

**Before the
DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
RURAL HOUSING SERVICE
RURAL BUSINESS-COOPERATIVE SERVICE
FARM SERVICE AGENCY
Washington, DC 20250**

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| SPECIAL AUTHORITY TO ENABLE |) | |
| FUNDING OF BROADBAND AND SMART |) | RUS-20-TELECOM-0022 |
| UTILITY FACILITIES ACROSS SELECT |) | RIN No. 0572-AC50 |
| RURAL DEVELOPMENT PROGRAMS |) | |

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

The *Agriculture Improvement Act of 2018* (“Farm Bill”) adopted significant changes to the U.S. Department of Agriculture (“USDA”) rural telecommunications support mission, including a substantial authorization increase and a new grant component for the Rural Utilities Service (“RUS”) Rural Broadband Access Loan and Loan Guarantees program (“Farm Bill Broadband Loan Program”), codifying the Community Connect Grant Program, new support for middle mile infrastructure, and Section 6210 – a 10% allowance across the entire Rural Development (“RD”) mission area to use program funds for broadband deployment “related to the project financed” when the work of financing rural broadband networks within USDA had previously been led entirely by RUS.¹ On top of the numerous Farm Bill changes signed into law on December 20, 2018, several months earlier Congress used the FY18 omnibus appropriations bill to create what is now called ReConnect² – a new RUS loan and grant program

¹ See Public Law No: 115-334.

² See Public Law No: 115-141, *Consolidated Appropriations Act, 2018*, Sec. 779.

for supporting rural broadband network deployment that Congress has already funded with over \$1.8 billion in appropriations. These recent statutory changes give USDA an even more prominent role in supporting rural broadband deployment, making coordination among USDA programs and programs administered by entities such as the Federal Communications Commission (“FCC”) more important than ever.

II. COORDINATING FEDERAL SUPPORT FOR BROADBAND

Two federal agencies currently provide the primary support for rural broadband network deployment through five programs – the FCC through its USF High Cost Program and RUS through Community Connect Grants, Farm Bill Broadband Loans, Telecommunications Infrastructure Loans and Guarantees, and ReConnect. Section 6210 dramatically alters and expands this landscape by involving additional RUS programs and two more USDA agencies – the Rural Business-Cooperative Service and the Rural Housing Service. Altogether, the number of federal programs providing support for broadband network deployment will increase from five to at least twenty, making millions more in loan and grant funds available for supporting retail broadband service in rural areas.

While more funds are needed to meaningfully connect every rural American to the Internet, doubling the number of agencies and quadrupling the number of programs supporting broadband poses the risk of duplicating existing rural networks built with federal support. When administering the Section 6210 authority (“special broadband authority”), careful precision will be required to avoid duplication of efforts and waste of dollars. Congress provided helpful safeguards in Section 6210 by limiting the funds to finance broadband infrastructure in areas 1) not served by the USDA minimum acceptable level of broadband service and 2) which will not

result in competitive harm to a current RUS loan, grant, or loan guarantee – which the proposed rule wisely extends to all RD programs.

RUS’s decades of experience with administering network support, including processes already in place for ensuring program coordination, will be an invaluable resource for helping the other RD agencies oversee the special broadband authority. The rule prudently helps the agencies tap into this expertise by requiring applicants with plans to provide retail broadband service to follow the public notice and reporting requirements that RUS has in place for the Farm Bill Broadband Loan Program to allow other carriers to respond to the notice and describe where service is currently available.

Nonetheless, additional safeguards are necessary and appropriate, because the expanded authority and funds for USDA to support rural telecom network deployment were provided by Congress even as the FCC has continued transforming the Universal Service High Cost program into a broadband network support program that now largely requires recipients to deploy retail service that delivers at least 25/3 Mbps³ – the same minimum broadband benchmark employed by USDA. Indeed, in many instances, carriers are currently receiving High Cost USF under a variety of programs with obligations to deploy at least 25/3 Mbps broadband throughout a service area over a period of years. By definition, the FCC is providing support in these areas because they currently lack 25/3 Mbps broadband, meaning another carrier could technically be eligible to use the special broadband authority afforded by the Farm Bill to build an additional broadband network where an existing operator is receiving USF from the FCC and is in the process of deploying a network that will meet (and often exceed) the USDA broadband standard.

