



NRECA

America's Electric Cooperatives

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Chad Rupe, Administrator
Rural Utilities Service
Rural Development
U.S. Department of Agriculture
1400 Independent Ave. SW, STOP 1510, Room 5135
Washington, DC 20250-1510

Christopher A. McLean, Assistant Administrator
Electric Program
Rural Development
U.S. Department of Agriculture
1400 Independence Ave., SW, STOP 1560, Rm 5165
Washington, DC 20250-1560

Re: Request for Comments on the Rural Utilities Service (“RUS”) Final Rule and request for comments on Broadband and Smart Utility Facilities Across Select Rural Development Programs; 85 *Fed. Reg.* 57077 (RUS–20–TELECOM–0022) (RIN 0572–AC50) (September 15, 2020).

To Administrator Rupe and Assistant Administrator McLean:

The National Rural Electric Cooperative Association (“NRECA”) submits these comments in response to the Rural Utility Service (RUS) Final Rule and request for comments to establish the authority authorized by Section 6210 of the Agriculture Improvement Act of 2018, to allow recipients of a loan, grant, or loan guarantee from Rural Development (RD) to use up to 10 percent of the amount provided to construct broadband infrastructure in areas not fully served by a minimum acceptable level of broadband service.

INTRODUCTION AND SUMMARY

On September 15, 2020, the Rural Utilities Service (“RUS”) issued a Final Rule and request for comments (“IFR”) for the Broadband and Smart Utility Facilities Across Select Rural Development Programs 85 Fed. Reg. 57,077 (September 15, 2020), including: Electric Loans and Guarantees; Water and Waste Disposal Programs Guaranteed Loans, Water and Waste Loans And Grants; Revolving Funds for Financing Water And Wastewater Projects; Community Facility Loans, Grants and Guaranteed Loans; Intermediary Relending Program; Business and Industry Loans; Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans; Rural Economic Development Loan And Grant; Rural Energy For America Program; and Rural Business Development Grants. The IFR set a deadline for comment of November 16, 2020. While the rule applies across multiple RD programs NRECA will focus on the programs that support electric operations and smart grid.

NRECA

NRECA is the national service organization for America’s electric cooperatives (co-ops). NRECA represents the interests of the nation’s more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 48 states. Electric cooperatives are member-owned, private, not-for-profit small businesses serving member-consumers facing significant economic challenges, especially in rural areas which are primarily served by co-ops. They are driven by their purpose to power communities and empower their members to improve quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Given this critical responsibility to provide affordable, reliable, and universally accessible electric service, cooperatives are vital to the economic health of the communities they serve.

The members of NRECA are also active in rural economic development efforts. Currently, more than 150 electric co-ops are working toward meaningful and diverse solutions to provide broadband services, which can help bridge the digital divide and jumpstart local economies. Another 100 to 200 are exploring the feasibility of providing broadband, either on their own or through partnerships. This cooperative commitment is vital for some 30 percent of rural Americans that still lack access to broadband, compared to about 2 percent in urban areas. Allowing up to 10 percent of an RD loan to go directly for retail broadband will not only speed deployment of smart grid but will also help bring desperately needed vital broadband to unserved rural communities.

The Need for Rural Broadband

The ongoing COVID-19 crisis has put the spotlight on the absolute and outright necessity for ubiquitous high-bandwidth broadband for all Americans, in particular the need for services that provide robust upload speeds. This new and changing world depends on reliable two-way telecommunications capability. Unfortunately, many of the legacy internet services that rural Americans currently rely upon do not have the technological capability to provide sufficient upload bandwidth for reliable usage of the applications that are enabling remote access to critical services. The pandemic has forced us to rethink the practice and delivery of healthcare, education, and professional services, among many other things. And it has brought to light an all-too realistic picture of the negative impact on rural America caused by the lack of broadband access. Simply stated, people and businesses in rural America will struggle to emerge into a changed world that depends more and more each day on remote healthcare (telehealth),

remote education (distance learning), and remote work (virtual offices) without significant investment into improved telecommunications infrastructure.

