middle income neighborhoods, it impacts the supply and value of houses in

⁶ See, for example, “American Cable Association on the Warpath,” http://findarticles.com/p/articles/mi_m0PJR/is_20_4/ai_n16361964; see also, CRS Report to Congress, Broadband Loan and Grant Programs in the USDA’s Rural Utilities Services, updated April 27, 2007, pp. 13-14.

nearby market. The issue here is not whether there is some impact on existing business, but whether in providing the loan the Agency is achieving its goal of improving the quality of life in rural communities. Unfortunately, it appears that the proposed rules are targeted more toward avoiding adverse impacts to Incumbent Service Providers than furthering the Agency's purposes.

Nonetheless, it is certainly arguable that a loan to a suburb of Houston (which was provided via the Program) does less for improving the quality of life in rural America than one in Hinton, West Virginia (which incidentally will be ineligible under the proposed rules). It may also be argued that a loan supporting deployment of a wireless broadband network providing the broadband speeds equivalent to DSL service when the community already has DSL and cable modem service does little to improve the quality of life in that community.

In its NPRM, the RUS emphasizes its purpose as pursuing the goal of "increasing economic opportunity in rural America."⁷ It further states that by assisting in providing:

"...access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment."⁸ (emphasis added)

The "urban counterparts" are now receiving broadband networks based on new, not retrofitted, infrastructure. These networks have dramatically increased capacities and can perform today's tasks and those of tomorrow. The networks of Incumbent Service Providers in rural America are not "the same networks" as those being deployed in major urban areas and cannot provide or have severely constrained ability to provide the kinds

⁷ NPRM, p. 26743.

⁸ Id.

of services (distance learning, telework, and telemedicine, etc.) that RUS believes are needed for broadband to substantially contribute to improved quality of life in rural America.

iTown believes that in practice the proposed rules will fall far short of promoting either broader coverage or substantially enhanced capability, and they are seriously biased toward protecting and serving Incumbent Service Providers. It urges the RUS to adopt rules that encourage, wherever possible, broadband infrastructure deployment that can deliver the 21st century services that will serve rural communities for decades to come. This can and should be done while simultaneously pursuing broader coverage of broadband availability in rural America. Its rules should focus less on parochial concerns of Incumbent Service Providers. The determining factor is whether in providing the loan the Agency is meeting its goal of improving the quality of life in rural America.

THE PROPOSED DEFINITION OF "ELIGIBLE RURAL COMMUNITY" IS UNDULY RESTRICTIVE, AND IN ANY CASE THE RUS DOES NOT HAVE THE AUTHORITY TO MODIFY THE CURRENT DEFINITION.

The RUS proposes to modify the current definition of "Eligible Rural Community" in a manner that is unduly restrictive and that will make thousands of small communities ineligible for the Program. Moreover, its proposed definition is contrary to both the spirit and letter of the statute that defines the term specifically for the Program.

Currently, the definition of "Eligible Rural Community" as it applies to the RUS Program is found in the federal statute:

"The term 'eligible rural community' means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants."⁹

⁹ Public Law 109-199, Sec. 772.

The RUS proposes through this rulemaking to change that definition to:

“...any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

- 1) The boundaries of an Urban Area;
- 2) An incorporated city or town with a population of more than 20,000; or
- 3) An area that has four or more Existing Broadband Providers (excluding the applicant).”¹⁰

The RUS further proposes that definition of “Urban Area” means:

“...as defined by the Bureau of the Census, all territory, population and housing units located with an urbanized area (UA) or an urban cluster (UC).”¹¹

Accepting for the sake of argument that RUS has the authority to make this definitional change, it is the wrong change because practically speaking it makes ineligible a substantial portion of rural America RUS is attempting to assist. That result occurs because the rule is constructed to exclude any place identified by the Census Bureau as an “Urban Area.” The Census Bureau’s definition is very inclusive of truly rural locations as it is based on only population density in small, Census defined geographic areas.

