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*Filed with Rural Utilities Service  
via courier*

July 10, 2007

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

RE: *Docket No. RUS-06-Agency-0052 – Rural Broadband Access  
Loans and Loan Guarantees – RIN 0572-AC06 – Proposed Rules  
(7 C.F.R. Part 1738) -- Comments of Qwest Corporation*

Dear Ms. Brooks:

Enclosed hereto, for submission in the above-referenced proceeding of the Rural Utilities Service, are the Comments of Qwest Corporation.

If you have any questions concerning these Comments, please contact me using the information reflected in the letterhead.

Sincerely,

A handwritten signature in cursive script that reads "Daphne E. Butler". The signature is written in black ink and is positioned below the word "Sincerely,".

Enclosure

Before the  
RURAL UTILITIES SERVICE  
U.S. DEPARTMENT OF AGRICULTURE  
Washington, DC 20250

In the Matter of	)	
	)	
Rural Broadband Access Loans and Loan Guarantees	)	Docket No. RUS-06-Agency-0052
	)	
RIN 0572-AC06	)	
	)	
Proposed Rules (7 C.F.R. Part 1738)	)	

**COMMENTS OF QWEST CORPORATION**

Qwest Corporation (“Qwest”), pursuant to the Federal Register publication of the Rural Utilities Service (the “Agency” or “RUS”) in the above-referenced matter, hereby provides its responsive comments concerning proposed rule amendments to 7 C.F.R. Part 1738, the rules for the Rural Broadband Access Loan and Loan Guarantee Program (the “Program”).<sup>1</sup> Qwest has two primary interests in this item. First, because “broadband is a critical component to the future of rural America,”<sup>2</sup> and because the fund of dollars from which to make loans and loan guarantees is not infinite, the Program should limit its scope to providing loans and guarantees to make broadband coverage possible in un-served rural areas. Moreover, providing broadband service to areas where broadband is not commercially viable is a current Congressional priority,<sup>3</sup> and appears to have been a priority of the Congress that created the Program, which stated that in “making or guaranteeing loans . . . the Secretary shall give priority to eligible rural communities

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<sup>1</sup> 72 Fed. Reg. 26742 (May 11, 2007).

<sup>2</sup> *See id.* at 26743.

<sup>3</sup> *See* U.S. Representative John Salazar’s comprehensive broadband legislation, H.R. 2174; Senator Hillary Rodham Clinton’s Rural Broadband Initiatives Act, S. 1032; Congresswoman Stephanie Herseth Sandlin’s Rural Broadband Improvement Act, H.R. 2035.

in which broadband service is not available to residential customers.” 7 U.S.C. § 950bb(c)(2).

Second, the Program should be highly transparent.

**I. THE PROGRAM’S GOAL SHOULD BE TO EXPAND THE DEPLOYMENT OF BROADBAND SERVICES TO CURRENTLY UN-SERVED AREAS.**

Qwest is pleased that through the change in definition to the term “Eligible Rural Community” the Program will no longer provide loans or loan guarantees to service providers in Urban Areas, as defined by the Bureau of the Census. Qwest believes that further changes are required in order to limit the Program to providing loans or loan guarantees to applicants seeking to provide broadband in currently un-served areas.

Proposed Rule 1738.2 defines an “Eligible Rural Community” as any area “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.” “Existing Broadband Service Provider” is defined as an Incumbent Service Provider that is providing Broadband Service, and is able to provide evidence and certify to the Agency that ten percent of the households passed by their facilities are purchasing their Broadband Service. Resellers using the facilities of another carrier will not be considered as an Existing Broadband Service Provider.

Under these definitions, broadband may be available and offered throughout an entire community by ten broadband service providers, but if no more than three of those broadband service providers has a take rate of ten percent or more, the community is eligible for an RUS broadband access loan or loan guarantee, if its not an Urban Area or an incorporated city or town with a population of more than 20,000. The relevance of a service provider’s take rate, rather than the availability of its broadband service, is bewildering. It would seem that such an area (with ten broadband service providers) does not have a problem with access to broadband

service. Rather, demand for such services should be stimulated. The Program's loans and loan guarantees would be better directed towards bringing broadband to an area lacking any service providers.

