Comment Info: =================

General Comment: I am greatly concerned by some of the proposed changes. As a borrower, I see some things moving in the right direction while other proposed changes could greatly diminish the efficacy and the reach of this program. As a small township officer, I see the implementation of some of the wording that could eliminate the financial feasability by too highly restricting the ability of a company to build in the nearby small towns, and as a rural citizen, I see a definite chance that the only real funding source available to companies that want to serve our areas will be hamstrung in a meaningless attempt to please political and lobby organizations that are worried that a few people that are not rural may get some internet too.
While I beleive that as a company, we must do our part to serve the truly unserved and underserved, this new set of rules makes it a political exercise intstead of a true concerted attempt to provide broadband into rural areas. I have attached two word documents that more fully describe my comments. One of them is a letter that I had sent to several members of Congress and the Senate some time ago outlining what some of these changes could mean. The second is a more systematic set of comments on specific portions of this proposed change in rules. I have formatted the quotes, including reference when possible, in blue and my comments on that section in red. I hope this makes it easier fro everyone to read. Thank you for taking the time to read and consider these comments.

Subpart B--Loan Purposes and Basic

1738.43............... .... Modified original language in 1738.30(b)(1)(i)(B) to be consistent with proposed rules. Language located in 1738.11b(1)(ii) now reads ``is not capable of receiving broadband service or can receive service from only one existing broadband service provider. Deleting original language in 1738.30(b)(1)(ii)—This language was intended to promote service to outlying rural areas because these areas had less access to broadband service. The new proposed regulations will achieve this same goal by requiring most applicants to include a significant portion of service areas with little or no broadband service. Deleting original language in 1738.30(b)(1)(i)(C)-- Our experience has demonstrated that this rule was too restrictive and prevented most applicants from qualifying for the 4% funding. The proposed regulations will require most applicants to include service to areas with little or no broadband service. These areas are likely to have lower population density and higher deployment costs. Removing the original restriction in 1738.30(b)(1)(i)(C) will better support deployment to these areas by allowing applicants access to lower cost financing. While the blue statement is true, it does nothing to help with this additional cost since most counties do not meet the financial criteria set in the 4% loan.

Subpart G--Miscellaneous Requirements and Information:

F. Proposed Rule Changes: The following proposals seek to implement changes to the Broadband Program's regulations regarding: (1) Funding in competitive markets and new eligibility requirements; (2) New equity and market survey requirements; and (3) New legal notice requirements to increase transparency. Through this Notice, the Agency seeks comments on all of these proposed changes from any and all interested parties.

(1) Funding in competitive markets and new eligibility requirements: The most intractable problem the Broadband Program has encountered is finding feasible loan applications which propose to serve only rural areas which do not have broadband service. 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. Consequently, in the history of the program, the Agency has certified as complete only one application to serve a rural area completely without broadband service. Uniquely, that application was for an Indian reservation with a very different competitive environment.

In order for broadband loans to be feasible, it is necessary for applicants to serve low cost, more densely populated areas, as well as low density high cost areas. Although it is necessary to serve high density areas which are likely to have broadband service, the Agency proposes to place limitations on service to such areas. The Agency proposes changes in eligibility that would prohibit funding within urban areas, regardless of population, and areas where a significant share of the market is already served by incumbent providers. To accomplish this, the Agency is adding or modifying three definitions, Existing Broadband Service Provider, Eligible Rural Community, and Urban Area, which will identify communities that will be ineligible for funding by establishing that sufficient service is already being provided.

(a) Existing Broadband Service Provider. The Agency initially proposes the definition of an existing broadband service provider to identify existing competition. As a basis, the Agency will use the current definition of ``broadband'' established by the Federal Communications Commission (FCC) to determine Incumbent Service Providers that are providing broadband service to the households in the applicant's proposed communities. To be recognized as an Existing Broadband Service Provider, the Incumbent Service Provider must provide evidence and certify to the Agency that 10 percent of the households passed by their facilities are purchasing their broadband service..