The State of West Virginia, one of the most rural and poorest states in the Nation provides good examples of this problem. Buckhannon, West Virginia, population 5,725, an isolated town in central West Virginia is more than 70 miles from Morgantown, the nearest community with a population of more than 20,000. It is ineligible under the proposed rules. Belmont, West Virginia, population 1,036, an isolated community along the Ohio River is more than 20 miles from the nearest community of more than 20,000 (Parkersburg), is also ineligible under the proposed rule change. And even little Handley,

¹⁰ NPRM, p. 26751.

¹¹ NPRM, p. 26752.

West Virginia, population 362, over 25 miles south of Charleston along the Kanawha River is ineligible. These few examples are not isolated exceptions. Indeed, the Census Bureau recognizes 282 communities (including unincorporated populated areas) in West Virginia. Of these, only six have populations great than 20,000 with Charleston, the state capitol being the largest at just over 53,000. Of the remaining 276 communities, 146 or 53% will be ineligible if the proposed rules are adopted. In other words, the RUS is seeking to disqualify over 50% of communities in one of the poorest and most rural states in the Nation from eligibility for broadband loans.

It strains credulity that such a result was intended when Congress explicitly modified and broadened the definition of Eligible Rural Community in 2004. On the contrary, the original definition Congress adopted in 2002 when it fully established the RUS Program was quite broad. It included as eligible all Census Bureau recognized communities with populations of 20,000 or less except those located in Metropolitan Statistical Areas (MSA).¹² When it revisited the issue of eligibility two years later, it explicitly chose to further broaden eligibility by eliminating the MSA restriction. Now the RUS, on its own initiative, has set out dramatically reverse direction and exclude thousands of communities smaller than 20,000 and outside of MSAs that Congress clearly intended be eligible for potential loans.

The RUS may be feeling pressure from Incumbent Service Providers who view the RUS loan program as a threat to their dominance in communities that receive loans. It may even believe that the current statutory definition is too broad and does not properly serve the Program's purposes. Nonetheless, the definition of "Eligible Rural Community" as it applies specifically to the RUS Program is defined by statute. The RUS does not

¹² Public Law 107-171, Section 6103.

have the authority to substitute its own judgment for that of Congress. It cannot adopt rules that clearly and dramatically contradict the definition already written into the law. And if, by some chance, it believes its charter allows it to modify a statutorily defined term, its proposed definition widely misses the mark because it clearly excludes numerous communities it obviously seeks to serve.

THE PROPOSED RULES EXPLICITLY, UNDULY AND UNNECESSARILY DISCRIMINATE AGAINST STARTUPS AND NEW ENTRANTS, PROTECT INCUMBENT PROVIDERS, AND REDUCE THE RATE AT WHICH BROADBAND SERVICES WILL BE ENHANCED

It is well known that other countries are deploying broadband capabilities more advanced than those in the United States, and that in the United States urban area broadband services are rapidly being enhanced with new infrastructures that have substantially greater transmission capacities than currently available DSL and cable modem services. Furthermore, the RUS explicitly recognizes increased demand for bandwidth is a critical challenge.¹³

Through its proposed rules, the RUS explicitly proposes to grant Incumbent Service Providers exclusive access to loan funds for the purposes of enhancing broadband services currently available in any Eligible Rural Community. Section 1738.21(a)(2) requires that all applications for loans include in the proposed service area “at least 40% of households with no access to Broadband Service or access to only one Existing Broadband Service Provider”.¹⁴ However, it makes an exception for Incumbent Service Providers that seek to “enhance” service in their existing service areas in paragraph (b) of that section:

¹³ NPRM, p. 26744.

¹⁴ NPRM, p. 26753.

“Applications submitted by Incumbent Service Providers solely for the purpose of upgrading existing facilities in Eligible Rural Communities must enhance existing service by providing or improving Broadband Service and other services related thereto.”¹⁵

Excluding startups and new entrants from loan eligibility in service areas with existing broadband services blatantly favors Incumbent Service Providers to the detriment of the communities involved.

