



March 23, 2021

Submitted via Portal

(<https://www.regulations.gov>)

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

Laurel Leverrier
Acting Assistant Administrator
Telecommunications Program
Rural Development
U.S. Department of Agriculture
1400 Independence Ave. SW, Room 5153-S
Washington, DC 20250

Re: *The Rural Utilities Service (RUS) Final Rule and request for comment on the Rural eConnectivity (ReConnect) Program. The Rural eConnectivity Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas (RUS–20–Telecom-0023) (RIN: 0572-AC51) (February 26, 2021).*

To: Acting Administrator McLean and Acting Assistant Administrator Leverrier;

INTRODUCTION AND SUMMARY

The National Rural Electric Cooperative Association (“NRECA”) submits these comments in response to the RUS Final Rule and request for comments on the Rural eConnectivity Pursuant to the Section 779 of the Consolidated Appropriations Act, 2018 Pub. L. 115-141, 132 Stat. 348 (2018) (the “Act”) authorized Rural Utilities Service (“RUS”) to establish

a new eConnectivity loans and grant program to eligible applicants for broadband investments separate and distinct from previous RUS broadband programs. This program was later renamed the ReConnect program

On February 26, 2021, the Rural Utilities Service (RUS) issued a Final Rule and request for comment (comments due April 27, 2021) on the Rural eConnectivity (ReConnect) Program. The Rural eConnectivity Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural area 86 FR 11603 (RUS–20–Telecom-0023) (RIN: 0572-AC51) (February 26, 2021).

The members of NRECA are dedicated to improving the communities in which they serve and are active in rural economic development efforts. Nearly 200 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% of rural Americans that still lack access to broadband, compared to about 2% in urban areas.

The ongoing COVID-19 crisis has put the spotlight on the absolute and outright necessity for ubiquitous high-performing broadband for all Americans. The pandemic has forced us to rethink the practice and delivery of healthcare, education, and professional services, among many other things. We move forward in the midst, and wake, of the pandemic both on the local and national levels, but a realistic picture is being painted in rural America. In many of our communities, the impacts will be challenging and enduring. Simply stated, numerous people and businesses in rural America will struggle to emerge into a changed world that depends more each day on remote healthcare (telehealth), remote education (distance learning), and remote work (virtual offices).

NRECA, on behalf of its members, strongly supports the efforts of Congress and the RUS to address the widely recognized digital divide between rural and urban areas of the country. As stated, there are many rural areas that still lack adequate access to broadband, which drives local, regional, national, and international communications. NRECA also recognizes that there are differences among electric cooperatives, among the laws of the states in which they are organized, and among the communities they serve and thus a single approach or model rarely fits all of the situations they collectively address. For that reason, flexibility in administering the ReConnect program is vitally important in order to serve the Congressional intent behind these programs. The modifications NRECA recommends here will improve program flexibility and efficiency. This will not just benefit electric cooperatives but all applicants and the rural communities they plan to supply with vital high-speed broadband. The following are some of the specific recommendations that NRECA urges RUS to consider:

- The definition of a served area for establishing eligibility should be updated from 10/1 Mbps to at least the current minimum definition of broadband, 25/3 Mbps and RUS should ensure that any area with anything less than “25/3 Mbps fixed terrestrial” is eligible while prioritizing areas that lack access to at least 10/1.
 - RUS should consider adjusting this even higher and more in line with the average speed currently available in urban areas.
 - RUS should reevaluate this definition in each new funding round, which doesn’t require any statutory changes.
- Rules on existing service in proposed funding area should be modified to provide additional flexibility.
 - Current rules allow for 90% of a proposed funding area needs to be unserved for grants but this could be further reduced to 80%, or less, if coupled with an exclusion for areas with fiber networks.
 - Rules on existing service in 100% loan areas should be reduced to 50% unserved. This would bring the ReConnect program rules in line with what Congress established in the updated 2018 Farm Bill Broadband program which was created to be the successor to ReConnect.
- RUS should modify the treatment of incumbent provider challenges to applications by providing the applicant with access to the challenge, subject to protective order, and given a chance to respond within 30 days.
 - In cases where issues raised in a challenge to an application can be addressed by minor modifications to the application, RUS should allow applicants to do so instead of denying the application, and without another public notice period.
- RUS should not declare locations identified in the FCC’s December 7, 2020, announcement of RDOF Phase I auction initial results automatically off limits from eligibility in the ReConnect program. The initial RDOF auction results are, as the name indicates, initial. Winning a bid only gives a bidder the right to begin the lengthy and rigorous long-form review process to determine if they have the financial and technological capability to build and maintain a network at the speed and latency promised in the auction.
- Areas in the FCC’s 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through ReConnect. This same principal should also apply to other areas that received any federal

