

**Before the
Rural Utilities Service
Washington, D.C. 20250**

In the Matter of)	
)	
Rural Broadband Access Loans)	Docket No. RUS-06-Agency-0052
and Loan Guarantees)	
)	

**COMMENTS
of the
WESTERN TELECOMMUNICATIONS ALLIANCE;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES; and the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

I. INTRODUCTION

The Western Telecommunications Alliance (WTA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the National Telecommunications Cooperative Association (NTCA) (the Associations)¹ submit these comments to the Rural Utilities Service (RUS) on the subject of its Interim Rule and Notice (Interim Rule) for the Rural Broadband Access Loans and Loan Guarantees Program (Broadband Loan Program).²

¹ WTA is a trade association representing approximately 250 rural, independent telecommunications providers located in the 24 states west of the Mississippi River. Its members operate in some of the most remote and hard-to-serve areas of the country. OPASTCO is a leading voice for rural telecommunications, representing approximately 460 small incumbent local exchange carriers serving rural areas of the United States. Its members include both commercial companies and cooperatives, which collectively serve more than 3 million customers. NTCA represents over 570 small and rural telephone cooperatives and commercial companies providing service to approximately 40 percent of the rural area of the United States.

² 76 FR 13770, 7 CFR part 1738, Docket No. RUS-06-Agency-0052 (published March 14, 2011) (Interim Rule).

The rural, independent telecommunications providers represented by the Associations have a long-standing relationship going back 75 years with RUS and its predecessor agency, the Rural Electrification Administration (REA). The vast majority of providers the Associations represent were, at one time, RUS/REA borrowers and many of them continue to borrow from RUS today. The members of the Associations have a stake in making sure that any RUS loan program is both an effective driver of broadband in rural America and an efficient, sustainable use of taxpayer resources. RUS has maintained a longstanding tradition of providing loans to bring state-of-the-art telecommunications infrastructure and services to rural America. A strong and stable RUS Broadband Loan Program can continue this tradition and assist service providers in ensuring that American consumers in rural areas have access to comparable communications services to those in suburban and urban areas. It is in this spirit the Associations offer these comments on the Broadband Loan Program Interim Rule. The Associations state that interim speed standards should be applied and defined the same for mobile and fixed providers and updated regularly; loans for projects with greater scalability should receive priority; RUS should proactively notify broadband providers who request information about loan applications that would fund networks in their state; RUS should continue to safeguard against undermining its previous investments of taxpayer dollars; and RUS should review applications within 180 days.

II. INTERIM SPEED STANDARDS SHOULD BE UPDATED TO REFLECT EVOLVING CONSUMER DEMANDS AT THE EARLIEST OPPORTUNITY

In the Interim Rule, RUS chose to use three different speed standards to define broadband depending on the purpose of the definition and the technology used to provide the broadband service. The question of how to define broadband using speed as a metric is one that has perplexed policymakers for years. Congress, in the *Food, Conservation, and Energy Act of 2008*

(Farm Bill) left it to RUS to determine what speed it would use to determine what constitutes “broadband service.”³ Congress also required that RUS review its speed definition from time to time so that it does not lag behind advances in technology.⁴ The effectiveness of these standards will only be as good as the frequency with which RUS reviews and updates them to reflect changing technology and the needs of rural broadband consumers.

RUS has chosen to use a 3 megabits per second (Mbps) (upload plus download speeds) as an overall standard for determining whether broadband service is already being provided by an existing provider, thereby ensuring its resources are being targeted to rural areas most in need of broadband.⁵ Although evidence demonstrates that 3 Mbps is inadequate to meet current, much less future, consumer demand,⁶ this figure may be an acceptable placeholder for a temporary, interim rule. However, RUS should update its definitions at the earliest opportunity.⁷

The Associations oppose a lesser speed standard for would-be borrowers who seek to deploy mobile (as opposed to fixed) wireless broadband. Although RUS uses the same speed (3 Mbps download plus upload) for fixed and mobile services to determine whether an area is served by broadband, the Interim rules to determine lending eligibility state that the minimum

³ Farm Bill, P.L. 110-234 , 7 U.S.C. Sec. 950bb(b)(1).

⁴ *Id.* 7 U.S.C. Sec. 950bb(e)(1).

⁵ Interim Rule, p. 13780.

⁶ See comments submitted to the FCC by the National Exchange Carrier Association, NTCA, OPASTCO, WTA, and the Rural Alliance, *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for our Future*, GN Docket No. 09-51; and *High-Cost Universal Service Support*, WC Docket No. 05-337 (fil. July 12, 2010), Appendix B, *Report of the Association of Communications Engineers – Good Engineering Practices Relative to Broadband Deployment in Rural Areas*. See also *ex parte* letter from Larry E. Sevier, CEO, Rural Telecom Service Company, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-29 (fil. May 14, 2009), pp. 1-2, explaining that consumer demand had already reached 40 Mbps per household.

