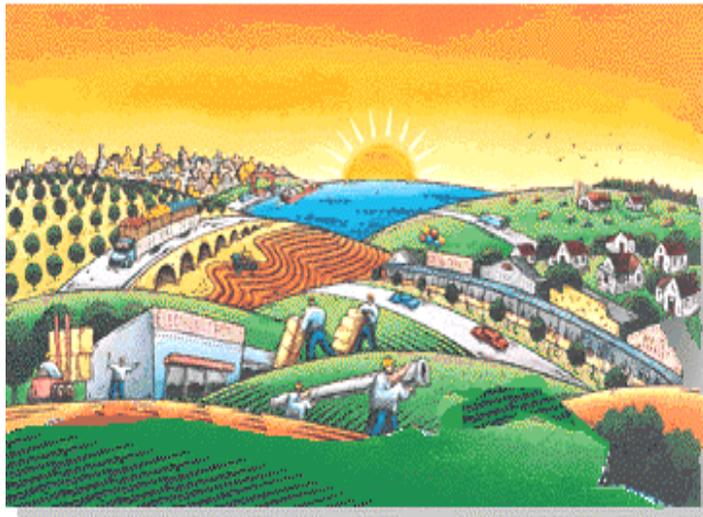


RURAL UTILITIES SERVICE

RUS Bulletin 1738-1

Rural Broadband Access Loan and Loan Guarantee Program Application Guide



Contents:

Introduction and General Information

- Applying for a Loan
- Completing the Loan Application
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Rural Utilities Service

Rural Broadband Access Loan and Loan Guarantee Program

The Rural Broadband Access Loan and Loan Guarantee Program is designed to provide loans for funding, on a technology neutral basis, the costs of construction, improvement and acquisition of facilities and equipment to provide broadband services to eligible rural communities. The Programs' goal is to ensure that rural consumers enjoy the same quality and range of telecommunications services that are available in urban and suburban communities.

General Information

!! BEFORE YOU GET STARTED !!

You must read:

- ◆ *The Notice of Application Deadline (NOAD) published in the Federal Register on January 30, 2003; and*
- ◆ *7 CFR 1738 – Rural Broadband Access Loans and Loan Guarantees.*

A copy of each is included in this guide as Attachment 14 and 15, respectively.

These documents **MUST** be utilized in conjunction with this Application Guide. Should any differences result in the interpretation of this Application Guide and the Regulation, the Regulation takes precedence over information contained in this Application Guide.

Where to Submit Your Application:

An original and two copies of a **completed application** must be mailed or hand-delivered. **Applications must be submitted to:**

KENNETH KUCHNO
BROADBAND TEAM
TELECOMMUNICATIONS PROGRAM
RURAL UTILITIES SERVICE
US DEPARTMENT OF AGRICULTURE
STOP 1541, ROOM 2919-S
1400 INDEPENDENCE AVENUE, SW
WASHINGTON, DC 20250-1541

Due to the current disruption in mail delivery service, applicants are strongly encouraged to submit applications via express mail or hand delivery to our office.

Applications Delivered by Hand:

Applications delivered by hand will be accepted daily between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time), except Saturdays, Sundays and Federal holidays. Individuals delivering applications must provide proper identification to enter the building.

➤ When to Submit Your Application:

On October 1 of each fiscal year (FY), RUS will establish, from available loan funds, a national reserve for broadband loans and loan guarantees. RUS will then allocate amounts in the reserve to each state based on the number of communities with populations less than 2,500 in relation to the national total of such communities.

To be considered eligible for funding from your state's reserve for the FY, an application must be postmarked by January 31.

On April 1 of each FY, RUS will return all unobligated amounts in each state's reserve to the national reserve available to eligible entities in any state.

To be considered eligible for funding from the national reserve for the FY an application must be postmarked by July 31.

➤ Minimum and Maximum Loan Amounts:

RUS will not consider applications for loans or loan guarantees of less than \$100,000. Maximum loan amounts apply only to an applicant for a direct 4-percent broadband loan. These limitations will be published in the Federal Register at the beginning of each FY.

➤ ***Types of Broadband Loans: (7 CFR 1738.30)***

1. Direct Cost-of-Money Loan– This loan will bear interest at a rate (the “Cost of Money Interest Rate”) equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity

2. Private Loan Guarantee – This loan shall bear interest at a rate set by the lender consistent with the current applicable market rate for a loan of comparable maturity.

3. Direct 4 Percent Loan – To be eligible for this loan bearing an interest rate of 4 percent, the applicant must be proposing to serve:

A) A rural community that:

- i) Has a population of less than 2,500 inhabitants;
- ii) Is not currently receiving broadband service; and
- iii) Is located in a county with per capita personal income that is less than or equal to that percent of the national average per capita personal income which RUS will publish in the Federal Register at the beginning of each fiscal year (FY). County per capita personal income, as a percent of the national average per capita personal income, is published by the Bureau of Economic Analysis, U.S. Department of Commerce at www.bea.doc.gov/bea/regional/reis. RUS will use the most recent statistics published on October 1 of the fiscal year (FY) in which the application is deemed complete by RUS.

B) A service area with a certain maximum population density, calculated as the total number of persons in the service area divided by the square miles of the service area. The maximum population density will be published by RUS in the Federal Register at the beginning of each FY.

* The total amount of financing made available by RUS, in each FY, for Private Loan Guarantees and Direct 4 Percent Loans and the maximum amount for any one Direct 4 Percent Loan will be published by RUS in the Federal Register, at the beginning of each FY.