support to deploy networks at speeds below 25/3 Mbps. Blocking new federal funding to these areas relegates these communities to the wrong side of the digital divide.

- Consistent with the precedent in the CAF II auction, an RDOF Phase I winner, once approved for funding by the FCC, should be allowed to apply for a ReConnect 100% loan for the same areas won in RDOF.
- RUS should allow matching funding, whether in the form of cash or loan funds, to be spread over the build-out period, rather than fully expended upfront before grant funding can be used. And loan/grant combo awardees should be allowed to draw equally from loan and grant funds rather than expend loan funds before accessing grant funds. The terms of 100% ReConnect grant awards should be modified such that recipients need not have the full amount of matching funds in cash-on-hand prior to award¹
- We encourage RUS to clearly state in the Application what the applicant must report and provide regarding its structure to increase its flexibility regarding partnerships (for example, not requiring one partner to be designated “lead applicant”).
- Increase flexibility in using outside contractors, for example 515 contracts. Current rules require at least 50% of the employees working on the project be employed by the lead contractor. Many electric co-ops rely heavily on outside contractors, and very often subcontractors, particularly for fiber deployment and installation. This is especially critical when under program buildout deadlines.
- RUS should take all steps to minimize administrative burdens, including:
 - Reduce data required on non-proposed funding service areas (NFSA).
 - Streamline the Environmental/NEPA review to reduce burdens.
 - Modify the environmental questionnaire (EQ) to be similar to the EQ for the RUS Infrastructure Loans which may be more detailed but is only required once for the entire project instead of the current EQ which is required for each project segment.
 - Eliminate requirement for applicants to provide subscriber penetrations per serving area (NFSA, PFSA).
 - Allow for all environmental approvals to be filed and reviewed concurrently. Current rules require environmental approvals to be obtained in sequential order.

¹ NRECA and NTCA letter to Administrator Rupe urging immediate changes to ReConnect Round Two Rules, May 28, 2020, available at https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/NRECA_NTCA_Ltr_RUS%20ReReConnect%20recommendations%20052820_FINAL.pdf

Allowing for concurrent review and approval would speed up the process resulting in quicker broadband deployment.

- Applicants should be able to upload financial information in Excel format, rather than line-by-line entry.
- Capital Investment Workbook and Schedule should be streamlined for established broadband and electrical providers.

COMMENTS

I. Eligible Areas

The Final Rule (FR) states that respondents urged the agency to modify how it defines a served area. Specifically, respondents, including NRECA, have urged the agency to increase the speed that defines an area as served from 10/1 Mbps to the current federal minimum definition of broadband, 25/3 Mbps. Maintaining the antiquated 10/1 Mbps definition would relegate communities with existing service between 10/1 Mbps and 25/3 Mbps to substandard service for years to come. In response the FR states, “To accommodate this request the regulation implements procedures that allow the definition of sufficient access to be updated any time an application window is opened through a notice in the Federal Register.” NRECA is encouraged by this statement that the agency intends to make this change. NRECA reiterates its strong support for RUS to implement this change in the next round of ReConnect funding. Any area with anything less than “25/3 Mbps fixed terrestrial” should be eligible while the agency can give priority to areas that lack access to at least 10/1.

This definition should be reevaluated and updated prior to each new funding round. RUS could go further and consider adjusting this even higher and more in line with the average speed currently available widely in urban areas. The Federal Communications Commission (FCC) found in its April 2020 Broadband Deployment Report that, “The vast majority of Americans, surpassing 85% of the population in 2018, now have access to fixed terrestrial broadband service at 25/25 Mbps.”² The vast majority of Americans with this level of access are in urban areas. It should be the goal of all broadband funding programs to ensure that rural communities have access to the same level of broadband service as their urban counterparts.