That four or more Existing Broadband Service Providers with broadband service take rates in excess of ten percent would have to be present before a community is considered ineligible for these loans and/or loan guarantees can only be interpreted to mean that the Agency sees the Program as one intended to subsidize competition rather than ensure that truly un-served communities are provided with access to broadband service. Since some rural communities will not be able to support more than one broadband service provider, this formulation of Eligible Rural Community takes the focus away from communities without any broadband service and enables subsidized broadband investment in communities already served by one or more broadband service providers. Further, it encourages loans that will undermine rural broadband investments already made by commercial broadband service providers that are not borrowers from the Program. Note, though, that pursuant to Proposed Rule 1738.19, the Agency will not approve the use of a broadband loan “[t]o an applicant proposing to provide Broadband Service in an Eligible Community where an existing Borrower [from the Program] is already providing Broadband Service.” The Agency should show the same consideration for non-Borrowers who have invested in broadband as it does for Program Borrowers who are already providing broadband service in an area that is the subject of an application.

Proposed Rule 1738.21 establishes the following service requirements for the proposed projects in an area not currently served by the applicant: 1) must be in an Eligible Rural Community; 2) must contain at least 40 percent of the households with no access to broadband service or access to only one Existing Broadband Service Provider.

In leveraging the deficiencies existing in the proposed definition of Existing Broadband Service Provider, the applicant can meet the service requirements for a broadband loan or loan guarantee (assuming the area is not an Urban Area or an incorporated city or town with a population of more than 20,000) where multiple broadband service providers have fully built out the area covered by the application as long as 40 percent of the households in the area do not have access to more than one Existing Broadband Service Provider (meaning an incumbent service provider with a take rate of at least ten percent of the households it passes with facilities). Five existing service providers could have fully built out broadband facilities in an area covered by an application. If four service providers have broadband service take rates of nine percent and one has a take rate of ten percent or more, the application meets the service requirements under Proposed Rule 1738.21, even though all households covered by the application have access to five broadband service providers and the cumulative take rate in the area is 46 percent or greater.

Qwest understands that the Agency is struggling to find “feasible loan applications which propose to serve only rural areas which do not have broadband service.” Qwest further understands that the Agency believes that 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, even though the high density areas are likely to have broadband service. Qwest does not agree with this approach.

First, the Program does not improve broadband deployment in the nation if it funds loans to provide service in rural areas that already have a broadband provider, with the hopes of inducing the subsidized entrant to provide service in a high cost area too. Doing so undermines economically viable, served communities and disrupts the market-determined equilibrium by

inducing another provider to enter the served market with below market cost capital. It ends up disturbing the naturally occurring balance between demand and supportable investment, threatening the continued viability of the existing providers who are forced to compete with a competitor with lower capital costs. In the end there is no assurance that the new entrant will secure sufficient market share to survive in the served market much less extend service into the un-served market that has historically demonstrated itself to be unattractive to private capital. The Agency has not demonstrated its underlying premise that it can introduce a government subsidized competitor into an economically challenged, but served community without doing harm to an incumbent or incumbents. The Agency should not sacrifice one or more incumbent carriers in order to give the government's favored carrier a better chance to succeed.

Second, the Agency should have an integrated focus on both demand and supply. The Agency should not act like private bankers, waiting for loan applicants to walk through the door to take on the challenge of bringing broadband to the most difficult and costly parts of the Nation to serve. Rather, the Agency should identify and map rural communities that are un-served. It needs to develop a market demand profile for these communities and identify ways to incent increased demand to the point where it is sufficient to support some level of community broadband service, if not ubiquitous residential deployment, and provide technical assistance to potential broadband service providers on how to leverage existing state and federal programs like the under-utilized federal universal service rural healthcare program.

Finally, while appreciative of the fact that the Agency has been criticized in the past for not granting enough broadband loans, the true measure of success for this Program is how much it expands the availability of broadband service in un-served rural America, not how many loans it makes or how much loan money it distributes. A reasonable approach would be to adopt a

proposal similar to legislation being proposed by Representative Herseth Sandlin whereby no broadband loan would be granted or guaranteed if 50 percent or more of the households to be passed by the applicant's facilities already have access to broadband service that is reasonably comparable as to available speed and price to the broadband service that the applicant commits to provide throughout the service area covered by its application. Moreover, the loan or loan guarantees should cover only the *pro rata* share of the project that would provide broadband service to previously un-served households.