* Direct 4 Percent Loans can be made simultaneously with a Cost of Money Interest Rate Loan.

➤ ***Priorities for Broadband Loan Approval:***

The Farm Security and Rural investment Act of 2002, Title VI –Rural Broadband Access, Section 601 [c](2), requires that in making and guaranteeing loans under this section, priority must be given to eligible rural communities in which broadband service is not available.

Completed loan applications proposing to provide broadband service in an area where none is available (criteria 1 (a) under Availability of Service on page 8 of this Application Guide) will receive **FIRST** priority for funding under the state reserve prior to April 1 and the national reserve after April 1, on a first-in, first-out basis, as long as funds remain available.

➤ **Key Definitions:**

Please refer to the NOAD and 7 CFR 1738 (Attachments 14 and 15) for all defined terms.

Broadband Service – means any technology identified by the Administrator as having the capacity to transmit data to enable a subscriber to originate and receive high-quality voice, data, graphics, and video. For funding under 7 CFR 1738, projects must offer data transmission services, and may provide voice, graphics, and video. At the beginning of each fiscal year, RUS will publish, in the Federal Register, the transmission data rate criteria to be utilized for purposes of the identification of broadband service technologies during that fiscal year’s funding period.

Eligible Rural Community – means any incorporated or unincorporated place in the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) that: (1) has no more than 20,000 inhabitants based on the most recent available population statistics of the Bureau of the Census and (2) is not located in an area designated as a standard metropolitan statistical area. For purposes of this program, place may include any area located outside the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 20,000.

System Design – means the detailed plans, specifications, and associated costs for the proposed construction, improvement, or acquisition of facilities for broadband service.

Market Survey – means a collection of data about consumers in a proposed service area showing the types of products and services they are interested in obtaining.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et. seq.).

Service Area – means the geographical area within which the applicant proposes to provide broadband services.

For additional information concerning this loan program, please contact the Broadband Team. Points of contact for the Broadband Team are provided as Attachment 12 to this application guide. Information about RUS and this application guide can be retrieved electronically ***via the internet*** at:

<http://www.usda.gov/rus/telecom>

Applying for a Loan

Loan Processing

Completed broadband loan applications must be submitted in accordance with the requirements as set forth in the NOAD, 7 CFR Part 1738, and RUS Bulletin 1738-1.

Applicant Eligibility (7 CFR 1738.16)

RUS makes broadband loans and loan guarantees to legally organized entities providing, or proposing to provide, broadband services in eligible rural communities.

Types of eligible entities include: cooperative, nonprofit, limited dividend or mutual associations, limited liability companies, Indian tribes and tribal organizations as defined in 25 U.S.C. 450(b) and (c) and commercial organizations. Individuals or partnerships of individuals are not eligible entities.

To be eligible to receive a loan under this program, the entity:

- ◆ Cannot be serving more than 2 percent of the telephone subscriber lines installed in the United States; and
- ◆ Must have sufficient authority to enter into a contract with RUS and to carry out the purposes of the proposed loan.

State or local governments, including any agency or subdivision, or instrumentality thereof (including consortia) shall be eligible for a broadband loan only if, not later than 90 days after publication of 7 CFR 1738, no other eligible entity is already offering or has committed to offer broadband services to the eligible rural community.

Eligible Loan Purposes (7 CFR 1738.10 and 1738.19)

RUS makes broadband loans and loan guarantees to:

- ◆ Finance the construction, improvement, and acquisition of facilities and equipment to provide broadband service in eligible rural communities;
- ◆ Finance broadband facilities leased under the terms of a capital lease, as defined in generally accepted accounting principals; financing will be limited to 2 years of lease costs;
- ◆ Finance the acquisition by an eligible entity of another system, lines or facilities if the acquisition is necessary and incidental to furnishing or improving rural broadband service (can not exceed 50 percent of requested loan amount); and
- ◆ Refinance an outstanding obligation on another telecommunications loan made under the RE ACT. The refinancing cannot exceed 40 percent of the loan amount.

Ineligible Loan Purposes (7 CFR 1738.19)

RUS will not make a broadband loan or loan guarantee to:

- ◆ Acquire any stock, facilities or equipment of an affiliate of the applicant;
- ◆ Finance customer terminal equipment (including modems) and any associated inside wiring not owned by the applicant during its economic life;
- ◆ Finance vehicles not used primarily in construction;
- ◆ Finance broadband facilities leased under the terms of an operating lease;
- ◆ Finance system designs or facilities that have not been designed to RUS' satisfaction;
- ◆ Finance the merger or consolidation of entities; and
- ◆ Pay for operating expenses of the project.

NOTES:

(a) Prior to October 1, 2004, RUS will not make broadband loans or loan guarantees to provide broadband service in an area receiving local exchange telephone service from an RUS telecommunications borrower to any entity other than the incumbent RUS telecommunications borrower if the existing borrower, not later than 90 days after RUS receipt of an application proposing to provide broadband service in the borrower's local exchange service territory, submits to RUS a letter of intent to provide or begin to construct residential broadband service in its local exchange service territory within two years. . Thereafter, RUS will consider an application based on the criteria for determining broadband availability as stated in 7 CFR 1738.11(b).

(b) RUS will not approve loans to more than one applicant to provide broadband service within the same eligible rural community.

Credit Support (7 CFR 1738.20)

To be eligible for a loan, RUS will require, as a condition to RUS financing, that an applicant provide credit support in an amount equal to 20 percent of the requested loan amount.