The rules on existing service in proposed funding area should be modified to provide additional flexibility. Under current rules, a proposed funding area needs to be 90% unserved for grants and grant/loan combos but this could be further reduced to 80%, or less, if coupled with an exclusion for areas with fiber networks.

² *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, April 24, 2020, (2020 Report), available at: <https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf>.

The 90% unserved rule also currently applies to 100% loan applications. NRECA recommends that rules on existing service in 100% loan areas should be reduced to 50% unserved. This would bring the ReConnect program rules in line with what Congress established in the updated 2018 Farm Bill Broadband program which was created to be the successor to ReConnect. Congressional intent on this is clear and RUS should implement this modification immediately.

RDOF Phase I initial results should not disqualify an area from eligibility:

RUS should not declare locations identified in the FCC's December 7, 2020, announcement of RDOF Phase I auction initial results automatically off limits from eligibility in the ReConnect Program.³ The initial RDOF auction results are, as the name indicates, initial. Winning a bid only gives a bidder the right to begin the lengthy and rigorous long-form review process to determine if they have the financial and technological capability to build and maintain a network at the speed and latency promised in the auction. NRECA, working with NRTC, filed a letter and whitepaper with the FCC expressing heightened concern with the substantial subset of initial awards in the RDOF Phase I auction to fixed wireless and hybrid fixed wireless Gigabit tier bidders, despite the absence of meaningful industry consensus or a proven track record that fixed wireless technologies can deliver at the level they have promised.⁴ Concern was also raised with the initial awards to entities relying on low-earth-orbit (LEO) satellite providers bidding at the 100/20 Mbps tier since this technology is in beta testing and is not a proven technology.⁵

As outlined in the whitepaper, it is very likely that a fair number of these bidders will be found to be unqualified during the review process, which was initiated by the January 29, 2021, deadline for long-forms. In the CAF II process, it took eight months or more for the FCC to approve long-forms and grant final authorization of funding. We anticipate a similar timeframe for the RDOF. If RUS were to prematurely prohibit these initial RDOF awarded areas from being eligible for the ReConnect program and the RDOF bidder is found to be unqualified, these communities could lose out twice on vital federal broadband funds and would be further left behind. This cannot be allowed to happen.

Given the high-risk nature of these specific bids, RUS should allow the RDOF census block groups initially awarded specifically to fixed wireless providers in the gigabit tier and to

³ FCC News Release, *Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans*, December 7, 2020, <https://www.fcc.gov/document/fcc-auction-bring-broadband-over-10-million-rural-americans>.

⁴ NRECA & NRTC Whitepaper, *The Rural Digital Opportunity Fund: Rural America's Broadband Hopes at Risk*, filed with the FCC February 1, 2021, in the matter of *The Rural Digital Opportunity Fund Auction*, AU Docket No. 20-34; *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90, available at: <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/pages/nreca-files-whitepaper-with-fcc-expressing-concern-with-fixed-wireless-gigabit-rdof-winners.aspx>.

⁵ See also, *Starlink RDOF Assessment Final Report*, NTCA – The Rural Broadband Association & Fiber Broadband Association, filed with the FCC February 8, 2021, <https://www.fcc.gov/ecfs/filing/10208168836021>

LEO satellite providers to be eligible for funding by any applicant, but not give them priority. This would allow for RUS and the FCC to review applications simultaneously. If the FCC were to deem the initial RDOF winner unqualified, then RUS could award any qualifying applicant funding for the respective areas quickly to speed deployment to these unserved communities. This carefully crafted approach, limited to areas provisionally assigned to RDOF gigabit fixed wireless and LEO satellite bidders, would provide flexibility among government programs while maximizing expansion of broadband networks to unserved areas.