⁷ RUS may wish to consider harmonizing its definition of “unserved area” and what speeds should qualify for broadband loans with the definitions established in the Federal Communications Commission’s (FCC’s) proceeding on universal service reform and the proposed Connect America Fund (CAF).

bandwidth requirement for a broadband loan may be different for fixed and mobile broadband service.⁸ RUS establishes the minimum rate of data transmission as 3 Mbps for mobile broadband and 5 Mbps for fixed broadband.

RUS is required, by statute, to use criteria that are technologically neutral to determine whether to make a loan or loan guarantee.⁹ RUS justifies distinguishing between fixed and mobile “[t]o account for the value of mobility”¹⁰ stating that consumers “appear to be willing to accept slower speeds in exchange for mobility.”¹¹ RUS is attaching a value to mobile service, the antithesis of “technology neutrality” and contrary to the statutory directive. RUS may not adopt a definition for “broadband lending speed” that requires different speeds based on the technology chosen by the loan applicant.

What is considered an appropriate speed will soon become antiquated. It is therefore imperative that RUS frequently reviews and updates these standards in response to customer demand to ensure rural America is not left behind. As recently as 2007, the FCC used 200 kilobits per second (kbps) as the standard for defining broadband. The speed being deployed by providers and demanded by consumers far surpassed that speed at the time. It took years for the FCC to update its definition. RUS should not succumb to the same inertia. Congress did not specify how often RUS should review its standards, but RUS should nevertheless establish a specific time period for reviews in order to ensure that its speed standard reflects current trends in technology and consumer expectations.

⁸ Interim Rule, p. 13780.

⁹ See, U.S.C. Title 7, Chapter 31, Subchapter VI, Sec 950(bb).

¹⁰ Interim Rule, p. 13780

¹¹ *Id.*

III. LOANS FOR PROJECTS WITH THE GREATEST SCALABILITY SHOULD BE PRIORITIZED OVER LESS-SCALABLE PROJECTS

In Section 1738.203 of the Interim Rule, RUS outlines how it will prioritize applications.¹² These priorities are reasonable and prudent and align with Congress' intent in the Farm Bill. However, priority should also be given to applicants who are proposing projects that feature scalability – meaning those that can be easily and relatively inexpensively upgraded to reflect increased consumer demand for more bandwidth.

In May 2009, FCC Commissioner Michael Copps issued a Report on a Rural Broadband Strategy, which wisely advised that rural networks should be able to “evolve over time to keep pace with the growing array of transformational applications and services that are increasingly available to consumers and businesses in other parts of the country.”¹³ The Report also stated that “networks deployed in rural areas should not merely be adequate for current bandwidth demands. Instead, they should also be readily upgradeable to meet bandwidth demands of the future.”¹⁴

Accordingly, RUS should give priority to those applications within the proposed hierarchy of applicants in this section that feature more “future proof” proposals. As OPASTCO noted in comments to the FCC during the development of the National Broadband Plan:

... wireline technologies are inherently more capable of scaling up to meet the needs of residents and businesses in rural service areas, so that they can utilize the vast array of applications and services that continue to grow in number and

¹² Specifically, the Interim Rule prioritizes (1) Applications in which no broadband service is available in any proposed service area; (2) applications that propose service areas in which at least 75 percent of the households have no access to broadband service (for applications with multiple service areas, the 75 percent calculation is based on all service areas combined); and (3) all other applications. Interim Rule, p. 13782.

¹³ Acting Chairman Michael J. Copps, Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29, 24 FCC Rcd 12791 (2009) at ¶ 11.

¹⁴ *Id.* at ¶ 82.

bandwidth requirements. Wireless technologies can offer complementary services, but even they rely on more robust wireline technologies in order to drive consumer demand and provide functionality. The ability of consumers to utilize the many transformative applications and services that only wireline technologies will be capable of accommodating will spur more broadband adoption which, in turn, will enhance the economic feasibility of extending and upgrading broadband networks in rural service areas.¹⁵

The mobile industry itself points out that mobile users must share limited spectrum, and that mobile networks are constrained by physical capacity limits. As the Cellular Telecommunications and Internet Association (CTIA) has explained to the FCC:

- The capacity of a wireless cell site is shared between all users in that cell. The mobile user must share the available bandwidth with other users in their vicinity.
- The capacity of a cell is shared between all services running over the network. Mobile voice and data use share the finite capacity of the cell.
- Mobile providers cannot “build their way out” of spectrum constraints. Unlike wired services that can add capacity through greater buildout, constraints on expansion of network capacity are a reality for spectrum-based services.¹⁶

These capacity constraints demonstrate that while mobile services are well-suited to providing complimentary broadband, they are insufficiently robust to act as the primary broadband service for most end-users (especially small businesses and anchor institutions such as schools and libraries that tend to have greater capacity needs). Therefore, RUS should prioritize applications that use scalable technology, which will result in a more efficient use of the limited resources RUS has available to underwrite broadband projects.