The applicant must have, as part of the minimum 20 percent requirement, cash or, in the case of state and local governments, cash equivalents in an amount equal to operating expenses for the first full year of providing service, as determined by a feasibility study satisfactory to RUS. If one full year of operating expenses exceeds the minimum requirement, applicants will be required to provide the entire amount for the full year of operating expenses.

THE CASH REQUIREMENT FOR OPERATING EXPENSES WILL BE WAIVED FOR APPLICANTS OPERATING AS TELECOMMUNICATIONS COMPANIES WHICH HAVE POSITIVE CASH FLOW FOR THE TWO CALENDAR YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION.

If the total amount of operating expenses is less than 20 percent, the remainder of the minimum requirement can be met by undepreciated assets which would normally be financed as part of an RUS broadband loan, additional cash or cash equivalents, licenses, or an unconditional letter of credit.

For an application to be considered complete, applicants must provide evidence and RUS must be able to verify that credit support in the amount of 20 percent is available.

NOTE: For the purposes of Credit Support, assets and licenses will be valued based on the lower of cost or market value, net of liens or other obligations of payments for those assets and licenses.

Preapplication Stage

A prospective applicant should contact a member of the Broadband Team (Attachment 12) prior to submitting an application. An RUS General Field Representative (GFR) will be assigned to each Broadband application.

Initial prospective applicants and their attorneys should review the terms and conditions set forth in the standard RUS broadband mortgage, note, and loan contract. Please note, additional terms and conditions may apply once feasibility has been determined. Copies of these documents can be obtained from the RUS website.

Subsequent loan applicants may directly contact their assigned GFR. A listing of the GFR's and their contact information is provided as Attachment 13 to this application guide.

Availability of Broadband Service Determination (7 CFR 1738.11)

Before submitting an application to RUS, prospective applicants should consider the following:

- 1) Availability of broadband service. Priority will be given to eligible rural communities in which broadband service **is not** available to residential customers in the applicant's proposed service area. The following criteria will be considered when determining whether broadband service is not available to residential customers:
 - a) An existing provider's network is not providing broadband service, as defined by RUS, to residential customers in the service area.
 - b) Broadband service is not provided at rates comparable to those of similar services in neighboring urban and suburban areas, as determined by RUS.
 - c) The quality of existing services, including, but not limited to, the availability of specified data rates, system latency, and data rate restrictions, is not satisfactory as determined by RUS.

For a completed application, applicants will have to certify to RUS the extent to which broadband service is available to residential customers in the proposed service area and evidence will need to be provided that a legal notice has been published stating the applicant's intent to offer broadband service in a particular community. Sample wording for the legal notice is included in this guide as Attachment 3.

Administrative Findings

The RE Act requires that RUS make certain findings to approve a broadband loan and/or loan guarantee. Applicants should ensure that their broadband loan applications contain sufficient information for RUS to make the following findings:

Feasibility of and security for the loan. From the broadband loan application, RUS must be able to determine that the security for the loan is reasonably adequate and that the loan will be repaid on time. This finding is based on:

- a) Self-liquidation of the loan within the loan amortization period, requiring sufficient revenues from the applicant's system in excess of operating expenses (including maintenance and replacement), to repay the loan with interest;
- b) Reasonable assurance of achieving the broadband subscriber projections upon which the loan is based;
- c) Economic feasibility (based on projected revenues, expenses, net income, maximum debt service, and rate of return based on investment) for the proposed system;
- d) Impact of the proposed loan and construction on the ratio of the applicant's secured debt to assets;
- e) Projected growth in the applicant's equity;
- f) Satisfactory experience of the system's principal owners and manager;
- g) A first lien on the applicant's total system; or other adequate security;
- h) Fair market value of the applicant's assets as represented in its financial reports;
- i) Appropriate financial and managerial controls included in the broadband loan documents; and
- j) Any other factors determined to be relevant by RUS.

Refinancing. For broadband loans that include funds to refinance an outstanding telecommunications loan made under the RE Act, the applicant must provide satisfactory evidence for RUS to determine that the proceeds will further the construction, improvement, or acquisition of broadband facilities.

Acquisition. For broadband loans that include funds to acquire broadband facilities, the applicant must provide satisfactory evidence for RUS to determine that the acquisition is necessary and incidental to furnishing or improving rural broadband service.

Completing the Loan Application

This section addresses all of the information that must be submitted for an application to be complete and considered for financing:

- | | |
|---|--|
| A. <i>Application for Broadband Loan or Loan Guarantee (RUS Form 532)</i> | G. <i>Certification on Availability of Broadband Service</i> |
| B. <i>Market Survey</i> | H. <i>Evidence of Legal Notification</i> |
| C. <i>Business Plan</i> | I. <i>Supplemental Information</i> |
| D. <i>Certified System Design</i> | J. <i>Compliance with other Federal Statutes and Regulations</i> |
| E. <i>Financial Forecast</i> | |
| F. <i>Environmental Report</i> | |

A. A Completed RUS Form 532, “Application for Broadband Loan or Loan Guarantee”

Complete this form along with a **board of director’s resolution or other document** authorizing the funding request, Attachment 1.

▶ THE MARKET SURVEY, BUSINESS PLAN, CERTIFIED SYSTEM DESIGN AND FINANCIAL FORECAST ADDRESSED IN THE FOLLOWING FOUR SECTIONS MUST BE INCLUSIVE OF YOUR COMPANY’S TOTAL OPERATIONS, NOT JUST THE BROADBAND PORTION THAT IS TO BE FINANCED WITH LOAN FUNDS.

