Before the
United States Department of Agriculture
Rural Utilities Service
Washington, D.C. 20250

In the Matter of:	)
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Rural Broadband Access Loan and Grant Program	)
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COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association (APPA) appreciates this opportunity to provide background information that will facilitate the efforts of the Rural Utilities Service (RUS) to implement and administer the broadband loan and grant provisions of the Farm Security and Rural Investment Act of 2002.

As Assistant Commerce Secretary Nancy Victory has recently noted, "the opportunities and innovation offered by high-speed networks are crucial to promoting America's productivity and our people's welfare."[1] Similarly, Federal Communications Commission Chairman Michael Powell has observed that "ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance many other worthy objectives – such as improving education and advancing economic opportunity for more Americans."[2] Likewise, the Rural Utilities Service has suggested "[t]he information revolution holds its greatest promise in rural America, where distance, density and geography have often

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1 Nancy J. Victory, "Removing Roadblocks to Broadband Deployment," presented at the Competition Policy Institute's Conference on Keeping Telecom Competition on Track (December 6, 2006), http://www.ntia.doc.gov/ntiahome/speeches/2001/cpi_120601.htm.

2 Michael K. Powell, "Digital Migration Part II," Press Conference (October 23, 2001), http://www.fcc.gov/Speeches/Powell/2001/spmkp109.html.

impeded economic development."[3] Unfortunately, however, broadband is not being deployed as rapidly as it should be – or could be – outside the Nation's major populations centers.

In this proceeding, the Rural Utilities Service has invited the public to comment on numerous issues related to rural broadband access.

INTEREST OF APPA

APPA is a national service organization that represents the interests of more than 2,000 publicly-owned, not-for-profit electric utilities located in all states except Hawaii. Many of these utilities developed in communities that were literally left in the dark as electric companies in the private sector pursued more lucrative opportunities in larger population centers. Residents of these neglected or underserved communities banded together to create their own power systems, in recognition that electrification was critical to their economic development and survival. Public power systems also emerged in several large cities – including Cleveland, Jacksonville, Los Angeles, Memphis, Nashville, San Antonio, Seattle and Tacoma – where residents believed that competition was necessary to obtain lower prices, higher quality of service, or both. **Currently, approximately three-fourths of APPA's members serve communities with less than 10,000 residents.** At present, public power systems operated by municipalities, counties, authorities, states and public utility districts provide electricity to approximately 40 million Americans.

The patterns that marked the evolution of the electric power industry are now repeating themselves in the communications industry. As private communications providers focus on establishing or further entrenching themselves in large population centers, many smaller communities are at risk of falling behind in obtaining the full benefits of the Information Age.

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[3] *Ex Parte Comments of the Rural Utilities Service* in FCC Docket No. 98-122 (filed September 21, 2000) (Attachment A).

These benefits include vigorous economic development, educational and occupational opportunity, affordable health care, and quality of life.

Furthermore, the recent economic downturn and the shakeout in the communications industry have significantly slowed or stopped private-sector deployment of broadband networks and advanced telecommunications in most areas. Numerous competitive local exchange carriers have either cut back on their plans to compete with incumbent telecommunications providers or have gone out of business altogether.[4] The same misfortune has befallen many of the "broadband overbuilders" that had intended to build sophisticated new communications networks to compete simultaneously with providers of voice, video, data and other advanced communications services.[5] According to the National Telephone Cooperative Association, small telephone companies have curtailed investments in broadband infrastructure in rural areas to such an extent that "few additional customers will gain access over the next few years."[6] Even the major incumbent providers of cable and telecommunications services have retreated from their promises to extend their services aggressively outside their traditional markets.[7]

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4 Goodman, "A Hot Sector Burns Out As Investors Stop Calling, Companies Search for Answers," *The Washington Post* at G01 (February 28, 2001), http://www.washingtonpost.com/ac2/wp-dyn/A59646-2001Feb26?language=printer; Kane, "Rhythms Looks For a Way Out," *CNET News.com* (April 2, 2001), http://news.cnet.com/news/0-1004-200-5419260.html?tag=lh.

5 Estrella, "Digital Access Pulls The Plug," *MultichannelNews* (March 1, 2001), http://www.tvinsite.com/multichannelnews/index.asp?layout=print_page&publication=Multichannel+News&webzine=tv&doc_id=17868&articleID=&pub_id=MCN; Gerstein, "No Hand–Wringing Allowed – Focus on the Future," *The TelecomAnalyst* (January 9, 2001), http://www.thetelecommanalyst.com/individual/010109sections/pan4gold.asp.

6 "Telcos: Low Demand Slows Rural Broadband Deployment," *Telecommunications Reports* (December 17, 2001), http://www.tr.com/online/tr/2001/tr121701/Tr121701-25.htm#TopOfPage.