For electric cooperatives it is increasingly difficult to operate a modern electric grid without a robust communications backbone. Implementation of this rule allowing recipients of Rural Development loan, grant, and loan guarantees to use up to 10 percent of the amount provided to construct broadband infrastructure correctly recognizes the necessity of communications in utility operations as well as the role these multi-purpose assets can play for economic development in the rural communities they are deployed.

NRECA unequivocally states that in no way should this new provision limit or constrict the primary goal of the specific RD program, and especially the electric program. Smart grid is a rapidly evolving and advancing field and adopting restrictive definitions and rules will hamper innovation and delay implementation of technologies and applications that are needed to further secure, harden and improve efficiencies within electric cooperatives critical infrastructure. It would be counterproductive to the goal and mission if RUS were required to undertake a new rulemaking to update the definitions and rules each time a new smart grid application is developed.

NRECA supports the goal of the new rule and commends RUS for moving forward to implement it in a timely fashion. It correctly recognizes the vital role of communications in managing the electric grid, the ongoing technology convergence between the utility and telecommunications industry, and is in-line with congressional intent. NRECA does have some recommendations on how the rules could be improved as detailed herein.

The Necessity of Smart Grid

The benefits of smart grid are numerous. The collection and on-time availability of energy usage data empowers consumers to control their energy usage. As distributed-generation assets, like solar energy, proliferate the grid is transforming from a one-way street to a multi-lane two-way superhighway. The need for utilities to monitor conditions and operate equipment in real time is exploding. Because of this, distribution utilities are now recognizing the need for high-bandwidth, low-latency telecommunications capability throughout their complete network of equipment – all the way to the end-user's meter and beyond into the home. This capability is quickly becoming the most important tool to maintain the reliable source of electricity that modern society depends on.

And yet broadband is intertwined with smart grid. Given the fundamental need for distribution systems to invest in communications capability to modernize the electric grid, the new mission that many electric cooperatives are undertaking to become internet service providers (ISPs) for their unserved communities is well timed. By building communications networks that are simultaneously optimized and synchronously used for both electric system management as well as paid third-party interconnection and access to the internet, significant efficiencies are gained and overall costs are reduced. Most importantly, the utility creates a new product to offset the costs of deploying the communications network, whether it is the retail broadband provider or leasing to a third-party provider. This will dramatically reduce the costs that the utility would otherwise have expended to create a single-purpose network serving electric system operations only.

Consumers will benefit from both the increased availability of consumer broadband and the increased grid efficiency, reliability, safety and security made possible by the new utility broadband network deployed for critical grid communications.

Comments

- **Evaluation of the Broadband Portion of Loans Under the Final Rule Should Not Result in a Delay of Loan Approval or Processing**
- **RUS Should Provide the Applicant with Access to the Response/Challenge Filed in Reply to Their Application During the Public Notice Period. Without Access the Applicant Will Lack Data Necessary to Alter the Proposed Funding Area in Response to Incumbents**
- **RUS Should Verify Incumbent Claims of Adequate Service Throughout the Contested Area**
- **RUS Should Clarify That It is Requesting Incumbents to Provide Actual Speeds and Require Speed Test Results to Verify Consumer Experience**
- **RUS Should Require Broadband Pricing Data for the Locations in Question From any Incumbent Claiming Sufficiency of Service**
- **RUS Should Avoid Unreliable Broadband Data Sets**

Evaluation of the Broadband Portion of Loans Under the Final Rule Should Not Result in a Delay of Loan Approval or Processing

RUS issued this final rule to establish the authority authorized by Section 6210 of the Agriculture Improvement Act of 2018, which will assist rural families and small businesses in gaining access to broadband service by permitting recipients of a loan, grant, or loan guarantee from and Rural Development (RD) program to use up to 10 percent of the amount provided to construct broadband infrastructure in areas not served by minimum acceptable level of broadband service.