B. Market Survey

A market survey, satisfactory to RUS, should be conducted by each applicant to evaluate the needs of potential subscribers and their interest in services and/or goods to be provided. The market survey should indicate the communities’ desires to obtain those services to be offered by your organization (based on wants and needs of prospective subscribers). The marketing survey should support the number of proposed subscribers expected to take service at the proposed rates as well as support the numbers generated in the pro forma financial statements.

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Tips on conducting a market survey:

1. Mediums for conducting surveys:
 - a. Direct mailing of surveys;
 - b. Telephone surveys;
 - c. Door to door interviews; and
 - d. Town meetings:
 - i. Coordinate with local governmental officials;
 - ii. Coordinate with local Chamber of Commerce; and
 - iii. Announcements by local TV, radio and newspapers.
2. Information to be included as part of market survey:
 - a. Who you are;
 - b. Services you propose to provide;
 - c. Timeline for providing those services;
 - d. Costs of services to be provided;
 - e. Benefits to be derived from subscribing to proposed services; and
 - f. Would the consumer be interested in subscribing to proposed services?
3. Factors to consider:
 - a. Economic and social demographics of proposed area to be served:
 - i. Poverty, education, and age
 - b. Location and availability of community services with broadband access:
 - i. Fire, rescue, emergency;
 - ii. Schools, medical facilities; and
 - iii. Community centers, senior centers.

C. Business Plan

A detailed business plan, satisfactory to RUS, is required to evaluate your organization. The plan should describe in detail the fundamentals of the business and it should provide sufficient financial data to indicate that the business will be economically sustainable.

The business plan should include:

1. A persuasive introduction and request for funds
 - a. How will loan funds be used?
 - b. Does the business have enough working capital? (Keep in mind that RUS requires applicants to provide credit support in an amount equal to 20 percent of the requested loan amount, of which a part must be at least equal to operating expenses for the first full year of providing services.)
 - c. Where are investments in the business coming from?
 - d. What is the legal form of the company? (Corporation, LLC, Cooperative, etc.)
 - e. Who are the owners?

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2. A statement of the purposes of the business
 - a. What services/goods does the company intend to offer?
 - b. A description detailing the goods and services offered
 - c. Highlights or features which make these goods and services sell
 - d. Current state of development of goods and services
 - e. Status of licenses/regulatory approvals required to conduct business
3. An analysis of the market for the applicant's business
 - a. Who are your customers?
 - b. How will your business reach the most customers and deter competitors?
 - c. What goods and services are customers willing to purchase?
 - d. Current status, prospects and trends influencing the industry
 - e. Describe primary market
 - i. Discuss geographic area to be served
 - ii. Discuss factors affecting market growth
 - iii. Basis for customers' decision to take services (price, quality, delivery, etc.)
 - iv. General marketing philosophy
 - f. How will you price your product?
 - g. How are the services advertised and promoted?
4. An evaluation of main competitors
 - a. Who are your competitors?
 - b. How do your prices compare to those of competitors?
 - c. How does your quality of service compare to competitors?
 - d. Include an estimate of market share and customer levels with a detailed explanation supporting the estimates.
5. Details of the applicant's organization and management
 - a. Organizational chart
 - b. List of key personnel
 - i. Include duties and responsibilities of key personnel
 - ii. Resumes of key personnel
 - c. Has management worked together before?
 - d. How do management skills complement each other?
 - e. Compensation and ownership
 - i. Salaries paid to key personnel
 - ii. Stock ownership of key personnel
 - iii. Bonus plans
 - iv. Individual equity investments
 - f. Board of Directors
 - i. Size and composition of board
 - ii. List of board members with brief statement of each member's background
6. Detailed financial information (Section E of the Application Guide)

D. System Design

The broadband loan application requires supporting data collectively called the “System Design”. The System Design requires the following items in support of a request for loan funds to provide broadband service:

- 1) A description of the proposed service area including a map of the service area. Any existing service areas should be clearly identified. The map should indicate any other broadband providers serving in the area;
- 2) If applicable, a detailed description of all existing facilities that the applicant owns. This should not only include the facilities that will be used to deliver broadband service but all facilities owned by the applicant;
- 3) A detailed description of all the proposed facilities to be constructed with loan funds. This description should also address any distance or coverage limitations associated with the proposed facilities. Furthermore, if any facilities are to be constructed with any other sources of funding, these facilities must also be described and the sources identified in this section;
- 4) If applicable, copies of all required FCC licenses to operate facilities and provide service must also be provided;
- 5) A description of the proposed types of services (frame relay, T1, Ethernet, DSL, etc.) that will be provided including the different levels of bandwidth that will be available (i.e. 200 kb/s, 328 kb/s, 512 kb/s, etc.). This description must also directly correlate the different types and levels of service to the total proposed number of subscribers. It is imperative that the methodology used to complete this correlation be clearly stated;
- 6) A Network Diagram that details all existing and proposed facilities. The diagram must include proposed route miles of plant, types of facilities (microwave, fiber, copper, electronic equipment, etc.), the capacity of the facilities (number of fiber and channels, bandwidth capacity, etc.), and the serving area of the proposed broadband nodes;
- 7) A detailed cost breakdown of all facilities to be constructed. This breakdown should be on a per unit basis. It should also clearly show what will be financed with RUS or Guaranteed loan funds and what will be financed with nonloan funds; and
- 8) A depreciation schedule of all new facilities to be constructed.