## **II. THE PROGRAM SHOULD INCLUDE A TRANSPARENT PROCESS.**

Proposed Rule 1738.2 defines "Broadband Service" as one that the Agency can change by publishing "a notice in the **Federal Register** defining the minimum rate-of-data transmission criteria to qualify as broadband service during that fiscal year's funding period."<sup>4</sup> Qwest believes that the Program would benefit from better coordination between federal agencies if the Agency followed the Federal Communications Commission's definition of broadband.

Proposed Rule 1738.33 addresses Legal Notice requirements. In subsection (a), it provides that the legal notice of the application that must be prepared by the Applicant will be published on the Agency web page for a period of 30 work days. There is no reason why this notice should not remain posted until final disposition of the application. The notice is to request that Incumbent Service Providers submit specified information to the Agency within the 30-day period. While appropriate to set an initial time frame for the submission of data by Incumbent Service Providers, data or information relevant to consideration of the application should be received by the Agency at any time up to disposition of the application. Subsection (b) attempts to punish Incumbent Service Providers by denying them the status of an Existing Broadband

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<sup>4</sup> 72 Fed. Reg. at 26751 (emphasis in original).

Service Provider during consideration of the application should they not respond to the legal notice within 30 days. This is simply punitive as to Incumbent Service Providers and is counter-productive to encouraging broadband investment in un-served areas. The Agency has an independent obligation to determine the full extent of existing broadband service in the area that is the subject of the application, irrespective of whether an Incumbent Service Provider elects to respond to the notice with additional information. In addition to posting a copy of the legal notice on the Agency web page, all entities identified in the application as providing broadband service in the proposed service territory should also directly receive a copy of the legal notice. To the extent the Agency adopts its proposal to exclude existing broadband service providers that fail to submit a response to the application, then the Agency should require the applicant to also directly contact the existing broadband service providers.

Further, Proposed Rule 1738.34 requires a market survey except in areas where the applicant projects that it will penetrate less than 15 percent of the market. Qwest believes that the Agency should still require a market survey if the applicant is predicting less than 15 percent penetration. In such instances the Agency should investigate why the applicant projects that more than 85 percent of the homes the applicant passes will not purchase the applicant's services.

Finally, Proposed Rule 1738.33 expands the Incumbent Service Provider's response requirements to include "(3) [t]he number of residential and business customers receiving other services that will be offered in the applicant's proposed service area and the associated rates for these other services." This additional requirement extends beyond broadband to other services, potentially including traditional voice telecommunications. Of course, subsidizing voice



competitors is not a productive use of the Program's dollars, which should be focused on aiding areas un-served by broadband.

Proposed Rule 1738.61(a) establishes the priority for processing loan applications. The proposal gives first priority to “[a]pplications for service areas that include only households that have no broadband access or receive Broadband Service from only one Existing Broadband Service Provider.”<sup>5</sup> Second priority goes to “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.”<sup>6</sup> Following this proposed rule could threaten the viability of an incumbent that has invested in a rural area, but has not yet achieved a high level of penetration. Suffice it to say that the ill-conceived definition of Existing Broadband Service Provider (*i.e.*, a service provider serving at least 10 percent of the households passed by their facilities) that is at the core of this proposed rule establishing the priority for processing loan applications takes us further away from the current Congressional priority for broadband loans to go to un-served areas.

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<sup>5</sup> *Id.* at 26758.

<sup>6</sup> Rule 1738.61(a)(2).

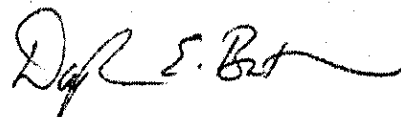
## CONCLUSION

For the foregoing reasons, Qwest believes that the proposed rule amendments of the Rural Utilities Service concerning Part 1738 of Title 7 of the Code of Federal Regulations should not be promulgated as drafted.

Respectfully submitted,

QWEST CORPORATION

By:



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