RUS must not lose sight of the primary objective of each RD program since they are integral to the rural utilities and communities the programs were created to serve. NRECA is concerned that evaluation of the 10 percent rule could complicate or delay overall approval of an application for a grant or loan product.

In 2018, NRECA, the National Rural Telecommunications Cooperative (“NRTC”), and Ericsson partnered on a study, *The Value of a Broadband Backbone for America’s Electric Cooperatives: A Benefit Assessment Study*.¹ This study examined and quantified the economic benefits of a broadband backbone for electric cooperative operations. The study evaluates the smart grid use cases enabled by a broadband backbone and estimates the cost avoidance or revenue enhancement associated with each of these applications, on a per-meter basis. The study calculates total benefits of \$185 to \$317 per meter. This corresponds to an average of approximately \$2.4 million per year for a 10,000-member cooperative. The value of a broadband backbone for electric cooperatives is demonstrated by its essential contribution to achieving these economic benefits.

We urge RUS to be remain cognizant of the importance of the primary mission of each RD program. In the unlikely event that a complication arises with the 10 percent amount that would delay

¹ The Value of a Broadband Backbone for America’s Electric Cooperatives: A Benefit Assessment Study, by NRECA, NRTC and Ericsson, June 2018, available at: <https://www.cooperative.com/topics/telecommunications-broadband/Pages/The-Value-of-a-Broadband-Backbone-for-Electric-Cooperatives.aspx>.

approval of the total award the agency should not delay in approving the 90 percent non-broadband portion and allow the applicant to access those funds immediately. This would ensure that the primary mission and goal of the specific RD program in question is maintained and not negatively impacted while ongoing evaluation of the broadband portion is completed.

RUS Should Provide the Applicant with Access to the Response/Challenge Filed in Reply to Their Application During the Public Notice Period so Applicant can Alter the Proposed Funding Area as Required Under the Rule

If applicants are requesting to provide retail broadband service using this new broadband authority, the portion of the application regarding use of the 10 percent for broadband must be posted publicly for 45 days. During the public notice period, incumbent service providers may voluntarily submit information required by the RUS Administrator onto the agency's mapping tool, or alternate methods if determined by the RUS Administrator under § 1980.1206(d). Further the final rule states, "if no broadband service provider submits information under paragraph (a)(1) of this section, the agency shall consider the number of providers in the proposed service area to be established by using any other data regarding the availability of broadband service that the RUS may collect or obtain through reasonable efforts."

The following paraphrases requirements and processes within the rule, followed by NRECA's feedback on those specific items:

After RUS reviews information submitted from incumbent service providers (if any) and all available data on broadband availability and then determines that the minimum acceptable level of broadband service is available in the proposed retail service area, the Awarding Agency shall not approve the use of funds for such purpose. The Awarding Agency, however, may approve the use of funds for retail broadband service if: (1) Areas with the minimum acceptable level of broadband service are eliminated from the proposed service area; and (2) The applicant covenants that it will not provide service in these areas with funds from the Awarding Agency.

For applicants requesting that funds be used for wholesale broadband service, the rule requires applicants must agree: (1) To publicly advertise in the service area that broadband service is available at wholesale to any service provider; and (2) That the same wholesale contract will be used for all service providers requesting wholesale service and offered at the same per unit price. The agency has created a specific response form for incumbents to utilize in responding to applications during the public notice period.

The final rule also states that applicants indicating they plan to take advantage of the new rule must provide the following: (1) A description of the proposed retail broadband project; (2) A map of the proposed service area to be funded under smart utility authority of the applicant; (3) The amount and type of support requested by the applicant; (4) The estimated number and proportion of service points in the proposed service territory without fixed broadband service, whether terrestrial or wireless; and (5) Any other information required of the applicant in a funding notice. The final rule states that RUS will publish a notice regarding each Application that must include a summary of the information submitted by the Applicant and provide 45 days for public comment. According to the IFR, information submitted by service providers during this public notice period shall be exempt from disclosure pursuant to 5 U.S.C. 552(b)(2)(B).552.