****The System Design may be prepared by qualified personnel on the applicant’s staff or by consultants. If the applicant chooses a consultant to prepare the System Design that is not a registered engineer licensed in the state in which the facilities will be constructed, the applicant will need to have a registered engineer, licensed in the state, certify that the proposed System Design will be capable of delivering the proposed broadband services. Also, consulting services shall be obtained**

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only from persons or firms who are not affiliated with, and have not represented, a contractor, vendor or manufacturer who may provide labor, materials, or equipment to the applicant for projects included in the loan application. If the applicant has qualified personnel on staff to complete the preloan services, copies of the staff's qualifications to perform these services must be included as part of the application and must clearly demonstrate the staff's ability to complete the System Design.**

The following certification shall be signed by the applicant, the principal of any firm responsible for the preparation of the System Design, and the certifying engineer (if applicable) and must be included as part of the System Design:

We the undersigned, certify that the data in this System Design is correct to the best of our knowledge and believe it reasonably reflects the cost to serve the proposed subscribers with broadband service and that this System Design adheres to RUS construction procedures as stated in RUS Bulletin 1738-2.

E. Financial Forecast

RUS will approve a loan only if, in RUS' sole judgment, the loan will be repaid according to its terms and within the time agreed. It is the applicant's responsibility to provide RUS with sufficient financial information to determine that the loan will be feasible and adequately secured. Please note, financial information submitted is subject to RUS review and revision. This section should include the following:

1. Certified financial statements of the applicant for the last three (3) years or for as long as the applicant has been in business if less than three years. If at all possible, the financial statements should be audited;
2. A pro forma 5-year financial forecast. This should consist of detailed financial information, including your best estimates of start-up costs (if any), revenues, expenses, your ability to make a profit and all financial data related to any subsidiaries. The pro forma financial statements should include a forecasted income statement, balance sheet, and statement of cash flow. The pro forma should be prepared by a consultant, accountant or individual familiar with preparing forecasted financial statements. If your organization chooses someone outside of a consultant or accountant, that individual's qualifications showing their ability to prepare the pro forma financial statements should be submitted with the application;

NOTE: Beginning with the first calendar year following the end of the forecast period, RUS will require the recipient of a broadband loan to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.25 and not greater than 2.0. The financial information submitted by an applicant should show its ability to meet this requirement.

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<u>Revenues to Consider:</u>	<u>Expenses to Consider</u>
<ul style="list-style-type: none"> ◆ Broadband Revenues <ul style="list-style-type: none"> - cable modem - DSL - Wireless ◆ Sales Revenues ◆ Cablevision Revenues ◆ Telecom Revenues <ul style="list-style-type: none"> - Local and Long Distance ◆ Dial-Up Internet Revenues ◆ Access/Connecting Company Revenues ◆ Web Hosting/Storage Revenues ◆ Any Other Related and Non-Related Revenues 	<ul style="list-style-type: none"> ◆ Access Fees ◆ Cable and Spectrum Leases ◆ Connecting Company Fees ◆ Depreciation Expense ◆ Interest Expense ◆ Salaries/Payroll Expenses ◆ Rent/Leases ◆ Miscellaneous <ul style="list-style-type: none"> - Utilities - Advertising - Supplies - Maintenance - Insurance - Professional Fees - Taxes ◆ Management Agreement Expenses ◆ Any Other Related and Non-Related Expenses

3. Detailed assumptions for each revenue and expense relating to the 5-year projected financial statements. You should consider how many customers are anticipated, rates that will be charged, how the projected subscriber forecast was derived and are your proposed rates in line with others in the industry when preparing the assumptions. Supporting documentation for revenues, such as contracts for service, should be provided. The assumptions should provide RUS with a clear picture on how you derived the figures;

FACTS TO CONSIDER

<ul style="list-style-type: none"> ☼ Long-term forecast analysis should be based on knowledge of the external and internal factors that affect a company’s operations. ☼ It is particularly difficult to make accurate projections for young companies/start-up companies. Research and extensive studies are needed. ☼ Forecasts are only as good as the underlying assumptions on which the projections are based. ☼ Review forecasts for “REASONABLENESS.”

4. A detailed 5-year subscriber penetration forecast. Provide details on assumptions and data used in the forecast; and
5. Proposed schedule of rates to be charged for the broadband service.

F. Environmental Report

RUS is responsible for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs. The policies and procedures set forth in 7 CFR Part 1794 – Environmental Policies and Procedures, assist RUS with making decisions that are based on an understanding of environmental consequences, and taking action that protects, restores and enhances the environment.

Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Therefore, applicants must prepare an environmental report in accordance with 7 CFR Part 1794, for any facilities that will be constructed with RUS broadband loan funds. A copy of 7 CFR Part 1794 is included with this application guide as Attachment 16.

G. Certification of Availability of Broadband Service (7 CFR 1738.11[c][1])

In accordance with the Farm Security and Rural Investment Act of 2002, Title VI – Rural Broadband Access, Section 601[c](2), RUS, in making or guaranteeing broadband loans, must give priority to eligible rural communities in which broadband service is not available to residential customers.

All applicants applying for a loan or loan guarantee under the Rural Broadband Access Loan and Loan Guarantee Program must certify the extent to which broadband service is available to residential customers in the proposed service area. A certification form has been included in this application guide as Attachment 2.