As referenced earlier in these comments, the Agency’s overall goal is to “increase economic opportunity in rural America” by providing “...access to the same advanced telecommunications networks as its urban counterparts...”¹⁶ iTown readily admits that nothing in existing law directs RUS to promote competition to achieve its goal. By the same token, nothing in existing law suggests its rules should explicitly protect Incumbent Service Providers. Rather, the RUS should keep its eye on its stated objective: assisting in the development of broadband access with the same capabilities as those in major urban areas to support advanced applications that assist its efforts to make rural America “a healthy, safe and prosperous place to live and work.”¹⁷ The RUS should not be in the business of handicapping through its rules whether those capabilities are provided by an existing or new provider. Therefore, iTown submits the RUS should modify this rule to so it does not discriminate against new entrants and startups that propose to provide broadband services that are substantially enhanced in comparison to those already available.

This is particularly true as it relates to companies like iTown. iTown’s LCPN provides a quantum leap in infrastructure capability, eliminating the inherent capacity

¹⁵ NPRM, p. 26753.

¹⁶ NPRM, p. 26743.

¹⁷ Id.

constraints of current copper-based DSL and cable modem networks. The potential impact of existing networks that deliver several megabits downstream and several hundred kilobits upstream pales in comparison to an LCPN that initially provides 100Mbps in both directions and has the inherent capacity to provide whatever bandwidth is required. Networks that control and limit the applications available to users hold back growth and innovation that can be derived from broadband. They in turn serve to restrict the economic development benefits that could otherwise develop by a greater ability to participate in the New Economy.

The proposed exclusivity rule is unnecessary. Moreover, it hurts rural communities that could otherwise have access to an advanced network like an LCPN. Does it make sense to deny a community that can financially support one advanced infrastructure capable of providing all the capacity needed by all end users and all service providers (including Incumbent Service Providers) in the name of government protection of existing, inferior broadband networks? iTown believes not. Therefore, iTown urges the RUS to adopt a rule that does not discriminate against new entrant and startup companies who propose to substantially enhance broadband services in Eligible Rural Communities even though those communities may already have some inferior broadband services.

Finally, a rule that leaves open to all qualified entities the opportunity to obtain an RUS loan to enhance existing services in Eligible Rural Communities actually better serves RUS objectives. It will create an environment that encourages Incumbent Service Providers to more rapidly enhance their existing services. An open application process creates a credible threat that a new, substantially more advanced network will be built by

another company. That creates pressure for the Incumbent to enhance its capabilities. Additionally, using RUS financing the Incumbent can both enhance its capabilities and limit entry by others since the RUS will provide only one loan in a service area. So RUS can produce better results by adopting a non-discriminatory rule.

PROPOSED RULES ARE IMPRACTICAL AND BURDENSOME TO APPLICANTS, IMPLICITLY DISCRIMINATE AGAINST STARTUPS AND NEW ENTRANTS, AND WILL FURTHER REDUCE THE EFFECTIVENESS OF THE PROGRAM

Several aspects of the proposed rules create substantial difficulty for applicants in a process that is already very cumbersome. In particular, the proposed rules create dramatically increased risk that a fully and diligently prepared application actually meets RUS criteria. This new level of uncertainty affects new entrants and startups more than Incumbent Service Providers, and thus, the rule changes implicitly discriminate against new entrants. The discrimination arises because absent complete information on the market penetration of Incumbent Service Providers and network maps of their service areas, an applicant cannot know whether it violates the proposed four existing service provider rule¹⁸ or the proposed 40% of households with no broadband service rule.¹⁹ This uncertainty forced on the applicant is a significant structural problem in the proposed rules.

Under current rules applicants face some uncertainty about the acceptability and completeness of their application, but that relates to providing information about the proposed network and business that is completely within the control of the applicant. It can fully determine whether the community meets the current criteria for community

¹⁸ See definition of Eligible Rural Community, NPRM, 26751.

¹⁹ See propose rule Section 1738.21(a)(2), NPRM, p. 26753.

eligibility from publicly available information. The new rules place the substantial burden and expense on the applicant of preparing an application, but the applicant cannot know with any certainty that the area it proposes to serve is even eligible for a loan.