Therefore, we propose a threshold of 10 percent of the households in a market. A company offering broadband service will need to have a customer base of at least 10 percent of the households in a community in order to be considered an Existing Broadband Service Provider for the purposes of this proposed rule

(b) Urban Area. In addition to identifying competition, the Agency proposes limiting eligibility of those communities that qualify under the regulations as rural in population, but are located within the boundaries of an Urban Area. The Agency believes that using the pre-established definition of Urban Area will clarify exactly which communities are eligible and reduce the number of ``urban-like'' communities that technically qualify in population size but are not representative of rural in most other characteristics. As stated in other areas, these definitions of urban areas and urban clusters are going to dramatically limit the number of communities that qualify for funding, a dramatic overcompensation for the looser definitions allowed in previous years.

(c) Eligible Rural Community. Tying together the preceding two concepts, then, the Agency proposes that an Eligible Rural Community mean a community which contains less than four Existing Broadband Service

Providers and is not located in an Urban Area. This modification recognizes that, where there are four or more existing providers, the market is sufficiently served and does not warrant an additional market entrant subsidized through Federal funding. In addition, the Agency continues to prioritize deployment of Broadband Service to households with no or limited broadband access while ensuring the financial feasibility of loans. To accomplish this, the Agency will require applications from new market entrants, start-ups or incumbent providers that are expanding their service area, to enter areas where 40 percent of households either have no or limited access to Broadband Service. This requirement addresses the need to reach unserved or underserved areas while also permitting service to more lucrative areas, which may be served by up to three Existing Service Providers, in order to attract feasible loan proposals which are supportable from project revenues. Permitting service in areas with up to three Existing Service Providers addresses the need for applicants to leverage revenues from lower-cost users (typically those in more densely populated areas within a city or town) in order to provide service to rural households in higher cost areas, while excluding areas with higher levels of competition where loan feasibility is unlikely. Lastly, the Agency's proposed rule includes loans to incumbent providers to upgrade existing facilities without requiring service to additional customers as long as the upgrades enhance existing Broadband Service. For purposes of determining whether the proposed service area has ``four or more'' Existing Service Providers, thereby disqualifying the area from lending consideration, the applicant will not be considered as an Existing Broadband Service Provider. Therefore, a facility upgrade loan may be made to an applicant operating in an area which has three other Existing Broadband Service Providers.

The Agency believes that this approach will benefit rural residents by allowing incumbents to keep pace with the changing needs of their customers through continued advancement in technologies and services

While I certainly agree with the goals of serving the rural unserved and underserved areas of our State and Country, I am not sure that requiring 40% or an area to be unserved or underserved will get that accomplished. Since roughly 60% or an area (this is not a researched number, rather an empirical observation in our area) is in the town and the rest is in the country, that would require building into each and every home, no matter how rural to accomplish this goal. Since most small towns have a cable provider of some sort and a phone company of some sort, it may be difficult to find a town that is unserved or underserved. While this definition would have worked well 3 years in the past, many of the incumbents are trying to offer service in a very limited way. It might be more effective to either raise the number for underserved to 2 or raise the percentage penetration to 15%. As a company dedicated to providing services in rural areas of this area, we would be hamstrung without the availability of these funds.

(a) Sec. 1738.31 Equity requirement: …... Therefore, the Agency is proposing to reduce its equity requirement from 20 percent to 10 percent of the requested loan amount for applicants proposing to serve an area wherein at least 40 percent of the households have no broadband access or service from only one provider. The Agency proposes that all other applicants be required to demonstrate a minimum equity position equal to 20 percent of the requested loan amount at the time the application is submitted. This should help.

(b) Sec. 1738.33 Market survey: Currently, the Agency uses market surveys, competitive assessments and financial analyses as tools to validate subscriber projections and determine loan feasibility. Applicants have asserted that completing a market survey can prove to be onerous, unnecessary, and cost prohibitive, especially for those seeking to serve areas where no service exists. Based on our experience with the program, the Agency finds that most market surveys submitted support a 15 percent penetration rate. As a result, the Agency relies more heavily on other means, such as the detailed competitive and financial analyses, to determine feasibility for areas where 15 percent or less penetration is projected. Therefore, in communities where an applicant is proposing to serve less than 15 percent of the market, the Agency is proposing to eliminate the requirement for a market survey, but continue to require submission of competitive and financial analyses. This should help.