H. Evidence of Legal Notification (7 CFR 1738.11 [c][2])

As stated in Section G, RUS must give priority to eligible rural communities where broadband service is not available to residential customers. Therefore, applicants under the Rural Broadband Access Loan and Loan Guarantee Program must publish a legal notice stating the applicant's intent to offer broadband services in a particular community. The legal notice must set forth the applicant's proposed service area and request that any incumbent broadband service provider submit to RUS, within 30 days, the number of residential customers receiving broadband service in the applicant's proposed service area, the rates of data transmission and the cost of each level of service or proof of commitment to provide service in the proposed service area. In addition, the legal notice should also request that incumbent broadband service providers supply RUS with a map of its service territory. A legal notice response form will be available on the RUS website for the incumbent's use. A sample legal notice has been included with the application guide as Attachment 3.

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The legal notice must satisfy all other requirements to constitute legal notice within the areas proposed to be served. If not already required by state statutes, the legal notice must be published in state and local newspapers covering the applicant's proposed service area. Prospective applicants must provide evidence of their legal notice for applications to be considered complete. This evidence may include an attorney's opinion that legal notice has been published in accordance with applicable state laws or a copy of the actual legal notice. Applicants should also provide the dates of publication and a list of the newspapers where the legal notice was published.

I. Supplemental Information

The following items should be included in the application package;

- ◆ Articles of Incorporation (except for LLC's)
- ◆ By-Laws;
- ◆ Opinion of Counsel and Property Schedule (Sample wording has been included with this application guide as Attachments 4 and 5, respectively.); and
- ◆ Details of any outstanding indebtedness, including; notes, interest rates and forms of security.

If applicable to your organization, the following should also be included in the application package:

- ◆ Operation and or Service Agreements with affiliates;
- ◆ Connecting Company Agreements; and
- ◆ Copies of any FCC licenses.

For Limited Liability Companies (LLC), the following will also need to be submitted:

- ◆ Articles of Organization;
- ◆ LLC or Management Agreement; and
- ◆ Copy of the State Statutes under which your company organized as an LLC.

For Guaranteed Loan Applications, the following will also need to be submitted:

- ◆ Name of Financial Institution Providing the Loan;
- ◆ Address; and
- ◆ Contact Person's Name, Phone Number and Email Address (if applicable).

Please provide any additional information you believe is relevant to the application and necessary to adequately evaluate the application.

J. Compliance with Other Federal Statutes and Regulations

The applicant is required to submit evidence that it is in compliance with other Federal statutes and regulations as follows:

- ◆ E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60, Attachment 6;
- ◆ Architectural barriers, Attachment 7;
- ◆ Flood hazard area precautions, Attachment 8;
- ◆ Assistance and Real Property Acquisition Policies Act of 1970, Attachment 9;
- ◆ E.O.s 12549 and 12689, Debarment and Suspension; **(See 7 CFR 3017.510)**, Attachment 10; and
- ◆ Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Attachment 11;
 - If the applicant is engaged in lobbying activities, the applicant must submit a completed disclosure form, “Disclosure of Lobbying Activities” **(See 7 CFR Part 3018)**”.

“BUY AMERICAN”

For RUS financing of a product, RUS requires that the product complies with the “Buy American” provision of the RE Act of 1938, as amended. A product complying with both of the provisions listed below complies with this “Buy American” provision and is considered a domestic product by RUS. If the product does not meet either of the two conditions, the product is then classified as nondomestic for purposes of RUS financing. These conditions are:

1) Final assembly or manufacture of the product, as the product would be used by an RUS borrower, is completed in the United States or eligible countries (currently, Mexico, Canada and Israel); and

2) The cost of the United States and eligible countries’ components (in any combination) within the product is more than 50 percent of the total cost of all components utilized in the product. The cost of non-domestic components (components not manufactured within the United States or eligible countries) which are included in the finished product must include all duties, taxes, and delivery charges to the point of assembly/manufacture.

A bid for a nondomestic product is considered to be in compliance with the “Buy American” provision by RUS if the nondomestic bid is lower than the lowest domestic bid by at least six percent of the cost of the material content of the nondomestic bid. This six percent cost differential is added to the nondomestic bid for the purpose of determining the low bid only.

*Rural Broadband Access Loan and
Loan Guarantee Program
Federal Forms and Attachments
Fiscal Year 2002*

Contents:

Attachment

1	Application for Broadband Loan or Loan Guarantee
2	Certification Regarding the Availability of Broadband Service to Eligible Rural Communities
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5	Sample Format for Property Schedule
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**U.S. Department of Agriculture
Rural Utilities Service**

***CERTIFICATION REGARDING THE AVAILABILITY OF
BROADBAND SERVICE IN ELIGIBLE RURAL COMMUNITIES***

In accordance with the Farm Security and Rural Investment Act of 2002, Title VI – Rural Broadband Access, Section 601[c](2), The Rural Utilities Service (RUS), in making or guaranteeing broadband loans, must give priority to eligible rural communities in which broadband service is not available to residential customers.

All prospective applicants under the Rural Broadband Access Loan and Loan Guarantee Program must certify to RUS the extent to which broadband service is available to residential customers in their proposed service areas.

Please check the appropriate line below:

- a) Broadband service IS NOT available to residential customers within our project’s proposed service area.
- b) Broadband service IS available to residential customers within our proposed service area.

If (b) above is checked, please complete the questions located on page 2 of this certification.

