

**Before the
DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
Washington, DC 20250**

IMPLEMENTATION OF)	
TELECOMMUNICATIONS PROVISIONS)	RUS-20-TELECOM-0044
OF THE AGRICULTURAL)	RIN No. 0572-AC48
IMPROVEMENT ACT OF 2018)	

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

I. INTRODUCTION

The *Agriculture Improvement Act of 2018* (“Farm Bill”) adopted several changes to the U.S. Department of Agriculture (“USDA”) Rural Telephone Loan Program (also known as the Telecommunications Infrastructure Loan Program), including a new grant component through Title VI, an updated broadband definition, and allowing obligation of funds prior to completion of the environmental review process. On top of the numerous Farm Bill changes signed into law on December 20, 2018 to modify existing programs, several months earlier Congress used the Fiscal Year 2018 omnibus appropriations bill to create a new program now called ReConnect¹ – a Rural Utilities Service (“RUS”) loan and grant program for supporting rural broadband network deployment that Congress to date funded with over \$2.4 billion in appropriations. These 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”), the National Telecommunications and Information Administration (“NTIA”), and even states and localities more important than ever.

The final rule implementing the Farm Bill provisions appears largely to be a faithful interpretation of the 2018 Farm Bill, although certain additions and clarifications would help ensure that USDA’s efforts and various other federal broadband programs are working in concert and honoring the congressional intent regarding universal service.

II. COORDINATING FEDERAL SUPPORT FOR BROADBAND

Background

Not long ago, two federal agencies provided the primary support for rural broadband network deployment and operations through five programs – the FCC through its High Cost Program under the federal Universal Service Fund (“USF”) and RUS through Community Connect Grants, Farm Bill Broadband Loans, Telecommunications Infrastructure Loans and

¹ See *Consolidated Appropriations Act, 2018*, Sec. 779 (Public Law No: 115-141).

Guarantees, and ReConnect. Section 6210 of the 2018 Farm Bill dramatically altered and expanded this landscape by involving additional RUS programs and two more USDA agencies – the Rural Business-Cooperative Service and the Rural Housing Service – in the business of supporting broadband. What’s more, a succession of COVID relief bills has made billions available for broadband deployment through NTIA, states, and local governments, with potentially much more coming if the *Infrastructure Investment and Jobs Act*² is enacted into law.

Proposed Rule Improvements

While more funds are needed to give every rural American sufficient and sustainable Internet access, increasing the number of agencies and programs supporting broadband and adding state and local governments to the mix poses the risk of duplication of efforts – that is, rather than reaching those Americans still in need, new federal program funds may be directed to areas that already have robust broadband or where other federal or state efforts are already in the process of promoting deployment of fiber networks. The proposed nonduplication language in Sec 1735.12 will help ensure coordination of efforts by recognizing where sufficient access already exists, but additional language as follows (underlined and in italics) would provide clearer direction on the need to account for where an applicant seeks funding in an area where another broadband provider has already committed to deploy broadband and is in the process of doing so leveraging other federal or state programs but has not yet completed the network:

§ 1735.12 Nonduplication.

(a) A loan will not be made unless the Administrator determines 1) that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan, or 2) that such loan will not result in duplication of lines, facilities, or systems that are obligated to be built in the area in question to provide reasonably adequate services under other programs administered by the Agency or any other federal Agency.

(b) Existing borrowers that apply to upgrade existing facilities in their existing service area are exempt from the non-duplication requirement in paragraph (a) of this section.

(c) * * *

(5) The LEC's network is capable of providing retail broadband service as defined in § 1735.2 to any subscriber location.

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Ensuring Broadband Programs Work in Concert

Additional coordination 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 currently receiving High Cost USF are leveraging

² H.R. 3684 (117th Congress).

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).

those funds to deploy networks capable of delivering speeds far in excess of the minimum required.⁴ 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 resources afforded by the Farm Bill to build a second 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.

Meanwhile, support available through the NTIA Broadband Infrastructure Program⁵ or American Rescue Plan Act⁶ funds will come with explicit obligations to deploy even faster networks. In short, it will be important for RUS to commit to avoiding duplication where it is clear from FCC or other available data that the Universal Service Fund or other programs are already providing funding to another provider to deploy to at least 25/3 Mbps broadband.

This is not to say that areas receiving support from other programs should be off limits for RUS. To the contrary, RUS can and should consider how it can work in concert with these other agencies and programs – by, for example, enabling a provider that can only deliver 25/3 Mbps broadband in certain areas leveraging USF to instead deploy a Gigabit-capable network by combining the efforts of the programs. But it is essential as a matter of good government and effective use of scarce resources that the Rural Telephone Loan Program and other RUS telecom programs should be used in concert with other federal or state programs to deploy the fastest, most reliable, and most sustainable 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.

Historical RUS Practice and ReConnect Round III

Thankfully, RUS has a rich history of working with small, rural telecom providers to employ 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 can make substantial grants in addition to loans. Overbuilding has been less of a concern for ReConnect as RUS adhered closely to the statutory guideline to 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. These past efforts can serve as a model for coordinating the additional resources available through the Farm Bill not only with USF but with the loans and grants being made available through other programs administered by NTIA and state and local governments.

⁴ See NTCA–The Rural Broadband Association Broadband/Internet Availability Survey Report (December 2020) (revealing that seven in 10 locations in NTCA member service areas have fiber broadband connectivity).

⁵ See NTIA Broadband Infrastructure Program Notice of Funding Opportunity at 5 (prioritizing projects designed to deliver 100/20 Mbps broadband service).