As in the ReConnect program, the public notice will request existing incumbent service providers to submit information in response, but the information received from the incumbent providers is expressly made exempt from disclosure. This asymmetry allows existing service providers to challenge information provided by applicants but not vice versa – this is not a level playing field and invites unscrupulous existing providers an opportunity to provide dubious information that may have the effect of denying broadband services to those that need it most.

Based upon experience with the ReConnect Program and all of RD's broadband predecessors, the problems created by this asymmetry of information needs be rectified for those programs and should not be carried over to the program established in this final rule. When an incumbent service provider objects to an application, the identity of the objecting party and the information underlying the objection is unknown to the applicant. As explained further below, NRECA urges RUS to provide the applicant with access to the response/challenge filed in reply to their application and given a chance to respond within a reasonable period. NRECA proposes 30-days, so as not to unnecessarily delay the process of evaluating applications.

To be clear, NRECA is not asking for public disclosure of the incumbent challenge but only for the applicant to have access. RUS could require the applicant to sign a confidentiality agreement to ensure the data is not made public. Prohibiting disclosure of the challenge to the applicant is illogical. The prohibition is based on the premise that data on where a carrier provides service and at what speed is competitively sensitive. However, this information is publicly available in many forms and in many places. All broadband providers are currently required to submit broadband deployment data, albeit on the census block level, to the FCC using form 477² which is publicly available and underpins the national broadband map. Also, under the FCC's Internet Freedom transparency rule, 47 CFR § 8.1, ISPs are required to publicly disclose information about its network management practices, performance characteristics, and commercial terms of its broadband Internet access services, including price.³

In addition, many states collect data on broadband deployment, and some on a more granular level than required by the FCC, from providers within their borders.⁴ Providers submit this information to states on a voluntary basis generally. Further, as a matter of their marketing strategy every provider, including electric co-ops, offers on its website maps of service availability and usually have databases that allow a consumer to check if their specific address is served by a provider.⁵ This information is all

² Fixed Broadband Deployment Data from FCC Form 477 and rules on who must submit data available at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477?contrast=highContrast#:~:text=Who%20Files%20What%3F,in%20at%20least%20one%20direction.>

³ Federal Communications Commission, *ISP Internet Transparency Portal*, available at <https://www.fcc.gov/isp-disclosures#:~:text=The%20Federal%20Communications%20Commission's%20Internet,its%20broadband%20Internet%20access%20services.>

⁴ States Look to Improve Upon Incomplete FCC Broadband Data, *Government Technology*, 03/06/2020 link <https://www.govtech.com/network/States-Look-to-Improve-Upon-Incomplete-FCC-Broadband-Data.html>. Georgia's New Broadband Maps, *POTs and PANs*, October 8, 2020 available at https://potsandpansbyccg.com/2020/10/08/georgias-new-broadband-maps/?mc_cid=dedea5441e&mc_eid=2aa3198f50.

⁵ A few examples of public disclosure of service availability are, AT&T: https://www.att.com/buy/bundles/?product_suite=NDTVN_NBB&productName=BASE-ENTERTAINMENT-201811&contract=true; CenturyLink:

publicly available and the applicant has likely utilized one or all of these in evaluating its proposed funding area and where it would spend the 10 percent for broadband. Given these facts, claims of service by an incumbent in challenging an application may differ from the mandated federal data submission and other publicly available data. In such a case, RUS must take steps to independently verify these claims by collecting detailed and verifiable data for most if not all the locations in the contested applicant proposed funding area.

NRECA is pleased that the rules allow for modification of an applicant's proposed funding area as it relates to the 10 percent for retail broadband if the public notice period discovers adequate service exists in some portion of the proposed funding area. This is an important provision that does not exist in the ReConnect program, but NRECA has advocated to be implemented. Without sufficient data by the incumbent and an ability of the applicant to evaluate and rebut dubious claims of sufficient service by an incumbent provider, however, some consumers could be left without adequate service as a result. However, the ability to modify the applications proposed funding area is inconsistent with the prohibition on sharing the underlying incumbent challenge. If an applicant is not given access to the challenge, it will be without the required information to modify its proposed funding area. This inconsistency must be addressed for the new rule to operate effectively.

