

E-COPERNICUS

February 18, 2010

The Honorable Jonathan S. Adelstein
Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, D.C. 20250

Dear Administrator Adelstein:

On behalf of my client, Hughes Network Systems, outlining a proposal for your consideration.
Thank you in advance for your consideration.

Sincerely,


Gregory L Rohde

Attachment

Suggested Satellite Project Category Clarifications for RUS RFP

Background. Following discussions with other prospective consortium members, Hughes Network Systems wishes to confirm its understanding of the treatment, under the Second Round NOFA, of a potential consortium of satellite broadband providers that would submit a joint application to RUS in the Round 2 Satellite Project category to provide satellite broadband service to unserved rural premises. The proposed application would cover multiple satellite service area regions listed in Part IX of the NOFA (“Satellite Regions”).

Proposal. It is envisioned that such a consortium would propose that in each of the Satellite Regions where the application is successful, each member of the consortium would be eligible to compete for, sign up, and use Satellite Project grant funding, for new eligible subscribers as defined in the NOFA (i.e., unserved rural premises that are not in the funded service area of another BIP/BTOP funded project). A third party administrator (the “Funds Administrator”) would administer receipt and disbursement of the funding for the provision of service to eligible subscribers. Among other things, the Funds Administrator would validate the eligibility of the transactions for the RUS subsidy, administer the payment of subsidies to the appropriate consortium member, and maintain records and facilitate auditing in accordance with Satellite Project requirements. Our thought is that such an approach could facilitate efficient disbursement of funding while maintaining accountability, and reduce the administrative burden on RUS in connection with the Satellite Project.

Requested Clarifications and Confirmations. With the foregoing background and proposal in mind, we ask that the upcoming Satellite Project RFP clarify or confirm the following:

1. The RFP should clarify that the consortium described above would be an eligible entity to apply for Satellite Project funding and that the structure of the proposal is consistent with the NOFA. Further, the RUS should clarify that individual consortium members can separately obtain funding for eligible subscribers in Satellite Regions where the application is successful, on a first-come, first-served basis until the available funds are expended.

2. (a) The RFP should allow for a single Funds Administrator who would coordinate and process funding requests and award administration activities.

(b) The RFP should make clear that the costs associated with the services provided by the Funds Administrator should be considered eligible expenses for reimbursement, and should specify how those expenses would be documented in the Application, and how they would be funded and reimbursed.

3. The RFP should clarify how the Application requirements set forth in Part V.C.3 applicable to Satellite Projects would be satisfied for a consortium project as well as what information called for, be separately provided for each consortium member. In addition, the RFP should clarify how the consortium should handle information that is confidential to the individual consortium members and not intended to be shared with other consortium members.

4. The RFP should confirm that the consortium would be eligible for a Satellite Region so long as one or more members of the consortium, individually or collectively, have the ability

to cover the entire region. The RFP should also require some baseline level of experience, operational expertise and track record, and proven ability to perform for broadband satellite Applicants.

5. The RFP should specify that the total funds allocated to the Satellite Project category would be available for use in any of the eight regions, on a first-come first-served basis, and that the funds will not be subdivided into individual allocations for each region.

6. The NOFA states, "At a minimum, an application must commit to . . . providing to such subscribers at least a 25 percent reduction in the Applicant's service rates as of December 1, 2009, for a term of at least one year." To the extent an Application proposes a reduction in service rates greater than 25 percent, the RFP should clarify that such reduction nonetheless be fully reimbursable as part of the award.

7. The RFP should specify that the "at least 25 percent reduction" in service rates can apply to any tier of rates that were available as of December 1, 2009.

8. The RFP should also permit new service plans that were not yet available on December 1, 2009, but offer faster speeds for the same or better prices, to be eligible.

9. The RFP should confirm that the only criteria required in order for a particular service plan to qualify are that it (a) meets the definition of "broadband" under the NOFA, and (b) satisfies the test of "at least a 25 percent reduction" in price, as stated in the NOFA.

10. The NOFA indicates there are three criteria for customer eligibility: that service will be provided to (1) an unserved premises; (2) located in a rural area; (3) that is not within the funded service areas of Awardees under the First Round NOFA and the RUS Second Round NOFA. Satellite Project awardees will need an unambiguous and inexpensive method of quickly determining subscriber eligibility that will not be prone to after-the-fact dispute. For the unserved premises component, the Broadband Satellite Commenters proposed in their comments on the Second Round RFI, an end-user self certification process, whereby a consumer or other end-user entity self certifies that they are not currently able to receive broadband service from a wireline or wireless broadband provider. The RFP should make clear that such a self-certification process would be sufficient to determine the unserved premises component of subscriber eligibility. In addition, for the "rural" and "funded service area" components, the RUS should indicate that it will have a database or other mechanism that Satellite Project Awardees can query for determining that subscribers are located in areas where funding is available, i.e., rural areas that are not within the funded service area of another Awardee.

11. Finally the Satellite Project funding should be available for the lease or other provision of customer premises equipment ("CPE") where the provider retains ownership of the equipment, as well for the sale of CPE to subscribers.