(3) New legal notice requirements to increase transparency: The Agency is also proposing to modify the Legal Notice requirement of Sec. 1738.32 to improve information to customers, existing service providers, and applicants. This requirement of the existing rule was designed 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 with an opportunity to describe their current service territory and service offerings, market share, etc. The concept of the legal notice is well intended and, the Agency believes, still necessary and useful to the Agency in making lending decisions. However, based on past experience, the current process needs to be modified. The Agency proposes further modifications to increase transparency, reach a broader range of interested parties, and provide more detailed information on the extent of broadband deployment by incumbent providers. To address concerns with timely access to legal notices, the Agency is proposing to establish a clearly defined window for posting of the notices. Specifically, the legal notice will be published on the Agency's webpage after the application has been received in the Agency's national office and will remain on the webpage for a period of 30 working days. The notice must set forth the applicant's total

proposed service area, including a service area map. An applicant will also need to indicate if it is proposing voice and video services, in addition to the present requirement of its intention to provide data services. This will increase the transparency of the new application to the incumbent provider, as well as alert customers to potential new service offerings.

In response to the Legal Notice, incumbent providers will have new responsibilities as well. The Legal Notice will now request any Incumbent Service Provider to submit to the Agency the following information (within 30 days of notice posting) on the number of customers: (i) Capable of receiving Broadband Service in the applicant's proposed service area; (ii) purchasing Broadband Service in the applicant's proposed service area (including the rates of data transmission being offered, and the cost of each level of Broadband Service); and (iii) receiving other services that will be offered in the applicant's proposed service area and the associated rates for these other services. An incumbent will also be requested to submit a map of its service territory.

It is important that the Agency receive this information, as it will be used by the Agency to determine if the incumbent will be classified as an Existing Broadband Service Provider, and ultimately whether an Eligible Rural Community is eligible for funding. If, however, an incumbent does not submit a response to the legal notice within the applicable time period, it will not be considered an Existing Broadband Service Provider for the purpose of determining applicant eligibility. Nonetheless, the incumbent will still be considered in the lending decision as a competitor. All proprietary and confidential information submitted by the incumbent will not be released under the Freedom of Information Act. This should help as long as it is completely replacing the old requirement.

List of Subjects in 7 CFR Part 1738

Broadband, Loan programs-communications, Rural areas, Telephone, Telecommunications.

Sec. 1738.2 Definitions.

(a) As used in this part:

Census block means an area normally bounded by visible features, such as streets, streams, and railroads, and by nonvisible features, such as the boundary of an incorporated place, minor civil division, county, or other tabulation entity as described in the latest decennial census. This definition appeared to never be used

Census block group means a group of census blocks within a census tract whose numbers begin with the same digit; for example, BG 3 within a census tract includes all census blocks numbered from 3000 to 3999. This definition appeared to never be used.

Eligible Rural Community means 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 Service Providers (excluding the applicant).

Urban Area means, as defined by the Bureau of the Census, all territory, population, and housing units located within an urbanized area (UA) or an urban cluster (UC).

These definitions would not seem to be a problem until one looks at the definitions of Urbanized Area or Urban Cluster, neither of which are defined in this document. However, when I looked them up, I was amazed to find that not only were they a problem, they would severly limit the application fo these funds to truly rural areas. Areas that are so rural that their main sources of business are livestock salesyards and Farmers & Merchants state banks, with populations of only 2500 people! Not only that, there are areas that would qualify for 4% money under the programs intent that would now not even be able to qualify for a loan. These definitions are just plain wrong. Areas like Zumbrota, MN and Adair, Iowa are not metropolitan or urban in nature, design, or any other way shape or form. When the program begins restricting money to these areas, the application process will simply dry up as there are not enough areas that can qualify anymore. In fact, I was hard pressed to even find a town of over 2500 that did not meet the definition of Urban that is being proposed. In point of fact, I found towns that met all of the definitions of Urban used here (except for their total population) that were as small as 1500, 1000, and even 80. You see, the definition of an Urban Cluster is any community that is between 2500 and 49999 people with a density of over 1000 people per square mile. Since most farm communities are older, the lot sizes are very small, thus making them almost defacto Urban Clusters the instant that they hit 2500 people. I do not believe that this is what is meant by Urban and as such it should not be allowed to be part of the definition. If this definition is let stand as it is currently written, it would appear that at least 70% or all rural residents would be deemed to “not be worthy” of receiving broadband services.