RUS Should Verify Incumbent Claims of Adequate Service Throughout the Contested Area

As mentioned above, an incumbent provider may challenge the applicant's proposed funding area with claims of service differing from publicly available data from federal and state databases, and even from the providers own website. Therefore, it is imperative that RUS ensure the claims are accurate. The form that RUS requires an incumbent to utilize in any response during the public notice period asks many good questions but can be improved significantly. For example, line fifteen on the form allows for the voluntary uploading of speed test data by the incumbent. Any challenge of coverage should require speed test data be submitted and tests should not be for a single location. RUS must verify incumbent claims of adequate service throughout the area it is contesting. Speed test data should be required for the vast majority, if not all, of the locations within the area in question. Such a request is not burdensome. Service providers regularly run tests to evaluate and optimize network operations and therefore can be submitted with little effort.

RUS Should Clarify That It is Requesting Actual Speeds and Require Speed Test Results to Verify Consumer Experience

Similarly, lines eleven and twelve require the incumbent to provide the highest download and upload speeds within the proposed funding area. However, the form does not clarify whether the speed is an advertised speed or actual speed. Advertised speeds are rarely achieved by consumers, especially in rural areas. NRECA urges RUS to clarify that it is requesting actual speeds on lines eleven and twelve and require speed test results to verify consumer experience (as recommended above).

<https://shop.centurylink.com/MasterWebPortal/freeRange/shop/guidedShoppingStart?bones#module=start>; Co-Mo Connect (Co-Mo Electric Co-op): <https://join.co-mo.net/>;

RUS Should Require Broadband Pricing Data for the Locations in Question From any Incumbent Claiming Sufficiency of Service

The price of service must be a consideration of RUS. From the consumer perspective, there is no difference between having no access to broadband service and having access but not being able to afford it. The result is the same and therefore affordability is a key component. NRECA member cooperatives are keenly aware of affordability issues since they collectively serve 93% of persistent poverty counties as identified by the U.S. Census Bureau. Therefore, RUS should require broadband pricing data for the locations in question from any incumbent claiming sufficiency of service exists when responding to an application under this new rule. Pricing data should not be considered competitively sensitive since ISPs are already required to publicly post pricing data under the FCC's Internet Freedom transparency rule cited above.

RUS Should Avoid Unreliable Broadband Data Sets

Without specific verified data from a respondent, RUS says it will "consider the number of providers in the proposed service area to be established by using any other data regarding the availability of broadband service that the RUS may collect or obtain through reasonable efforts." As stated above, there are multiple existing broadband data sets. Unfortunately, many are unreliable. A case in point is the FCC data collected using form 477. NRECA is concerned that RUS may be required to rely on data providers submit to the Federal Communications Commission (FCC) in the FCC Form 477, which has proven to be inaccurate and relies on advertised speeds - even if that speed is not available to everyone within the providers reporting area. The FCC uses Form 477 to assess the availability of fixed broadband services and conclude whether broadband is being deployed within a reasonable and timely fashion.⁶ NRECA agrees with the evaluation by the National Telecommunications and Information Administration ("NTIA") that the Form 477 data substantially overstates the availability of broadband, particularly to rural America.

A provider offering service to any homes or businesses in a Census block is instructed to report that block as served in its Form 477 filing, even though it may not offer broadband services throughout most of the block. This can lead to overstatements in the level of broadband availability, especially in rural areas where Census blocks are large.⁷

Not surprisingly, the U.S. Government Accountability Office reached a similar conclusion regarding the overstatement of broadband available on Tribal lands.⁸ And data from Microsoft found that 162.8 million Americans are not accessing the internet at or above the FCC definition of broadband at 25/3 Mbps, compared to the FCC estimate of about 25 million.⁹ The State of Georgia recently

⁶ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, FCC 20-50, paras. 3 (2020) (2020 Report).

