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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: Request for Comments on the Rural Utilities Service (“RUS”) Interim Final Rule and request for comments on the [Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees]; 85 *Fed. Reg.* 14393 (RUS-19-Telecom-0003) (RIN number 0572-AC46) (March 12, 2020).

Dear Ms. Leverrier:

The Utilities Technology Council (“UTC”) is providing the following comments in the above-referenced proceeding in response to the department’s Interim Final Rule (“IFR”).¹ These comments echo and support the comments of the National Rural Electric Cooperative Association in this proceeding.

Introduction and Background

UTC is the international association for the telecom and information technology interests of all kinds of electric, gas and water utilities and other critical infrastructure industries (“CII”). Its members include large investor-owned utilities serving millions of customers across multi-state service territories, as well as smaller rural electric cooperative and public power utilities serving relatively fewer customers in isolated communities and remote areas. Despite their differences in size and service territories, these UTC members all own, manage or control extensive communications systems that they use to ensure the safe, reliable and secure delivery of essential electric, gas and water services to the public at large.

UTC’s interest specifically in this proceeding is to promote opportunities for utilities to access broadband funding through the Rural Broadband Program and the Community Connect Grant Program. Utilities are already deploying broadband into unserved areas and others are interested in doing so. These utilities are deploying network infrastructure that is capable of offering extremely high bandwidth with low latency in areas that often lack any other broadband services. Access to funding through the USDA RUS programs can make it possible for utilities to deploy broadband networks faster and further out into remote areas than they otherwise could on their own.

UTC supports the IFR and provides the following comments to improve upon the rules, as summarized below:

- Applicants should be allowed to pair their grants with loans from third parties, not just loans from RUS.

¹ Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees, USDA Rural Utilities Service, Interim final rule; request for comments. 85 *Fed. Reg.* 14,393 (March 12, 2020).

- “Broadband lending speed” should be modified to clarify that the initial broadband lending speed under these programs is “25/3 Mbps fixed terrestrial” and clarify the discussion of “eligible service area” to make it clear that initially any area with anything less than “25/3 Mbps fixed terrestrial” is eligible while prioritizing areas that lack access to at least 10/1.
 - Mobile and satellite services should not be considered for purposes of determining eligible areas, nor should mobile broadband be included for purposes of “Broadband lending speeds” that may receive RUS funding.
- RUS should allow matching funding, whether in the form of cash or loan funds, to spread over the built-out period, rather than fully expended upfront before grant funding can be used.
- RUS should not require applicants to provide a competitive analysis of the market, because such analysis is not provided within the statute nor is such analysis necessary for purposes of carrying out the other provisions in the statute.
- RUS should allow applicants an opportunity to respond to challenges from existing service providers claiming to serve areas within the applicants’ proposed funded service area; and should permit applicants to modify their application to respond to challenges. In any event, RUS should not exempt from disclosure the information that is presented in support of an existing service provider’s claim. This one-way, opaque process invites abuse by existing service providers and prevents applicants from defending their proposals.

Use of Third Party Loans

UTC supports revision or clarification of Section 1738.101(a)(1) in order to allow applicants for grant funding to pair it with a loan from a third-party. In its current form, Section 1738.101(a)(1) requires applicants to “[s]ubmit an application for an associated loan component under Title I, Title II, or Title VI of the RE Act.” This provision could be read to require applicants to pair grant funding with a loan from RUS. UTC is concerned that this reading could prevent otherwise qualified applicants from eligibility for grant funding, contrary to the purpose of the funding programs and inconsistent with the language and the legislative history of the statute. No such requirement exists in the language of the statute, nor is it necessary to implement the other provisions of the program. Accordingly, UTC urges revision or clarification of this provision to allow applicants for grant funding to pair the grant with a loan from a third party, rather than requiring the applicant to obtain a loan through RUS.

Broadband Lending Speed

UTC supports revision and clarification of Section 1738.55 to circumscribe “broadband lending speed” to include initially “25/3 Mbps fixed terrestrial” services; and similarly, to revise and clarify Section 1738.53 so that an “eligible service area” includes any area with less than “25/3 Mbps fixed terrestrial” services – and does not include areas with satellite or mobile broadband. The intent of Section 1738.55 is to set the broadband lending speed at 25/3 Mbps initially, and to increase the minimum speeds over the time period of the funding. UTC supports this intent and urges RUS to clarify that 25/3 Mbps is the *initial* broadband lending speed and that fixed terrestrial services are eligible for funding if they provide this broadband lending speed initially. In addition, UTC requests that RUS revises and clarifies Section 1785.53 so that areas that do not have access to “25/3 Mbps fixed terrestrial” services are included as an eligible service area. UTC supports Section 1738.55(d) which states that “Mobile and satellite services will not be considered in making the determination that households in the proposed service area do not have access to broadband service.” UTC urges RUS to emphasize that satellite and mobile broadband services are not substitutes for fixed terrestrial services and therefore should not be considered for purposes of determining whether an area is an eligible service area.

Matching Funds

UTC requests revision and clarification with regard to the 25% match requirement of Section 1738.101(b) so that applicants may satisfy the match over the entire funding period, rather than having to pay the entire amount upfront. In addition, RUS should allow applicants to use cash or loan funds to satisfy the matching requirement. This would allow applicants the flexibility that they need to use grant funds without having to pay the 25% match first and out of cash which may be limited at the outset of the project. This is critical to the economic success and sustainability of deploying broadband in high cost areas and it is consistent and permissible under the language of the statute. Accordingly, UTC supports the comments of the National Rural Electric Cooperative Association in urging RUS to adopt this approach for purposes of satisfying the 25% match requirement for grant funding under this provision of the IFR.

Challenges and Competitive Analyses of the Market

UTC requests revision and clarification of Sections 1738.106(c) and 1738.206 which read together provide that applicants are required to provide highly detailed and potentially sensitive competitive information about their plans to provide broadband in the proposed service areas; meanwhile allowing existing service providers to submit challenges to proposed projects and protecting the information they provide against public disclosure. This process invites abuse by existing service providers who can make unsubstantiated claims and leaves applicants virtually defenseless to counter these claims. UTC requests that RUS refrain from requiring applicants to provide a competitive analysis of the market in their proposed service area, which is an undue administrative burden that is unnecessary and unsupported by the language in the statute. The RUS may rely on its own data to determine whether a proposed area is eligible for funding without requiring applicants to provide the details of their business plans. In addition, RUS must provide applicants with a 30-day period to respond to challenges by existing service providers that an area is currently served.

UTC appreciates the opportunity to comment and for consideration of the above-referenced revisions to the provisions to the IFR. If there are any questions concerning this matter, please contact the undersigned.

Respectfully,



Brett Kilbourne