

Rural Utilities Service, USDA

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part 1744, subpart C for additional requirements for requisitions and advances.

§§ 1735.78–1735.79 [Reserved]

Subpart H—Acquisitions or Mergers Not Involving Additional Loan Funds

§ 1735.80 Submission of data.

When a borrower is not requesting loan funds for an acquisition or merger, the borrower shall first notify RUS and submit for review by RUS the documents and information listed in (a) through (l) of this section required by RUS.

(a) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(b) Completed RUS Form 507, “Report on Telephone Acquisition.”

(c) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower’s existing service territory, and the names of other telephone companies serving adjoining areas.

(d) A brief statement of the plans for incorporating the acquired facilities into the borrower’s existing system.

(e) The number of subscribers currently receiving service in the areas involved in the acquisition or merger and the number of new subscribers that will be served over the next 5 years as a result of the acquisition or merger.

(f) Copies of deeds of real estate to be acquired, with an explanation of the proposed use of the land.

(g) Copies of security documents of any other lenders involved and any contracts or other rights of obligations to be assumed by the survivor.

(h) A list of all counties in which the proposed system will have facilities.

(i) If Article II, section 4(b) of the standard mortgage has not been made applicable, plans for operating the unified system.

(j) In the case of a merger, the proposed articles of merger that are to be used.

(k) In the case of an acquisition, the proposed purchase price, plus two copies of any options, bills of sale, or

deeds, and two copies of any acquisition agreements. All of these documents are subject to RUS approval. If the acquisition agreement is approved by RUS, two copies of it shall be returned to the borrower.

(l) Any other data deemed necessary by the Administrator for an evaluation of the acquisition or merger.

(Approved by the Office of Management and Budget under control number 0572-0084)

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990]

§§ 1735.81–1735.89 [Reserved]

Subpart I—Requirements for All Acquisitions and Mergers

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

§ 1735.90 Preliminary approvals.

(a) In cases where the borrower’s schedule for completion of the proposed action leaves insufficient time for RUS to prepare and process the required documentation, including new mortgages and replacement notes, the borrower may request RUS to give preliminary approval to the acquisition or merger. However, the borrower may not obtain additional loan funds until the documentation is completed to RUS’s satisfaction.

(b) Consideration of preliminary approvals generally will not be practicable in cases in which compensating benefits are required.

(c) RUS will not give preliminary approval when the lien of the mortgage on after-acquired property may be affected.

(d) Before RUS will grant preliminary approval, the borrower shall submit:

(1) Merger or acquisition documents required by state law;

(2) Acquisition agreements covering the transaction;

(3) Any required franchises, licenses, and permits;

(4) All required regulatory body approvals;

(5) All required corporate actions;

(6) Leases, contracts, and evidence of titles to be assigned to the purchaser; and

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(7) The latest audited financial statements for any nonborrowers involved.

(e) If the information in (d) of this section is acceptable to RUS, the borrower may proceed with the closing.

(Approved by the Office of Management and Budget under control number 0572-0084)

§ 1735.91 Location of facilities.

Telephone facilities to be acquired must be located so that they can be efficiently operated by the borrower and provide adequate security for the RUS loan.

§ 1735.92 Accounting considerations.

(a) Proper accounting shall be applied to all acquisitions and mergers, as required by the regulatory commission having jurisdiction, or in the absence of such a commission, as required by RUS based on Generally Accepted Accounting Principles or other accounting conventions as deemed necessary by RUS.

(b) If RUS determines that the plant accounts are not properly depreciated, the borrower should adjust its depreciation rates. Depending upon the characteristics of the case, commission jurisdiction and requirements, and similar factors, one of the following actions shall be taken:

(1) In states where commission approval of depreciation rates is required, a covenant shall be included in the loan contract that requires the borrower to:

(i) Have the consulting engineer make an original cost less depreciation inventory and appraisal of retained plant as part of the final inventory, and

(ii) Request commission approval of adjustments to its records on the basis of this inventory.

(2) In states where commission approval is not required, informal discussions between RUS and the borrower may be undertaken to reach satisfactory voluntary adjustments. If this does not resolve the situation to RUS's satisfaction, a covenant similar to that in paragraph (b)(1)(i) of this section shall be included in the loan contract and the borrower shall agree to submit evidence satisfactory to the Administrator that it has adjusted its records on the basis of the inventory.

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§ 1735.93 Notes.

Substitute notes may be required in the case of an acquisition or merger, regardless of the source of funds.

§ 1735.94 Final approval and closing procedure.

(a) Legal documents relating to the acquisition or merger, including copies of required franchises, commission orders, permits, licenses, leases, title evidence, corporate proceedings, and contracts to be assigned to the purchaser shall be forwarded to the Area Office prior to closing.

(b) The Administrator will not give final approval to any acquisition or merger until all RUS requirements relating to the transactions are satisfied.

(c) Following the Administrator's final approval of the proposal, the Area Office shall inform the borrower in writing of the necessary legal and other actions required for the advance of loan funds to finance the acquisition, including the submission, in form and substance satisfactory to the Administrator, of (1) all information and documents necessary to demonstrate that the transaction has been completed, and (2) all loan contracts, notes, mortgages, and related documents and materials required by RUS.

(d) Deeds reflecting the change in ownership, executed bills of sale, and opinions of counsel shall be forwarded to the Area Office following closing.

(e) RUS will not advance loan funds to furnish or improve service in the acquired or merged areas until the Administrator has given final approval and the transaction has been closed. RUS may, however, advance funds if it determines that loan security will not be jeopardized.

(f) At the discretion of RUS, a GFR may be present at the closing to assist the borrower and protect the interests of RUS. Under certain circumstances the closing may take place prior to RUS granting final approval for the transaction and the execution of amended loan security documents.

§ 1735.95 Unadvanced loan funds.

(a) The unadvanced loan funds of a borrower that will not be a survivor of