Subpart B--Types of Loans

Sec. 1738.11 Broadband Loans and Loan Guarantees.

(b) Direct 4 Percent, which shall bear an interest rate of 4 percent on any advance to the Borrower.

(1) To be eligible for a direct loan bearing an interest rate of 4 percent, the applicant must propose serving an Eligible Rural Community that:

(i) Has a population of less than 5,000 inhabitants; and

(ii) Is not currently capable of receiving Broadband Service or can receive Broadband Service from only one Existing Broadband Service Provider.

(iii) Is located in a county with per capita personal income that is less than or equal to that percent of the national per capita personal income which the Agency will publish in the Federal Register at the beginning of each fiscal year. County per capita income is published by the Bureau of Economic Analysis, U.S. Department of Commerce, at http://www.bea.doc.gov/bea/regional/reis/. The Agency will use the most recent statistics published on October 1 of the fiscal year in which the application is deemed complete by the Agency.

(2) When an approved application exceeds the maximum amount of 4 percent financing that may be available to the Borrower, a direct loan made at 4 percent may be made simultaneously with a Cost-of-Money Interest Rate loan. The real problem with the 4% loan money is that it is not available due to the economic limitations defined in the County per capita income. While the increase in size should theoretically make it easier, there is not a single county in the state of Minnesota that qualified for this financial threshold. Having looked at other states with significant rural areas, Minnesota is nowhere near unique. First, I would recommend that since all of the other requirements of this loan process are based on the census community, that this too be based on that lowest unit that is required for this project analysis. It adds no work at all for the applicant or the approver as both tables are kept in the same location for lookup. The second recommendation is to either 1 set the economic threshold high enough to insure that there are qualified areas or 2, use a point system similar to the grant system , that would let companies apply for the 4% money as long as the rurality was met. This would allow the most deserving projects acquire the 4% loan funds instead of no one being able to qualify.

Subpart C--Ineligible Areas, Eligible Entities and Eligible/Ineligible Items

Sec. 1738.21 Service requirements for proposed projects.

(a) A project in an area not currently served by the applicant must:

(1) Be in an Eligible Rural Community.

(2) Contain at least 40 percent of households with no access to Broadband Service or access to only one Existing Broadband Service Provider. (For example, if a start-up company or new entrant submits a loan application to provide Broadband Service to 1000 households, 400 (1000 x 40%) of the households must have no broadband access or have access to only one Existing Broadband Service Provider. Likewise, if an Incumbent Service Provider submits a loan application to provide Broadband Service to 2000 households in its existing service territory and 1000 households outside of its existing territory, 400 (1000 x 40%) of the households outside its existing service territory must have no broadband access or have access to only one Existing Broadband Service Provider.) This seems a little unclear to me. Is this stating that basically any town with a cable provider and a telephone company is going to be off limits to the program? If this is the case, none of the rural areas surrounding the town (even though they would qualify with no or 1 provider) This seems to needlessly limit competition and restrict construction into rural communities and farms. If on the other hand, it is stating that a proposal that wants to service 1000 customers, 600 of them in a town and 400 of them in the country with no service is acceptable, while limiting, it is not to restrictive.

Sec. 1738.22 Items eligible to be financed.

The proceeds of any loan made under this part may be used:

(d)(1) To finance an Acquisition, provided that:

(i) The Acquisition is necessary for furnishing or improving rural Broadband Service;

(ii) The acquired Service Area, if any, is in an Eligible Rural Community; and

(iii) Funds provided for the Acquisition do not exceed 50 percent of the approved loan amount.

(2) For the purposes of the Acquisition, the applicant will be considered the Incumbent Service Provider with regard to the acquired Service Area, if any.