CAF II satellite areas & areas receiving support for service below 25/3 Mbps:

Areas in the 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through the ReConnect program. The FCC incorrectly allocated money to deploy broadband that did not meet its own minimum definition of broadband, 25/3 Mbps. This was an epic failure that locked in substandard service and locked out any additional federal broadband support for at least a decade in these areas. Determining these areas to be eligible would be consistent with the intent of Congress, as expressed in report language that limited the exemption for CAF II areas eligible for ReConnect to only those areas (census blocks) for which the CAF II recipient is subject to a buildout obligation of 25/3 Mbps or greater for fixed terrestrial. This same principal should also apply to other areas that received any federal support to deploy networks at speeds below 25/3 Mbps that do not have access to 25/3 Mbps or higher. Blocking new federal funding to these areas relegates these communities to the wrong side of the digital divide for decades, if not in perpetuity.

Precedent in CAF II allowing recipients to be eligible for 100% ReConnect loans should be continued:

Through deliberation between the FCC and RUS, an agreement was reached in 2018 that allowed CAF II awardees to be eligible for 100% loans from ReConnect for the same areas. This acknowledges and continues the symbiotic relationship between RUS and FCC programs. Not only is it more expensive to build infrastructure in rural areas, it's also more expensive to operate and maintain that infrastructure on an ongoing basis with a smaller population density. Consistent with the precedent in the CAF II auction, an eligible RDOF Phase I winner should be allowed to apply for a 100% loan for the same areas won in RDOF Phase I. The award should be contingent on the FCC's approval of the RDOF winners long-form and grant final authorization of funding.

II. Applications and Challenges

Proposed Funding Service Area (PFSA) Challenge Process & Modifications:

Based upon experience with the ReConnect Program and all RUS broadband predecessors, the asymmetry of information on challenges persists and needs be rectified. 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. We urge RUS to provide the applicant with access to the challenge filed in opposition to their application, under protective order, and given a chance to respond within 30-days so as not to unnecessarily delay the process of evaluating applications.

Further, the ReConnect program needs to provide applicants an ability to adjust applications in response to challenges, as opposed to total rejection of the application. NRECA recognizes that some adjustments to address challenges are easier than others. For example, in some cases, the homes that are challenged are on the edge of the applicants proposed funding area, and thus the proposed funding area can be modified relatively easily to exclude those homes. Accordingly, we strongly recommend that, in cases where issues raised in a challenge can be addressed by minor modifications to the application, RUS should allow an applicant to do so. NRECA supports the exercise of RUS discretion to determine whether such modification is minor or major.

III. Flexibility in Applicant and Service Provider Structure

We understand and appreciate that RUS has been processing ReConnect applications with significant flexibility in terms of the service structure proposed by applicants (*i.e.*, that service models may differ for a variety of legitimate reasons such as differences in state law regarding whether an electric cooperative may provide broadband services directly or instead must do so through a subsidiary). In response to respondents the FR states, “The proposed regulation now includes language to clarify specifically what types of partnerships are eligible and which types are still considered ineligible. Partnerships that do not involve individuals are now eligible entities.” While we are encouraged by this statement, NRECA reiterates its recommendations on this issue.

We encourage RUS to clearly state in the Application Rules that the proposed structure, such as use of a subsidiary to serve broadband customers, must be explained and the applicant must submit the executed agreements between the entities that establish the service arrangement details and how the associated costs are allocated among these entities.

However, we understand that the experience under the ReConnect Program with respect to proposed partnerships could be improved and we provide these comments to encourage RUS to increase its flexibility on applications from partnerships. In ReConnect, when an application is filed by a partnership, RUS has required that one partner be the lead applicant. This position suggests that the arrangement is actually something other than a true and equal partnership. This position is inconsistent with RUS’ arguments promoting the benefits of partnerships. This position also runs contrary to RUS’ self-interest because the likelihood of recovery on a RUS

loan or other award should actually be *improved* by having more than one entity with a repayment obligation. Thus, in addition to greater RUS flexibility on partnership applications, NRECA asks RUS to make it clear in the application guidance what RUS expects from applicants regarding their structure.

IV. Matching Funds

The ReConnect rules regarding matching funds are counter to the goals of the program and add additional financial strain, especially due to impacts of the COVID-19 pandemic. NRECA recommends some measures to enhance the effectiveness of the ReConnect program, especially during a time of crisis when providers are making every effort to sustain their operations while continuing to make progress toward network deployment.