Indeed, the RUS understands this to be the case. It proposes additional rules that apply following submission of an application to obtain information from Incumbent Service Providers so it alone can determine whether an applicant's proposed geographic service area qualifies for a loan.²⁰

An additional problem with the proposed rules is that an applicant planning to serve an area that has some broadband service coverage cannot know with any reasonable degree of certainty and precision whether its proposed service area has at least 40% of households with no broadband availability. The geographic serving areas of DSL providers are often not the same as their defined telephone exchange areas so are not known to the applicant. Cable company cable modem serving areas are not publicly available. Moreover, wireless coverage areas can depend entirely on the topography and vegetation of the served neighborhood. Market surveys cannot be expected to produce service boundaries. Randomly sampled populations cannot determine service area boundaries. Attempts to identify the specific geographic location of survey respondents by requesting the specific location from the respondent jeopardizes the randomness of research, the reliability of responses, and otherwise substantially increases the cost of the research because the sample size would have to increase dramatically. Additionally, responses to a survey question are not an accurate means of determining whether one, let

²⁰ Under proposed Legal Notice rules, Section 1738.33, the RUS intends to obtain information on network maps and market penetration of existing service providers, information that will remain confidential and unavailable to the applicant. The RUS will use that information to determine if the proposed rural community is eligible. All this occurs after the applicant has submitted its application.

alone four, broadband services are available at that location. The respondent simply may not know what is actually available.

So how is the applicant to have any confidence that its proposed network meets the proposed criteria? While pursuing federal assistance always carries risk, these rules turn the process into a game of chance where the odds are unfairly stacked against the applicant, particularly new entrants and startups.

The combined impacts of rule changes on eligibility of rural communities, the presence of existing service providers, and service requirements for proposed projects are perverse and inimical to the stated goal of the RUS Program. The rules preclude companies like iTown from bringing dramatic improvements in broadband capabilities to rural towns. In doing so they protect aging incumbent networks and reduce what little pressure there is on Incumbent Service Providers to bring the advanced broadband infrastructure increasingly available in major urban areas to rural America. They place additional burdens on applicants, particularly new entrants and startups in the preparation of applications. They further complicate and extend the already complex application review process by requiring the RUS to make comparisons of data submitted by multiple parties to determine whether an application serves a community that is eligible for a loan. They create new uncertainty and additional costs for applicants in attempting to meet these new service requirements. They discriminate both overtly and implicitly against new entrants and in favor of Incumbent Service Providers.

In the end, these rules will result in fewer applications submitted, very few applications that qualify for loans, and ultimately little contribution made by the RUS

Program toward bringing broadband to rural America and assisting in improving the quality of life there.

IF RULE CHANGES ARE NEEDED, THERE ARE BETTER ALTERNATIVES TO IMPROVING THE FOCUS OF THE RUS PROGRAM THAN THE CURRENTLY PROPOSED RULES

iTown does not see the need now for a change in the current rules. The summary provided by the Agency of its progress to date suggests that RUS Program is finally beginning to produce benefits. iTown believes the Agency has the ability within its current rules and discretionary authority to approve only those loans that serve rural communities that are the Program's focus. In iTown's view, the Agency has simply over-reacted in attempting to address criticisms from Incumbent Service Providers threatened by the deployment of substantially enhanced broadband capabilities in selected areas they already serve.

As discussed earlier, iTown believes that the Agency lacks the authority to make proposed rule changes that redefine Eligible Rural Community under currently effective statutes governing the RUS Program. However, if the Agency proceeds with rule changes in an effort to better target and manage the Program and that include modification of community eligibility, then it should adopt key rules that reflect the guidance to applicants offered below in place of the rules it proposes in its NPRM.

1. Section 1738.2 -- The proposed definition of "Eligible Rural Community" should be deleted and the current definition should remain in effect. Additionally, the definition of "Urban Area" should be deleted as it becomes superfluous.

Alternatively, the proposed definition should be simply modified by replacing "or" with "and" in item (2) of the definition.