The only thing that I would say here is that it is very difficult for any company to be 100% rural. Therefore, it would be nice if the service area requirement was possibly set at 75 or 80 or even 90% so that the incidental non-rural customers could both be acquired and continue to be served.

Sec. 1738.31 Equity requirement.

(a) To be eligible for a loan, an applicant must have a minimum equity position in the operation proposed to be funded. For start-up companies, new entrants into an area and Incumbent Service Providers that are proposing to extend their service territory, the applicant must demonstrate a minimum equity position equal to

10 percent of the requested loan amount at the time the application is submitted. For all other applications, the applicant must demonstrate a minimum equity position equal to 20 percent of the requested loan amount at the time the application is submitted. If the applicant does not have the required equity in the operation to be funded at the time the application is submitted, the shortfall for this requirement can be satisfied as follows: What about existing borrowers equity? Will it be redefined to the 10% so that they are not at a competitive disadvantage with new applicants? Will they be able to apply for additional funds since their equity requirement on the new loans would (or at least might) be 10%?

(2) With an unconditional, irrevocable letter of credit (LOC) satisfactory to the Agency. If an LOC will be used to satisfy the equity requirement, the LOC must be secured and serviced by an entity other than the applicant applying for the loan and must remain in effect until the applicant's financial position has reached a Net Worth equal to 20 percent of Total Assets after 80 percent of loan funds have been expended. The Agency must be an unconditional payee under the LOC and the LOC must be in place prior to loan closing. Does this actually mean an unconditional payee or an unconditional payee if all of the terms of the LOC are met? This difference has limited the usefulness of this method of guarantee up until now. RUS does not need to be an unconditional payee, only a payee upon a certain event, the lack of cash that they are trying to guarantee available with this LOC. A slight change to this language may free capital to further invest in Rural America.

Sec. 1738.33 Legal notice. This appears to be a good change

Subpart E--Terms for Loans and Loan Guarantees
Sec. 1738.40 Direct 4 Percent and Cost of Money Loans.

Subpart G--Miscellaneous Requirements and Information
Sec. 1738.61 Priority for processing loan applications.

(a) In making or guaranteeing loans, priority shall be given to applications in the following order:

(1) Applications for service areas that include only households that have no broadband access or receive Broadband Service from only one Existing Broadband Service Provider.

(2) Applications for service areas that include only areas where at least 40 percent of households have no access to Broadband service or access to only one Existing Broadband Service provider;

(3) All other applications

(b) Once an application has been prioritized according to the criteria listed in paragraphs (a) (1) through (3) of this section, they will be processed on a first-in, first-out basis within each priority category.

(c) As applications are processed, using the first-in, first-out process, RUS may expedite for consideration for funding applications proposing to provide service where none is available.

This is unclear to me. Does the wording in 1,2, and 3 mean Applications that include ONLY that type of area or that include a MAJORITY of that type of area or include ANY of that type of area? Really just looking for clarification but it would seem that Majority or 40% or some percentage of that type might be reasonable.

Sec. 1738.63 Annual audit and reporting requirements.

(b) If a loan offer is accepted, the applicant will be required to submit quarterly financial and progress reports utilizing the Agency's electronic reporting system. This is a difficult exercise and a complete waste of time. This information is already recorded in electronic information from either accounting, billing or within a spreadsheet such as Excel. To manually have to retype this information each quarter wastes both time and money and serves very little purpose. A company should be able to submit their information in any electronic format that is easily recognizable to modern PC terminals such as word, adobe, excel, etc. At the very least, these documents should be able to be sent in lieu of filling out this form which took substantially more time than was allotted to complete. There is also a timeout mechanism that is put there for safety but the timeout is so short that even a phone call can automatically log you out and lose the information you have already entered.

Hello,

I was just reading an article in the Washington Post that stated that an effort was being made to change the RUS Broadband Program and that it was being spearheaded by representatives from our own Midwestern area, notably Representative Collin Peterson (MN) and Representative Stephanie Herseth (SD).

I am extremely familiar with this program and would be one of the first to stand up and say that the program could be defined and handled better. However, as a recipient of these funds, some of which go into "served" areas, I would like to stress the importance of this program and some of the key concepts that allow it to work, whether that is in a served, underserved, or unserved area.