The _____ (applicant) hereby certifies that the information above and, if applicable, the responses on page 2 of this certification are correct to the best of our knowledge and belief and reasonably reflects the extent to which broadband service is available within our proposed service area.

Date

(Authorized Representative’s Signature)

(Typed or Printed Name)

(Title)

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

If broadband service is available to residential customers within the project's proposed service area, please provide answers to the following questions:

1. Where is the existing broadband service available? (i.e.: entire proposed service area, only within the town limits, businesses only, etc.) Please provide the names of the communities/locations where the service is available and who is providing the service.
2. How many, if any, residential customers are receiving the existing broadband service?
3. What are the existing transmission data rates available? Please specify any differences in receiving/sending.
4. What are the costs being charged to subscribers for each level of broadband service?

LEGAL NOTICE

(Company Name)

We are a prospective applicant under the Rural Broadband Access Loan and Loan Guarantee Program being administered by the Rural Utilities Service (RUS), United States Department of Agriculture. We are required, as a prospective applicant, to announce our intent to provide broadband services (200 kilobits upstream and downstream) in the State of _____ in the following communities/counties:

Incumbent broadband service providers have **30 days** from the date of this Legal Notice to inform RUS if they are currently providing broadband service in these areas or if they have a commitment to provide service in these areas. Incumbent broadband service providers should submit to RUS, on a form prescribed by RUS, the number of residential customers receiving broadband service in the proposed service area, the rates of data transmission, and the cost of each level of service or proof of commitment to provide service in the proposed service area. A map should also be provided showing the boundaries of your service area in relation to the communities above.

A Legal Notice Response Form can be obtained from RUS' website at www.usda.gov/rus/telecom.

SAMPLE BROADBAND OPINION OF COUNSEL

(PRINTED ON ATTORNEY LETTERHEAD)

****NOTE** This is a blanket sample. Please use the language that is appropriate for the company in which the opinion is being prepared. Delete any language that is not appropriate for said company.****

DATE

Administrator
Rural Utilities Service
United States Department of Agriculture
Stop 1500
Washington, D.C. 20250-1500

Subject: (Company Name)

Ladies and Gentlemen:

We are counsel to _____ (the "Company") in connection with the Company's application (Application) for a loan from the Rural Utilities Service (RUS) to provide broadband service. We have examined or caused to be examined by competent and trustworthy persons such corporate records and files and such other records, indexes, and files as we have deemed necessary to permit us to render the opinions expressed herein.

We are of the opinion that:

1. The Company is a (corporation, cooperative, limited liability company, etc.) duly formed, validly existing and in good standing under the laws of the State of _____.
2. The Company operates in the States of _____ and is duly licensed and qualified and in good standing as a foreign _____, authorized to do business and own property in such States.
3. The Company has full legal right, power and authority to own its property and carry on its business as now conducted.
4. The execution, delivery and performance by the Company of the Application and the consummation of the transactions contemplated thereby are within the powers of the Company.
5. The Application has been duly executed by the Company.

Attachment 4

6. The Company owns the personal and real property described on Schedule A attached hereto and has the power to grant a security interest in such property and all other property owned by the Company to the RUS as collateral for the loan described in the Application.
7. The real property leases, tower leases and equipment leases (Leases) identified in Schedule A are in full force and effect and constitute the legal, valid and binding obligations of the Company and the other parties thereto. (Please list leases in appropriate categories on Schedule A.)
8. The Company has such rights under the Leases as are necessary to operate its business as described in the Application and may pledge and assign its interests in the Leases to RUS as security for the loans described in the Application.
9. The personal property descriptions set forth on Schedule A are sufficient for purposes of financing statements creating a lien on such collateral under Article 9 of the Uniform Commercial Code in effect in the State of _____, where the financing statement must be filed.
10. Schedule A contains complete and accurate descriptions of all the real property owned or leased by the Company, excluding easements and rights-of-way, which are sufficient, in form and substance, for inclusion in the granting clause of a mortgage creating a lien on such property.
11. A security interest in the Leases can be perfected by filing a _____ in the Office of _____ in the State of _____.
12. For purposes of Article 9 of the Uniform Commercial Code in the State of _____, the Company is a "transmitting utility."
13. The Company's organizational number is _____.
14. The exact true and correct legal name of the Company, as stated in its organization documents, is _____.
15. The Company's corporate debt limit is _____.
16. The execution, delivery and performance by the Company of the loan documents would not (would) require the consent, permission or authorization of (any) governmental authority.
17. The Company's taxpayer identification number is _____.
18. The pending claims or litigation against the Company are described in the attached Schedule B.
There are no pending claims or litigation against the Company.
19. The Company has no subsidiaries.
The Company's subsidiaries are listed on the attached Schedule C.

20. The titles of the officials of the Company with the proper authority to execute all loan documents on behalf of the Company, and attest to the execution where required, are _____.

Very truly yours,

SAMPLE FORMAT FOR A PROPERTY SCHEDULE

A property schedule prepared for submission with a loan application should include the following information:

- (a) The date of the deed and the names and relationship of the grantors; and
- (b) The date and place of recording, including the office, county, state, book and page number.

This information should be submitted in accordance with the following sample:

1. A certain tract or parcel of land situated in Bates County, State of Missouri, described in a certain deed, dated August 29, 1966, by Julia C. Doe and W. A. Doe, her husband, as grantors, to the Mortgagor, as grantee, and recorded on August 29, 1966, in the Office of the Clerk of Chancery Court of Bates County, in the State of Missouri, in Deed Book 52, on page 268;
2. A certain tract ...