7 *See* Borland, "Local Phone Giants In a Squeeze," *CNET News.com* (March 20, 2001), http://news.cnet.com/news/0-1004-200-5193605.html; "SBC Reports Third Quarter Results," http://www.sbc.com/News_Center/1,3950,31,00.html?query=20011022-1; Estrella, "Time Warner Puts 100K Subs on Block," *Multichannel News* (September 17, 2001).

In this environment, it could well be many years before the private sector is willing or able to offer rural and other underserved communities the same services and prices that are available in the lucrative sections of major population centers. Thus, many of APPA's members have concluded that they must rely on themselves again if they are to continue to survive and thrive. They believe that advanced telecommunications are as basic to modern life as electricity, water and roads, and that they must develop their own facilities to ensure that their residents will not be left behind in obtaining the benefits of the Information Age.

Throughout the country, scores of public power systems are filling service gaps or providing essential competition to incumbent communications providers, as Congress intended in enacting the Telecommunications Act of 1996. Below, we present a number of representative examples. These examples show what many other public power systems could do for their communities if financial assistance or incentives were made available.

BROADBAND DEPLOYMENT BY PUBLIC POWER UTILITIES

To perform their core function of providing electric power safely, reliably and efficiently in the 21st Century, public power utilities must have highly sophisticated communications capabilities. As a result, hundreds of public power utilities have already upgraded their communications networks and facilities, and hundreds more will do so during the next few years for their own use and for other government needs. These upgraded facilities can readily support the provision of video, voice, data and other advanced telecommunications services, either by the utilities themselves or by third-party providers of such services.

Public power utilities also have many other skills and assets that are well suited to deploying broadband networks and advanced telecommunications. They have workforces and equipment that are geared toward providing technologically challenging products and services. They reach most, if not all, of the addresses in the communities they serve. They have experience with all aspects of

customer relations, including billing and technical support. They have access to poles, ducts, conduits and rights of way. They also have an ethic of universal service. Thus, as the Federal Communications Commission (FCC) recently observed:

> [M]unicipally-owned utilities and other utilities have the potential to become major competitors in the telecommunications industry. *In particular, we believe that the entry of municipally-owned utilities can further the goal of the 1996 Act to bring the benefits of competition to all Americans, particularly those who live in small or rural communities.* We emphasized this fact in our August 2000 report on the deployment of advanced services. In that report, we presented a case study detailing advanced services deployment in Muscatine, Iowa where the municipal utility competes with other carriers to provide advanced services to residential customers....Our case study is consistent with APPA's statements in the record here that municipally-owned utilities are well positioned to compete in rural areas, particularly for advanced telecommunications services, because they have facilities in place now that can support the provision of voice, video, and data services either by the utilities, themselves, or by other providers that can lease the facilities.

Missouri Order, ¶ 10.

Many public power systems have already come forward to fill service gaps or provide essential competition in communications area. Many others would also do so if given appropriate incentives. **As of December 2001, APPA had identified 450 public power systems that operate communications systems capable of providing broadband service.** At least 91 members of APPA now provide cable television service, and at least 107 provide Internet access service. These systems were being used to provide the following the following services in addition to internal uses:[8]

- fiber leasing – 122
- Internet service provider – 107
- cable television – 91

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[8] American Public Power Association. "Public Power: Powering the 21st Century With Community Broadband Services" (2002), which is available at http://www.appanet.org/pdfreq.cfm?PATH_INFO=/legislativeregulatory/broadband/CommunityBroadbandFact.pdf&VARACTION=GO.

- cable modem – 59
- long distance telephone – 25
- broadband resale – 84
- local telephone – 29
- municipal data network – 163

The following are some representative examples.

In Glasgow, Kentucky, a rural community of approximately 14,000 residents, the public power utility has been providing competitive communications services since the late 1980's – long before the advent of private sector "overbuilders." Today, the public utility provides Glasgow residents cable and telephone service as well as well high speed Internet access at speeds of over 4 Mbps.

