



July 10, 2007

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

Re: ***Rural Broadband Access Loans and Loan Guarantees
Comments***

Dear Ms. Brooks:

USA Broadband, LLC ("USAB") is pleased to submit its Comments in the above-referenced proceeding regarding proposed new rules for administration by the U.S. Department of Agriculture's Rural Utilities Service ("RUS") of the rural broadband access loan and loan guarantee program.¹ While well intentioned, we believe that some of the proposed rules will be counterproductive to the expeditious completion of loan applications. USAB offers some suggestions that will facilitate the loaning of funds in areas where broadband access is most in demand, while preserving the integrity of the loan approval process.

About USA Broadband, LLC

Illinois-based NOW Wireless, LLC, and the Missouri Farmers Union have developed a unique relationship in the forming of USAB. This entity has formed an operating company for a fiber-to-building triple-play service (voice, internet, and entertainment) and a wireless broadband Internet service that will cover 6,000 square miles. USAB's philosophy is that no community or farmer be left behind. This means that every farmer, business, small office/home office and resident within USAB's service area will have access to the latest in high-speed broadband services.

This mission will also contribute significantly to the quality-of-life in all of the counties that receive these services. The USAB joint venture has developed a solid business strategy that puts the infrastructure in place for high quality, affordable broadband service throughout the Heartland. We believe that our communications services will provide a huge economic advantage not only in the towns, but also in the entire county where our services are available.

¹ See 72 FR 26742 (rel. May 11, 2007).

Comments

Eligible Rural Community

RUS proposes to change the eligibility requirements to help ensure that funding is used to facilitate broadband access in rural markets. As part of this effort, RUS proposes that “applications from new market entrants, start-ups or incumbent providers that are expanding their service area, to enter areas where 40 percent of the households either have no or limited access to Broadband Service.”² To demonstrate that the community the loan applicant is proposing to serve qualifies as an “Eligible Rural Community,” the area must have four or more Existing Broadband Service Providers, defined as an Incumbent Service Provider that “is able to provide evidence and certify to the Agency that 10 percent of the households passed by their facilities are purchasing their Broadband Service.”³

This proposal highlights a problem inherent to the loan application process. As part of its loan application, an application must include a competitive analysis that is based on information it is able to gather from its prospective competitors. In some cases, an incumbent may have the capacity to serve a large area but is really only operating in a smaller area. Or, the information may not be accurate. Regardless of the shortcomings associated with the data, the applicant includes it in the loan application pursuant to Bulletin 1738-1 (proposed §1738.35). After the application is submitted, the Incumbent Service Provider will be obligated to provide information on its household penetration. If this data is materially different – due to information being unavailable when the application was prepared, the passage of time, market changes or other reasons – then certain portions of a loan application may be rendered inaccurate. In some cases, this will cause RUS to return the loan application if the applicant’s business plan becomes untenable.

To remedy this situation, instead of returning the loan application, where there is a discrepancy between the data contained in the competitive analysis and the household penetration data provided by the Incumbent Service Providers, RUS should allow the loan applicant to amend the application and preserve its place in the processing line, rather than returning the applications without action and an opportunity to resolve the discrepancy. This will ensure that applicants that make a good faith effort to gather competitive data are not prejudiced by the actions of their competitors that do not provide accurate data or who’s operations change over time.

Moreover, the proposal that the area have a maximum of one Existing Broadband Service Provider may, in some cases, lead to results that foreclose service. For instance, in markets where the local cable operator and local exchange carrier are both providing fixed broadband service, a new entrant proposing a portable or mobile broadband service would be excluded by the rule from obtaining RUS funding. Likewise, an applicant proposing to serve a small community within an Urban Area would be prevented from seeking RUS funding to serve that community. In this manner, the community could be denied service if RUS funding is the only reasonable means to finance construction and operational expenses. To prevent this from occurring, RUS should retain the discretion to consider loan applications that do not meet the strict eligibility criteria where, for instance, an applicant

² *Id.* at 26749.

³ *Id.* at 26751.

demonstrates that special circumstances exist (such as a new use or service to a community within an Urban Area that would otherwise be excluded from consideration).

Equity Requirement

USAB commends RUS's proposals to replace the credit support methodology with the simpler equity requirement and lower the equity requirement to 10 percent of the requested loan for applicants proposing to serve an area where at least 40 percent of the households have no broadband access or service is provided by only one provider.⁴

However, USAB believes that the rules could be further relaxed in areas where the rural public is even more underserved. Specifically, USAB proposes that the equity requirement should be reduced to five percent if the percentage of households that have no broadband access or service from only one provider exceeds the 40 percent threshold by 10 percent or more (*i.e.*, 44 percent). This rule would further ease credit requirements where the need for broadband is greatest and the "take rate" can be expected to be higher, thereby encouraging Internet service providers to apply for a loan. Given this, the risk to RUS, as the lender, would be offset by the increased opportunities to more quickly grow a rural market that has less broadband availability.

Market Survey

USAB supports RUS's proposal to eliminate the market survey requirement in communities where the applicant is proposing to serve less than 15 percent of the households. We agree that it would create an unnecessary burden on an applicant to include a market survey where the expected penetration is not projected to meet a modest benchmark.

Legal Notice

Likewise, USAB believes that the proposed modifications to the legal notice requirement will improve transparency and will reduce the time and expense associated with the existing requirements. We support the changes stated in proposed §1738.33.

Conclusion

USAB appreciates the opportunity to participate in this important proceeding and urges the RUS to act consistent with these Comments.

Respectfully submitted,

/s/ Barry Goodwin

President of NOW Wireless, LLC,
Managing Member of USA Broadband, LLC
607 S. State Street
Jerseyville, IL 62052
(618) 498-6099
barry@noww.us

⁴ *Id.* at 26749-50.