⁷ *Improving the Quality and Accuracy of Broadband Availability Data*, Request for Comment, Docket No. 180427421-8421-01, 83 Fed. Reg. 24747 (May 30, 2018). (*NTIA Request for Comment*).

⁸ U.S. Gov't Accountability Office, GAO-18-630, *Broadband Internet: FCC's Data Overstate Access on Tribal Lands* at 14.

⁹ *It's time for a new approach for mapping broadband data to better serve Americans*, John Kahan, Chief Data Analytics Officer, Microsoft, April 19, 2019. Available at: <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/>.

completed a more granular evaluation of broadband access within its borders. The results from their mapping effort are eye opening. The Georgia data shows that over 507,000 homes and businesses, and 1 million people in the state don't have access to 25/3 Mbps broadband. That is double the 252,000 homes identified by the FCC in Georgia as not having access to 25/3 Mbps broadband. It is clear that use of FCC 477 data or unverified claims of service by incumbents cannot be relied upon. The concerns laid out above regarding availability of accurate broadband coverage data further substantiate/amplify NRECA's request that RUS work with applicants when an incumbent challenge is received during the public notice period and that challengers be required to submit speed test data. It is imperative and best for all Americans in need of robust, affordable broadband service that claims of existing service be carefully examined and verified.

CONCLUSION

RUS is to be commended for quick implementation of this new rule which will benefit rural communities immensely. The final rule correctly recognizes the dual-use nature of assets used for retail broadband communications services and electric cooperative smart grid technologies. Leveraging of utility facilities to bring vital broadband services to unserved communities is in-line with congressional intent and recognizes the timely nature of this convergence of technologies. NRECA reiterates that RUS must not let this new 10 percent provision detract from or impede the primarily goal of the respective RD programs. Further, NRECA urges the agency to immediately adopt its recommendations to establish symmetrical information flow during the public notice period. NRECA also urges updating the public notice response form to require an incumbent respondent to provide actual speeds and submit speed tests for the vast majority if not all the locations in a contested area. These would be important changes that will improve the efficacy of the new provision.

RUS has long been a partner in rural infrastructure deployment. In the 1930s when electric cooperatives were rolling out electricity, it was understood that it didn't make sense to build 'just enough' electricity for one light bulb. Instead infrastructure was built to power the whole house and appliances that didn't even exist yet but would become mainstream in the future. We as a nation need to employ that same outlook when it comes to deploying multi-use communications/broadband infrastructure. This new rule can be another step in that direction and play an important role in bridging the digital divide.

To that end, RUS must also regularly update the minimum acceptable broadband speed standard. Technology is advancing rapidly and failure to adapt would lead to federal funds being used to deploy broadband that is already outdated and won't meet the needs of today let alone tomorrow. This has become abundantly clear as our nation grapples with the COVID-19 pandemic that has closed in-person schools, offices and medical services. The crisis quickly moved us overnight into a world that depends more and more on remote healthcare (telehealth), remote education (distance learning), and remote work (virtual offices). The FCC's recent broadband deployment report found broadband in urban areas well above the minimum definition of broadband at 25/3 Mbps as defined by the FCC. Specifically, the report stated, "The vast majority of Americans, surpassing 85% of the population in 2018, now have

access to fixed terrestrial broadband service at 250/25 Mbps.”¹⁰ In light of this, RUS should reevaluate what it means for a community to be deemed served with broadband. Rural America must not be relegated to second class status in the digital economy.

Incorporation of the NRECA proposed changes will ensure the integrity of the primary goal of each RD program is maintained while maximizing the benefits of the new 10 percent broadband provision to unserved communities.

National Rural Electric Cooperative Association

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By: Brian M. O’Hara

Senior Director Regulatory Issues – Telecommunications & Broadband

National Rural Electric Cooperative Association (NRECA)

4301 Wilson Blvd. Arlington, VA 22203

703-907-5798

brian.ohara@nreca.coop

¹⁰ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, FCC 20-50, paras. 3 (2020) (2020 Report).