2. Section 1738.21 – Delete in its entirety including the section title and replace with a rule substantially similar to the following:

Service Requirements and Application Review Priorities

- (a) Applications for loans in Eligible Rural Communities where broadband service is not available or that include a substantial portion of the proposed serving area where broadband service is not available will receive highest priority with expedited review and processing.
- (b) Applications for loans where broadband service is offered in Eligible Rural Communities by one or more Existing Service Providers must propose to:
 - i. substantially enhance broadband service capabilities in the communities where Existing Service Providers operate, and
 - ii. offer broadband services through an open network and make the enhanced broadband access capabilities available to all requesting service providers (including Existing Service Providers) on a non-discriminatory basis.²¹

Such applications will be processed in the order received, but may be pre-empted to process applications submitted that include areas without broadband service.

- (c) Applications for loans in Eligible Rural Communities that are proximate to major population centers (cities with populations of 50,000 or more) will receive the lowest priority and will be considered only when the Agency has completed review of all other pending Applications.
3. Section 1738.33 – In paragraph (a) delete reference to submission and posting of Applicant’s proposed service area map and delete in their entirety paragraphs (a)(1) through (4).
4. Section 1738.34 – add a paragraph substantially similar to the following:

Market Description –The applicant must submit a Market Description that fully describes the rural nature of the Eligible Rural Communities included in its proposed service area, estimate the percentage of households in the proposed service that do not have broadband service available, and provide a detailed explanation of the methodology and calculations used in obtaining that estimate. The description must include a statement identifying the proximity of the communities to the nearest city with 50,000 or more inhabitants. Additional information on the requirements for the Market Description can be found in Bulletin 1738-1.

²¹ The RUS may find that it cannot adopt an eligibility rule that requires an Incumbent Service Provider to open its network. In that case, iTown believes that a rule that permits the Incumbent to use RUS financing for the sole purpose of enhancing its network and that allows a new entrant to qualify provided it opens its network is not an unreasonable solution given the Agency’s current stance of simply barring all but Incumbents from loan qualification where some broadband service is already offered.

These suggested modifications are fully within the RUS authority under current statutes. With other changes proposed by the RUS,²² iTown's proposals focus on encouraging submission and rapid processing of applications targeted at unserved areas. They eliminate the sweeping disqualification of small communities that are truly rural in nature that will occur if the proposed rules are adopted. They encourage consideration of loans in areas that currently have some broadband capabilities, but only where the impact of the loan will be to substantially improve broadband service to the community.


Although under current law the Agency cannot preclude submission of applications from any community with a population under 20,000, rules can be constructed to effectively discourage applications from small cities adjacent to major population centers that the Agency does not believe warrant consideration for loans. iTown's proposals also accomplish that objective. Furthermore, iTown's proposals encourage the agency to adopt an internal process that allows it to constantly rank incoming proposals and assign application review resources to those that best further the Programs objectives. With appropriate language in the rules, prospective applicants will be aware of how their applications will be treated. In short, iTown's proposals effectively serve the objectives the RUS outlined for improving the Program – increasing focus on unserved areas rural and enhancing capabilities in underserved rural areas, but they do so without the very negative impacts that will surely result from the rules proposed in the NPRM.

²² See, for example, the proposed rules in Section 1738.31(a) and (b) which lowers the equity requirement for unserved areas and reduces in selected instances the burden associated with conducting a market survey.

CONCLUSION

In proposing its new rules, the RUS is throwing the baby out with the bathwater. It is widely known that cable television industry has strongly criticized the Agency and pointed to a loan approved for a network in the suburbs of a major metropolitan area, Houston. It is a long way from Houston to Handley, West Virginia. The Agency may be correct to steer its limited resources away from a major metro suburb, but if its goal is assist in approving the quality of life in rural America it should not, must not, establish rules that in the first instance exclude half a of the small towns across the nation, and in the second instance make it so difficult and risky to even apply for funding that applicants are discouraged at the outset. A better solution is to make no rule changes to eligibility as those are statutorily defined or to service area requirements; but rather improve its internal review and decision making process so only those loans that best serve the Programs objectives are approved. If, however, the RUS believes it has the need to modify its rules, then iTown submits the proposed changes submitted in these Comments better serve the objectives of the RUS Program and rural America than those published in the Federal Register.

Respectfully submitted,



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