³ See FCC-16-33, 31 FCC Rcd 3087 (4), Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime (2016); see also FCC-18-176, 33 FCC Rcd 11893 (18), FCC Takes Further Steps To Improve Quality, Expand Availability Of Rural Broadband (2018).

In short, the special broadband authority serves an important purpose in helping to leverage every possible tool to promote the availability of broadband, but it will be important for RD to commit to avoiding duplication where it is clear from FCC data that the FCC is already providing funding – whether CAF Phase II or RDOF auction funds, Alternative Connect America Model support, or Connect America Fund-Broadband Loop Support – to another provider to deploy to at least 25/3 Mbps broadband.

III. USDA AND FCC PROGRAMS SHOULD WORK IN CONCERT

This is not to say that USF-supported areas should be off limits for the special broadband authority, but it is essential as a matter of good government and effective use of scarce resources that the Section 6210 funds should be used in concert with USF to deploy the fastest, most reliable networks possible to as many Americans as possible – rather than doubling down on robust broadband networks being deployed twice over in the same rural area even as other areas continue to sit lacking. The RD agencies need not look far to see this model work successfully, as small, rural telecom providers have long used High Cost USF and RUS loans in concert to deploy advanced telecom service in the most rural areas of the United States. This practice is continuing with ReConnect, which is able to make substantial grants in addition to loans. Indeed, dozens of ReConnect awards have already been made to carriers with USF obligations that plan to use USDA financing to deploy fiber to thousands of homes, businesses, farms, and anchor institutions. Overbuilding has been less of a concern for ReConnect, which still can only support networks in areas that mostly lack 10/1 Mbps, and it is a credit to RUS that the program has so far been carefully administered to avoid duplicating the work of other RUS programs and the USF High Cost program.

Ensuring that USDA financing and USF support continue to work in concert not only avoids duplication and helps deliver high-speed, reliable broadband to the consumer, but it also recognizes the harsh realities of operating in the most remote, sparsely-populated areas of the nation. Though USDA now has the resources to supply ample support for broadband network deployments through numerous programs, High Cost USF remains essential to supporting the ongoing operating costs of serving these areas that average fewer than 10 people per square mile and provide no business case otherwise for deploying networks and delivering telecom services. Rural telecom networks once built must then be sustained and improved over time, and what customers can afford to pay will normally not even cover these operating costs.

As more RD programs support broadband network deployment under Sec 6210, it will remain essential to use the additional funds to supplement the work of existing programs instead of supporting an additional ISP in a rural area that will not even support one provider on its own. For these reasons, the final rules for implementing Section 6210 should include a provision indicating that, for an area where FCC data indicate that a provider is receiving High Cost USF support and is subject to the corresponding obligation to deploy a network that will deliver 25/3 Mbps or greater service, no other provider will be eligible to obtain funds pursuant to Section 6210 in that specific area. Failure to adopt such “bright lines,” by contrast, presents the substantial risk that the FCC and RUS will ultimately support competing networks in areas, to the detriment of consumers, providers, and even the agencies themselves as this duplicative funding becomes known.

IV. CONCLUSION

The proposed rules for implementing Section 6210 represent a good faith and commendable effort to carry out the will of Congress expressed in the 2018 Farm Bill, and

USDA has the benefit of decades of experience (and countless success stories) at RUS in supporting rural telecom and coordinating with other federal programs. Using the existing RUS website and process for posting application information and areas proposed to be served is wise and will go a long way toward avoiding network duplication, as will the eligible area rules included in the statute. As each RD agency establishes requirements for each program to carry out the purposes of Section 6210, however, it will be important to commit to identifying where carriers are receiving USF to deploy to at least the RUS broadband standard, and limit the special broadband authority in those areas to the USF recipients instead of duplicating the existing network and putting scarce federal resources at risk. If USDA's track record with the RUS telecom program is any indication, then the Section 6210 special broadband authority will soon be producing its own success stories by helping more rural Americans realize the many advantages and possibilities of robust broadband connectivity.

Respectfully submitted,

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