In addition to supplying the information in the format requested, the applicant's attorney needs to prepare and attach to the top of the property schedule a letter certifying to its correctness. A suggested form for this opinion letter is attached.

**U.S. Department of Agriculture
Rural Utilities Service**

Equal Opportunity and Nondiscrimination Certification

All loans made under the Rural Broadband Access Loan and Loan Guarantee Program are subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, as amended, (7 CFR Part 15); Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 901 *et seq.*; 7 CFR Part 15b); and Age Discrimination of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR Part 90); and as amended by Executive Order 11375 Amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR, 1966, 1970 Comp., p. 684).

All recipients of financial assistance from RUS, the prospective primary participant commits to carry out RUS' established policy to comply with the requirements of the above laws and executive orders to the effect that no person in the United States shall, "on the basis of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Rural Broadband Access Loan and Loan Guarantee Program.

The _____ (Applicant) hereby certifies that, as a prospective recipient under the said Rural Broadband Access Loan and Loan Guarantee Program, it will comply with the above referenced laws and executive orders.

(Date)

(Authorized Representative's Signature)

(Name Typed or Printed)

(Title)

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

**U.S. Department of Agriculture
Rural Utilities Service**

Certificate Regarding Architectural Barriers

All facilities financed with RUS loans that are open to the public, or in which physically handicapped persons may be employed or reside, must be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*) and with the Uniform Federal Accessibility Standards (UFAS), (Appendix A to 41 CFR subpart 101-19.6).

As a prospective primary participant recipient of financial assistance from RUS, this organization commits to carry out RUS' established policy to comply with the requirements of the above referenced law to the effect that all facilities must be readily accessible to and usable by handicapped persons.

The _____ (Applicant) hereby certifies, that, as a prospective recipient under the Rural Broadband Access Loan and Loan Guarantee Program, it is in compliance, or will be in compliance upon completion of the project, with the above referenced law.

(Date)

(Authorized Representative's Signature)

(Name Typed or Printed)

(Title)

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

**U.S. Department of Agriculture
Rural Utilities Service**

Certificate Regarding Flood Hazard Area Precautions

If the project is located in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 through 4128). If applicable, the insurance must cover, in addition to the buildings, any machinery, equipment, fixtures, and furnishings contained in the buildings. RUS will comply with Executive Order 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117), and 7 CFR 1794.41, of this chapter in considering the application for the project.

Please check the appropriate line below:

- a) The project is not located in a 100 year flood plain; therefore, no Flood Insurance is required.
- b) The project is located in a 100 year flood plain and the required insurance is or will be provided by:

The _____ (Applicant) hereby certifies, that, as a prospective recipient under the Rural Broadband Access Loan and Loan Guarantee Program, it is in compliance, or will be in compliance during construction and/or installation of equipment and upon completion of the project, with the above referenced law.

(Date)

(Authorized Representative's Signature)

(Name Typed or Printed)

(Title)

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

**U.S. Department of Agriculture
Rural Utilities Service**

***Uniform Relocation Assistance and Real Property Acquisition
Policies Act of 1970 Certification***

The _____ (Applicant) assures that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), 42 U.S.C. 4601-4655, and with implementing Federal regulations in 49 CFR Part 24 and 7 CFR Part 21.

Specifically, the _____ (Applicant) assures that:

Whenever Federal financial assistance is used to pay for any part of the cost of a program or project which will result in the displacement of any person:

- (a) Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons in accordance with sections 202, 203, and 204 of the Uniform Act;
- (b) Relocation assistance programs offering the services described in section 205 of the Uniform Act shall be provided to displaced persons; and
- (c) Within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 205(c) (3) of the Uniform Act.

Date

(Authorized Representative's Signature)

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

**U.S. Department of Agriculture
Rural Utilities Service**

***Certification Regarding Debarment, Suspension, and Other Responsibility
Matters – Primary Covered Transactions***

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' Responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed transaction.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) are not presently debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Authorized Representative's Signature

Date

Name Typed or Printed

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

**U.S. Department of Agriculture
Rural Utilities Service**

***Certification Regarding Lobbying for Contracts, Grants,
Loans, and Cooperative Agreements***

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (Copies of this form may be obtained from RUS.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Authorized Representative's Signature *Date*

Name Typed or Printed

(This is not an official Government form. It has been prepared to assist and expedite the application process and is only intended for use in the Rural Broadband Access Loan and Loan Guarantee Program.)

U.S. Department of Agriculture
Rural Utilities Service

Points of Contact

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**U.S. Department of Agriculture
Rural Utilities Service**

**GENERAL FIELD REPRESENTATIVES
TELECOMMUNICATIONS PROGRAM**

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Northern Wisconsin

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New Jersey
New York
Eastern Pennsylvania

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Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

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Western South Dakota

Eastern South Dakota
Northwest Iowa

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(excluding Northwest Iowa)

Missouri

Northern Minnesota

Idaho
Wyoming
Montana

Southern Minnesota

Alaska
Washington
Oregon

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STATES COVERED

Northern Texas
Southern Oklahoma

Nebraska
Northern Kansas

Southern Texas

Arizona
California
Nevada

S. Kansas N. Oklahoma
Guam Hawaii
Federated States of Micronesia
Commonwealth of the N. Mariana Islands
Republic of the Marshall Islands
Republic of Palau

New Mexico
Colorado
Utah

Arkansas
Louisiana