IV. RUS SHOULD ESTABLISH A MECHANISM BY WHICH PROVIDERS CAN BE PROACTIVELY NOTIFIED OF LOAN APPLICATIONS FOR PROVIDING SERVICE IN THEIR STATE

¹⁵ OPASTCO comments, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 2009 (fil. June 8, 2009), pp. 15-16.

¹⁶ CTIA, *Notice of Ex Parte Presentation*, GN Docket No. 09-191 and WC Docket No. 07-52 (fil. Sept. 17, 2010), Attachment, p. 3.

The Farm Bill stipulates that public notice should be given of every Broadband Loan Program application that RUS receives.¹⁷ Section 1738.204 of the Interim Rule provides that it is the intent of RUS to post the public notice on the agency's webpage. RUS notes that it will seek ways to proactively alert existing broadband providers to an application seeking a loan to serve part of an existing service provider's service territory.

Although this is a much-needed improvement over past notice procedures, it still poses the substantial risk of "false negatives" as to the existence of broadband in any given community. The Associations strongly recommend that RUS determine an efficient method by which existing providers can be notified of submitted applications without being required to check a website periodically to make sure no one has submitted an application that potentially overbuilds their service territories. This would be overly burdensome and could result in an existing provider not noticing an application until several weeks into the proposed 30-day comment period (if at all).

One method may be to encourage existing providers to register for an e-mail alert system whereby they would receive an electronic notice whenever an applicant seeks a loan in the state or states in which they serve. It is important that existing providers have at least a 30-day period (if not more) to submit the required information to RUS. It might be even more reasonable for RUS to allow for a 45-day period now and adjust it to 30 days once borrowers and existing providers are made aware of and become accustomed to the online system that is established. If RUS declines to adopt a procedure in which it actively notifies providers of applications, the comment period should be extended to 60 days.

¹⁷ Farm Bill, 7 U.S.C. Sec. 950bb(d)(5).

Thirty days is insufficient if parties are required to check the website and respond to applications. RUS has a duty to use taxpayer dollars efficiently and it is essential that interested parties have ample opportunity to respond. Existing providers will have more work, must monitor the Agency website on a daily basis, and must respond to the postings with competitively sensitive information. The new 30-day RUS website notice requirement is an improvement over the current process but RUS should lengthen the notice period to 60 working days absent an e-mail alert system or similar type of notification. As with other aspects of the Interim Rule, we ask RUS to be responsive to any problems that arise and be open to adjusting the notice requirement accordingly.

V. RUS SHOULD CONTINUE TO SAFEGUARD AGAINST UNDERMINING ITS PREVIOUS INVESTMENTS OF TAXPAYER DOLLARS

RUS has a duty to use taxpayer dollars as efficiently as possible and to protect investments it has already made in rural America. The Associations therefore support the provision in Section 1738.102(a)(4) of the Interim Rule that prohibits funds from being used to build networks in areas being served by current RUS borrowers or grantees. It would be a waste of scarce funds for RUS to make a loan to an entity that would directly compete with another RUS borrower. The Associations also support the intention of RUS in Section 1738.104(a)(2) of the Interim Rule to notify potential borrowers in the preliminary assessment of service area eligibility about “whether the proposed service territory overlaps with any part of a borrower’s or grantee’s service area.” Both the prohibition on overlapping loans and the preliminary assessment notice will serve RUS well as it attempts to protect its past investments and prevent overbuilding of existing networks.

VI. RUS SHOULD REVIEW APPLICATIONS WITHIN 180 DAYS

The Associations encourage RUS to review applications in a timely fashion. We believe 180 days is an appropriate timeline for agency consideration of applications. The Associations have long been concerned that current administrative hurdles may deter many companies from applying for loans under the Broadband Loan Program. Several members represented by the Associations have reported seeking loans elsewhere, despite higher interest rates, because they cannot afford to wait for the length of time it takes for RUS to process loan applications. The Associations appreciate that RUS must carefully examine every application to ensure the applicant is not a credit risk. However, delays of a year or more in application processing can deter even the best business plans. These delays discourage use of the program, which could incorrectly suggest that low-interest loans for rural broadband networks are not needed. The Associations therefore support a 180-day deadline on application processing that would ensure borrowers and consumers are not kept waiting for an unreasonable amount of time.

VII. CONCLUSION

The service providers represented by the Associations support the goals and objectives of the Broadband Loan Program. There is substantial need for an effective loan program that meets the needs of rural consumers as well as the companies that have dedicated themselves to serving these remote, high-cost portions of the country. We look forward to working with RUS to make sure that this and other rural loan programs are as effective and efficient as possible in meeting the needs and demands of rural America.

Respectfully submitted,

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