

§ 1735.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans that include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1735.21.

(b) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

§§ 1735.53–1735.59 [Reserved]**Subpart F—Mortgage Controls on Acquisitions and Mergers**

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

§ 1735.60 Specific provisions.

(a) The standard form of RUS mortgage contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.

(2) Article II, section 4(b), if made applicable, provides certain exceptions to the requirements of section 4(a).

(b) Similar provisions are contained in other forms of documents executed by borrowers that have not entered into the standard form of mortgage.

(c) Mortgages and loan contracts may contain other provisions concerning mergers and acquisitions.

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 62 FR 46871, Sept. 5, 1997]

§ 1735.61 Approval criteria.

(a) If a borrower is required by the terms of its mortgage or loan contract to obtain RUS approval of a merger or acquisition, the borrower shall request RUS approval and shall provide RUS with such data as RUS may request.

(b) If loan funds are requested, the borrower shall comply with subpart G of this part. If no additional loan funds are involved, the borrower shall comply with subpart H of this part.

(c) In considering whether to approve the request, RUS will take into account, among other matters:

(1) Whether the operation, management, and the economic and loan-repayment feasibility characteristics of the proposed system are satisfactory;

(2) Whether the merger or acquisition may result in any relinquishment, impairment, or waiver of a right or power of the Government;

(3) Whether the proposed merger or acquisition is in the best interests of the Government as note holder; and

(4) Whether the proposed purchase price and terms of an acquisition are reasonable, regardless of the source of funds used to pay for the purchase. RUS will consider the purchase price unreasonable if, in RUS's opinion, it will endanger financial feasibility.

§ 1735.62 Approval of acquisitions and mergers.

(a) If a proposal is unsatisfactory to RUS, then RUS shall inform the borrower in writing of those features it considers objectionable and, as appropriate, recommend corrective action.

(b) If a proposal is satisfactory to RUS, then RUS shall inform the borrower in writing of its approval and any conditions of such approval. Among the conditions of approval are the following:

(1) RUS shall require a compensating benefit in return for any relinquishment, impairment, or waiver of its rights or powers.

(2) If the survivor is an affiliate of another company, RUS shall require any investments in, advances to, accounts receivable from, and accounts payable to the affiliated company contrary to mortgage provisions shall be eliminated in a manner satisfactory to the Administrator.

(3) RUS requires that the borrower agree not to extend credit to, perform services for, or receive services from any affiliated company unless specifically authorized in writing by the Administrator or pursuant to contracts satisfactory in form and substance to the Administrator.

(4) RUS may require the borrower to execute additional mortgages, loan agreements, and associated documentation.

§§ 1735.63–1735.69 [Reserved]

Subpart G—Acquisitions Involving Loan Funds

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

§ 1735.70 Use of loan funds.

(a) See 7 CFR part 1735 and 1737 for RUS's general loan policies and requirements.

(b) RUS will finance an acquisition by a borrower only when the acquisition is necessary and incidental to furnishing or improving rural telephone service and the service area is eligible for RUS assistance.

(c) RUS does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, RUS will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas.

(d) Generally, RUS will not make a loan for the acquisition of an existing borrower unless, in addition to all other requirements, such acquisition will improve the likelihood of repayment of an outstanding RUS loan and all outstanding balances of the previous RUS loans are paid in full.

(e) In determining the amount it will lend for each acquisition, RUS shall place a valuation on all telephone facilities that are to be acquired with loan funds. RUS may consider fair market value, the original cost less depreciation of the facilities, income generating potential, any improvement in the financial strength of the borrower as a result of the acquisition, and any other factors deemed relevant by RUS

to determine the reasonableness of the acquisition price and the amount of loan funds RUS will provide for an acquisition. RUS shall not consider the acquisition price reasonable or approve a loan if, in the Administrator's opinion, the acquisition price will endanger financial feasibility. If the acquisition price exceeds the amount RUS will lend, the borrower provides the remainder.

(f) When a borrower intends to request RUS loan funds for an acquisition, it shall present a proposal in writing to the Area Office as soon as possible. The borrower must either obtain RUS approval prior to making any binding commitments with the seller or make the commitments subject to RUS's approval. Failure to comply with these requirements will disqualify the borrower from obtaining an RUS loan for the acquisition unless the Administrator determines there were extenuating circumstances.

§ 1735.71 Nonrural areas.

Loan funds may be approved for the acquisition and improvement of facilities to serve nonrural subscribers only if the principal purpose of the loan is to furnish and improve rural service and only if the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. For example, when the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition. Approval for the use of loan funds in these circumstances shall be made only on a case by case basis by the Administrator.

§ 1735.72 Acquisition agreements.

When borrowers are seeking RUS financing, acquisition agreements between the borrower and the seller must be in form and substance satisfactory to RUS and shall be expressly conditioned on approval of the agreement by RUS and on obtaining an RUS loan. Normally, the acquisition agreement will not be approved by RUS until the loan has been approved.