The number one requirement of this program is that there must be a business case that can repay the loan. In order to do this, you must be able to reach a certain number of customers or you will not be able to generate the funds required to do this. To reach these customers, especially if they are rural, the system needs to be a contiguous system. This allows for service in very low-density areas while averaging that cost and revenue into areas that are low or moderately low density. Sometimes this means that you are adding services into an area that already has service but make no mistake, just because there is something in that area that constitutes the official definition of service, that does not necessarily translate into actual availability of service to the average resident. By the official definition, a zip code is served if one person has or can get broadband in that area. Therefore, if someone in a small town has a business that has a T1 in it that does data at $1100 per month, that WHOLE zip code is deemed as being served. I do not think that does much for your constituents in a small town nor does it really mean that the area is served by broadband.

A small town, such as Blooming Prairie, where I live, is deemed to be served because the local phone company offers DSL and the local cable company offers two-way cable. However, is this town really being served? While the obvious answer appears to be yes, the reality is that it is not. Oh sure, if you get cable and live on a qualified loop you can get low end data and it is a "reasonable price" of 30-40 dollars, all well and good. However, I live 45,000 feet from the central office. I cannot get any broadband from these suppliers without a very expensive T1. Building on this example, our company, Jaguar Communications, Inc., an Owatonna, MN based company, decided to apply for some of the RUS broadband loan funds. The process was slow, difficult, and expensive but after years, yes years, of effort, we were able to successfully achieve our first loan. We want to serve customers in the areas surrounding rural towns; in fact, we call ourselves a "fiber to the farm company". However, the reality is that we could not build into these very underserved, in most cases unserved, areas without building into the small town that it is surrounded by, as there would not be enough people to justify the cost. In our township, Ripley (Dodge Co) there are 36 Square miles and only 69 homes. With approximately 70 miles of roads, that is about one home passed per mile. There are no economic formulas to make the business case for that township. Yet, by adding it to an area that has hundreds of homes, such as Blooming Prairie, we are beginning to serve it by cost averaging. So far, we only have covered two houses there but this spring we are building past seven more. We have done (and are doing) this with RUS broadband loan funds that might no longer be available with the new changes.

In the article, it mentions building to expensive homes in a new development. While I do not know the specifics of that case, I would wonder why you should not get broadband if you have a nice house. I know that we are and will build into new developments. This year, we are planning to build into new developments that do have some expensive homes. They are located on Circle Lake in Rice County, MN. They also happen to be many miles from the nearest town with DSL or Cable, no high speed internet except an expensive, unreliable wireless connection, and no other prospects of acquiring another provider. Besides acquiring customers that are willing and able to pay, you are also increasing the average density of your network, thereby allowing you to build further and provide more service to people in even more rural areas, although it is really difficult to get much more rural than Millersburg, the town on Circle Lake (I think there are 3 houses, a restraunt/bar, mechanic, and church) and this new housing development.

I know that you have many items of importance to deal with in Washington on a daily basis and this may be seen by many as a small thing, but please believe me when I say that many of us that live in the rural portions of South Central and Southeastern MN see this as a big deal. We want the chance to have the same services as bigger areas. We want to have the benefits of high-speed data so that businesses will want to be here and that they will thrive when they are. We want our children to have the advantage of information provided by high speed broadband services and we hope that by having some of these amenities, that more of them might decide to stay in Southern Minnesota, not be forced to leave just to get a job, or worse, to get the knowledge to get a job.

I know that this was a very long missive and I apologize for that, but I am very passionate about the importance of this program to the future of our area, for this generation, the next, and for many generations yet to come. In that vein, I would be happy to answer any questions that you might have about the program, how it operates, or about our company. I hope that you will take this opportunity to stand up for the rural portions of our district and our nation. Please talk to the Honorable Collin Peterson and let him know that the program is doing some good and to not "throw the baby out with the bath water".

I would like to thank you for your time on this matter,
Best Regards,

Donny Smith

Ripley County Supervisor
CEO, Jaguar Communications