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Via Overnight Mail

July 10, 2007

Ms. Michele Brooks, Acting Director
Program Development and Regulatory Analysis
USDA Rural Development
1400 Independence Ave., STOP 1522, Room 5159
Washington, D.C. 20250-1522

Re: Docket No. RUS-06-Agency-0052

Dear Ms. Brooks:

Cinergy MetroNet, Inc. ("CMN") submits these comments to the Rural Utilities Service ("RUS") in response its Notice of Proposed Rulemaking ("NPRM"), Docket No. RUS-06-0052, regarding proposed changes to the Rural Broadband Access Loan and Loan Guarantee Program ("RUS Program"). Specifically, CMN opposes the modification of the definitions of "Eligible Rural Community" and "Urban Area". The combination of these proposed definitions will result in an unduly restrictive standard for the selection of eligible communities that will keep thousands of underserved rural communities from receiving the broadband services they desperately need. Moreover, the proposed definitions are contrary to both the spirit and letter of the statute that defines the terms specifically for the RUS Program.

The future success of rural America is tied to the deployment of broadband service which will create economic opportunity for rural America. CMN has utilized the RUS Program to provide broadband services in rural Indiana. As a competitive local exchange carrier and cable television operator, CMN has realized the RUS' goal of bringing high-quality innovative broadband and telecommunications services to historically underserved communities by overbuilding Greencastle and Seymour, Indiana. Without the RUS Program, CMN could not have obtained the necessary funding to build out these communities. To date, CMN has received a \$106 million dollar RUS loan to bring advanced broadband services to 11 rural communities in Indiana and is in the preliminary stages of requesting additional RUS funds to build out additional rural communities.

CMN is making available advanced broadband capabilities that dramatically exceed national standards through a network architecture that provides competitive Internet, data,

voice and video services. CMN believes that the RUS can address the issues in its NPRM without changes to the current eligibility requirements.

Specifically, the RUS proposes to modify the definition of "Eligible Rural Community" which currently provides:

"The term 'eligible rural community' means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants."

The RUS proposes to change the definition to:

"'Eligible Rural Community' means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

- (1) The boundaries of an Urban Area;
- (2) An incorporated city or town with a population of more than 20,000; or
- (3) An area that has four or more Existing Broadband Service Providers (excluding the applicant)."

The RUS also proposes to include "Urban Clusters", as defined by the Bureau of the Census, in the definition of Urban Area. The Bureau of the Census defines an "Urban Cluster" as an incorporated city or town with a population of greater than 2,500 and less than 50,000.

By defining Eligible Rural Community as any area that is not within the boundaries of an Urban Area and defining Urban Area to include Urban Clusters, the proposed rules will create a result that cannot be intended or contemplated by the RUS. In effect, only towns and cities with populations below 2,500 will be eligible for RUS funding. Instead of assisting the deployment of broadband services in underserved areas, the proposed rules will discourage new rural broadband deployments due to the lack of qualified communities. Moreover, incumbent service providers, who have refused to upgrade their infrastructures for decades, in towns and cities such as Greencastle and Seymour, will be virtually insulated from competition. Without RUS funding, it is simply not economically viable for most companies to overbuild such communities and repay the loan. With no competition to spur capital improvements by the incumbents, these communities will continue to languish behind as they have for decades without access to broadband services that are increasingly important to the economic viability of these communities.

Greencastle, Indiana was the first community that CMN built out with a high-quality broadband network utilizing a loan from the RUS Program and is a good example of the problem with the proposed definitions. Under the proposed definition of Urban Area, Greencastle would have been disqualified for the RUS Program even though it is located almost 50 miles away from Indianapolis and has a population of under 10,000. As previously noted above, the definition of Urban Area, as defined by the Bureau of

Census, includes Urban Cluster which sets a population threshold of under 2,500 in order to qualify for RUS Program eligibility.

This cannot be the result that the RUS and Congress intended. In establishing the RUS Program, Congress explicitly defined Eligible Rural Communities as communities outside of MSAs that are smaller than 20,000 inhabitants as recognized by the Census Bureau. Two years later, Congress broadened the eligibility criteria by explicitly removing the MSA restriction. Thus, it appears Congress' intent is to broaden eligibility not restrict it. As a practicable matter, the proposed rules will make ineligible substantial portions of rural America – the very ones that the RUS is attempting to assist.

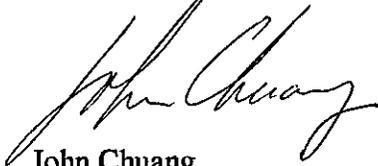
Rather than implement the proposed rules, perhaps the better approach is for the RUS to utilize the discretion it already possesses in approving loans to achieve its stated objectives and to guard against potential abuses. This approach will achieve the RUS Program's objectives without rules that will unnecessarily exclude thousands of communities that are underserved and would economically benefit from the type of high-quality broadband services that CMN provides. Moreover, rural markets are by definition small in scale, and that size by its very nature limits the degree of competition that can develop. The proposed change to the eligibility requirement will eliminate any competitive pressure for incumbent service providers to pursue upgrades to their network capability which is increasingly seen as substantially inferior to the services provided by CMN.

According to the Mayor and the local Executive of Economic Development of Greencastle, Greencastle would have remained grossly underserved in terms of broadband services if not for the RUS Program and CMN. For years prior to the RUS Program, Greencastle officials pleaded with the incumbent service providers on numerous occasions to provide broadband services. Without viable competition, the incumbents responded by doing nothing. Greencastle officials had to take the extraordinary step of filing a complaint with the Indiana Utility Regulatory Commission against the incumbent telephone provider just to get services such as caller ID, voice mail services and telemedicine links for the local hospital. Further, prior to the RUS Program and CMN, Greencastle was not competitive for attracting and retaining businesses that required quality and competitively priced broadband services. Prospective businesses now require availability of high-quality broadband services as a condition for locating to Greencastle. In its June/July 2007 issue, Area Development magazine listed broadband services as the fifth most important site location criteria for businesses. Thus, the RUS should keep its eye on its stated objective which is assisting in the development of broadband access with the same capabilities as those in major urban areas.

CMN does not see the need for changes to the eligibility requirements and urges the adoption of rules that do not disqualify thousands of small towns and cities from loan eligibility. The RUS Program is working well in that it encourages investment in areas that are historically underserved. CMN believes that the RUS has the ability within the current rules and discretionary authority over loan approvals to achieve its objectives and to prevent abuses. Ultimately, changes to the eligibility requirement will result in

denying thousands of underserved rural communities the benefits that stem from the RUS Program. The RUS should encourage, wherever possible, broadband infrastructure deployment that can deliver advanced services while simultaneously pursue broader coverage of broadband availability in rural America.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Chuang". The signature is fluid and cursive, with the first name "John" written in a larger, more prominent script than the last name "Chuang".

John Chuang
Corporate Counsel