Specifically, for those ReConnect awards that are 100% grants, we recommend first that RUS waive the requirement for providers to spend matching funds in full prior to drawing down any grant funds. To be clear, we understand the importance of ensuring that award recipients have “skin in the game,” but the obligation to expend all matching funds prior to the receipt of any grant resources can be unnecessarily onerous. The experience of co-ops has been that this requirement hinders flexibility and can limit their ability to participate in other broadband funding programs simultaneously, such as at the state level, that may have shorter build out periods. We therefore recommend that RUS modify the ReConnect program rules to allow an award recipient to opt to match 25% of the amount drawn from the grant funds within each fiscal year. A comparable policy already exists within the Community Connect Grant Program, which allows the spreading of matching funds over time, and RUS could adopt enhanced reporting in connection with this option to ensure program integrity and monitor proper use of funds.

We further recommend that the terms of 100% ReConnect grant awards be modified such that recipients need not have the full amount of matching funds in cash-on-hand prior to award. In many cases, recipients may plan to leverage state or other federal programs or to use loan funds from institutions like CFC/RTFC or CoBank to cover at least a portion of the matching funds required. Particularly in light of the potentially sizeable amounts of ReConnect grant awards, we recommend that grant recipients be required to show only that they have their matching funds for the first two years on hand, with a demonstration that the remainder will be available through either a committed award from another state or federal program or through an approved loan.⁶

Finally, we recommend a change to the terms of loan-grant combination ReConnect awards. In particular, we suggest that providers be permitted to draw down loan and grant funds proportionately rather than compelling providers to utilize all loan funding prior to receipt of any grant resources. While once again, we certainly understand that the use of loan funds ensures

⁶ See ReConnect finance video for award winners that discusses the order in which the funds must be used (<https://www.usda.gov/reconnect/awardee-webinar-materials#financial>) at minute 7:00 to 7:50.

providers have “skin in the game” from the start, a proportionate (or any) split that permits receipt of grant dollars alongside loan dollars would still achieve this purpose while providing greater flexibility to operators at a time when this could be most useful.

NRECA believes there are several justifications for this change in this program. First, this change would relieve financial pressure on cooperatives (or any winning entity) to be able to manage their own financial situation during and in the aftermath of the pandemic with more flexibility. Second, it does not change any of the financial commitments of either RUS or the awardee. Third, it would simply allow the sequencing of when dollars get spent to be more flexible for the recipient. Fourth, this change does not increase RUS’ expenditures or require Congressional approval but could make a significant difference to ReConnect recipients during this difficult time.

V. Streamline Burdensome Rules

RUS should remove or significantly reduce location and network specifics regarding Non-funded Service Areas (NFSAs) and Unadvanced Prior Loan Fund (UPLF) areas. Many applicants do not know the details of their broadband buildouts over the next five years. However, the application requires that they not only identify these areas on a map, but also provide detailed information regarding all capital assets. A considerable amount of time is needed to complete this portion of the application with minimal benefit to RUS. The capital expenditures for NFSAs and loan amounts for UPLFs can still be included in the financial projections without having to enter the detailed network specifics required by the application.

RUS should seek to significantly reduce the environmental reporting requirements in the application. The environmental section of the application requires detailed engineering information for the proposed funded service area (PFSA). For example, the applicant must enter the geocoordinates (latitude and longitude) for each bore pit. There may be hundreds of bore pits on a project. The exact locations of these bore pits are not known to this level of accuracy at the application period. Applicants will determine these locations at construction when all other utilities are located. Estimated locations could be provided after the detailed field engineering (“staking”) is complete. It is recommended that this level of detail be required after the grant award when the awardee is seeking the environmental approvals for their project, not as part of the application process. Some co-ops have reported this process taking eight months or more to complete.

On a related issue, the ReConnect environmental questionnaire (EQ) is more burdensome and time consumer than in other RUS programs, such as for RUS Infrastructure loans. In ReConnect, a new EQ was required for each segment (possibly hundreds per application) and some of the questions (such as flood plains) were already in the RUS map. In contrast, the EQ required for an RUS infrastructure loan is more detailed, but only needs to be done once for the entire project, which allows for more accuracy, less redundancy, and less effort. Some