⁶ See Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule (31 CFR 35, RIN 1505-AC77) at 26805 and Guidance for the Coronavirus Capital Projects Fund for States, Territories and Freely Associated States (September 2021) at 3 (both programs requiring that awardees deploy 100/100 Mbps broadband networks where practicable with a priority for fiber broadband investments).

Unfortunately, the Funding Opportunity Announcement for ReConnect Round III appears to diverge from this historical practice by declaring all areas without 100/20 Mbps broadband to be eligible for awards – with no direction to ensure those awards are coordinated with USF and other program support currently being used to improve broadband service in these areas. RUS can make a course correction when administering Round III by leveraging the preferences and priorities in program rules and focusing first on all areas lacking 25/3 Mbps to ensure all such areas are fully served before moving onto areas without 100/20 Mbps – and it can of course in its administration of the program otherwise ensure that all awards are closely coordinated with NTIA, FCC, and state and local efforts already underway. NTCA is confident that RUS will take such prudent and thoughtful measures as it moves to implement ReConnect Round III and future programs, recognizing the long history and substantial experience RUS has in doing so already.

Complementary Missions of RUS and USF

Ensuring that USDA financing and USF support in particular 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 support the ongoing operating costs of serving areas that often 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 resources become available through RUS, 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, Sec 1735.12 should include the above language to ensure that, for an area where reliable data indicates that a provider is receiving federal or state 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 from RUS in that specific area. Failure to adopt such “bright lines,” by contrast, presents the substantial risk that the FCC, RUS, and other government entities will ultimately support competing networks in areas, to the detriment of consumers, providers, and even the agencies themselves as this duplicative funding becomes known and puts at risk the sustainability of each supported network.

III. REQUIRE AWARDEES TO OFFER STANDALONE VOICE SERVICE

Just as the FCC transformed the USF into a program designed to ensure every American has robust, affordable broadband access, the 2018 Farm Bill codified changes to the RUS telecom portfolio to achieve the same end. When carrying out this objective of deploying broadband-capable networks, USF recipients must continue to offer customers standalone voice service due to clear statutory directives and numerous public policy objectives, and the same should hold true of recipients of RUS Rural Telephone Loan Program loans and loan/grant combinations for the same reasons.

Although the program name, authorizing statute⁷, and regulations⁸ clearly establish that the RUS Rural Telephone Loan Program is intended to foster universal voice connectivity, awardees have long employed the loans to deploy broadband-capable voice networks. Changes adopted by the RUS regulations at issue further the transformation of the Rural Telephone Loan Program into a broadband program with very little distinction from the RUS Rural Broadband Program. This includes welcome changes such as the ability to combine Rural Telephone Loan Program loans with Title VI grants.

None of these changes present cause for alarm and, considered in isolation, represent welcome reforms made in recognition of modern-day consumer needs. But it bears noting that transforming USF into a broadband program piqued the interest of carriers with no history of and little apparent interest in offering standalone voice service, and many have petitioned Congress and the FCC to drop the voice requirement for USF recipients.⁹ So far, the standalone voice requirement has held, both because it is what the statute requires and presumably because policymakers do not want a situation in which consumers cannot access 911 emergency services simply because the only network operating in that area does not function reliably during bad weather.

Simply put, even as the program increasingly finances broadband-capable networks, Rural Telephone Loan Program awardees should still be required to offer standalone voice to ensure that residents and businesses in rural areas are able to access 911 emergency service even if they do not want to purchase broadband. Recipients of loans under this program will in many cases be the effective providers of last resort for these areas, and therefore the only option for customers who only wish to purchase voice service. As important as broadband access has become, not every American has adopted broadband, and no consumer should be forced to buy broadband simply to obtain voice service and 911 access. Instead, program reforms should focus on adding broadband to the robust and affordable communications services available to rural Americans in areas where it is lacking today.

IV. CONCLUSION

The proposed rules for implementing the changes to the Rural Telephone Loan Program 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. As RUS begins administering the revamped program, however, it will be important to recommit to such efforts, including identifying where providers are receiving USF or other program support to deploy to at least the RUS broadband standard, and limiting future USDA awards in those areas to the recipients of support or funding from these other programs instead of duplicating the existing network and putting scarce federal resources at risk.

⁷ 7 U.S. Code Sec 922. Loans for telephone service.

⁸ 7 CFR Sec 1735.

⁹ See various commenters on *Rural Digital Opportunity Fund*, WC Docket No. 19-126, *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking (rel. Aug. 2, 2019) (including SpaceX Comments at 3-6; WISPA Comments at 10-11; and Geolinks Comments at 8).

Further, as the traditional telephone loan program takes on the character of a broadband loan and grant program, calls to strip the requirement for awardees to offer standalone voice should go unanswered to ensure continued access to 911 emergency service throughout rural America. If USDA's track record with the RUS telecom portfolio is any indication, then the new and improved Rural Telephone Loan Program will continue producing success stories by helping more rural Americans realize the many advantages and possibilities of robust broadband connectivity along with reliable voice service.

Respectfully submitted,

s/Michael Romano
Michael Romano
Senior Vice President of Industry Affairs and
Business Development
NTCA–The Rural Broadband Association
4121 Wilson Blvd., Suite 1000
Arlington, VA 22203
703-351-2000
www.ntca.org

s/Scott Lively
Scott Lively
Senior Director of Government Affairs
NTCA–The Rural Broadband Association
4121 Wilson Blvd., Suite 1000
Arlington, VA 22203
703-351-2000
www.ntca.org

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