In Muscatine, Iowa, the public power utility was the first provider of broadband service in the City. As a result, both the incumbent cable provider and the incumbent telephone company promptly launched their own high speed offerings, giving the residents of the City the benefit of three-way competition. In its second annual report on broadband deployment, the FCC pointed to the Muscatine's experience as a model of how a municipal electric utility can contribute to the fulfillment of the Telecommunications Act's pro-competitive goals.[9]

Public power utilities may also lead the way to the next generation of advanced telecommunications services – those offered through fiber to the home. For example, while major broadband providers claim that they have yet to find a business model that would justify offering

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[9] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Second Report*, ¶¶ 139-51, FCC 00-290 (rel. Aug. 21, 2000)

fiber-to-the-home,[10] the Public Utility District of Grant County, Washington, has already installed over 7,000 fiber miles and is building out an open-access fiber-to-the-home system that will make advanced telecommunications services available at gigabit speeds to approximately 40,000 homes and businesses by 2006.[11]

Similarly, the public power utility of Bristol, Virginia, a community of 18,000 on the border of Virginia and Tennessee, is building a world class fiber-to-the-home/business network that will enable customers to obtain speeds of 1 Gbps or more. The City is not only providing some advanced telecommunications services itself, but it is also making its network available to any communications provider that wants to provide service in the City.[12] By providing "open access" to its system, the City hopes to promote economic development by attracting providers that would otherwise be unwilling to invest in the City.

While most of the communications systems operated by members of APPA are relatively small, there are also some sizable ones. For example, in Georgia, a new statewide public communications entity, Georgia Public Web, Inc. (GPW), is using telecommunications capacity leased from the Municipal Electric Authority of Georgia to bridge the state's digital divide. GPW has recently obtained a CLEC license from the Georgia Public Service Commission to offer cost-effective, state-of-the-art telecommunications, Internet and web solutions to small and larger communities throughout Georgia.[13]

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10 Brown, "New Technology, Old Rules?," *Broadband Week* (May 21, 2001), http://www.broadbandweek.com/news/010521/010521_news_regs.htm; Estrella, "RCN Quietly Testing FTTH Deployment," *MultichannelNews* (June 13, 2001), http://www.tvinsite.com/multichannelnews/index.asp?layout=story_stocks&articleid=CA89798&display=archives

11 http://www.gcpud.org/zipp/press_3_20_01.htm.

12 http://www.bvunet.net/rp_internet.asp.

13 http://www.townware.com/exec/site/?mid=327&fid=1459.

One of the largest public communications network will be a $100 million fiber network that is currently under development in Memphis, Tennessee. This network will furnish wholesale high-speed communications services on an "open access" basis to telecommunications and data providers and resellers. These providers, in turn, will offer cable TV, video on-demand, high-speed data connections, telephone services and other advanced communications services throughout the city in competition with incumbent providers.[14]

In summary, public power utilities have had great success in deploying broadband networks and advanced telecommunications. Numerous other public power utilities could turn virtually at once to providing the same kinds of services as their counterparts highlighted above with some assistance. And there is a significant difference between public power utilities and other potential broadband providers. Public power utilities have a long-term commitment to their customer-owners, providing facilities-based services with universal coverage.

Our experience highlights that (a) there is substantial demand for broadband services in rural areas; (b) broadband is being deployed, but obviously on such a limited basis that many communities and portions of communities are being left behind; and (c) there is a need for low-interest capital to stimulate further investment and the new broadband loan program established under the Farm Bill creates a significant opportunity to advance further investment; and (d) all providers willing to provide broadband services throughout a community and with viable business strategies ought to be given the opportunity to provide service.

IMPLEMENTATION OF SECTION 6103 OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

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[14] Flessner, "Memphis Utility Forms Joint Venture For Fiber Network," Times & Free Press (November 22, 2000), http://www.timesfreepress.com/2000/nov/22nov00/memphisutility.html.

The statute requires that RUS promulgate rules governing the broadband loan and grant program by November 2002. The Congress left a number of issues for RUS to resolve in the rulemaking process. Public power utilities have a keen interest in how the program is to be designed, both as potential applicants and as representatives of the communities that are likely to benefit from RUS support. APPA, therefore, addresses a number of issues before you, suggesting how to meet Congress' intent and ensure that the program performs effectively.

1. Definition of Broadband Service

   APPA believes that the definition of broadband service should be set at the highest possible level that will encourage prompt and substantial new entrants. To qualify as broadband the service should be defined as having a minimum high data speed of no less than 200 kilobits in each direction. If RUS establishes the definition at this minimum level, the RUS should review its definition within two years, and every two years thereafter, to ensure that its definition is consistent with the Administration's emerging national broadband policy. Given the increasing demands for transmitting data, charts, music and video, RUS should not be promoting service that will fail to meet present, not to mention intermediate term, demands. It makes no sense for RUS to provide assistance for broadband services that will be outmoded at the time they are first delivered. Dial-up service, DSL service and cable service that cannot meet this standard on a uniform basis, after any foreseen degradation of speed based on distance or usage, should not qualify for assistance. In other words, service over twisted copper wire or non-upgraded cable should not be supported.

2. Cost and Availability of Service

Since the loans and grants that will be offered under this program provide a federal subsidy, the cost of the broadband supported service should be no greater than the cost to the residential customer of the least expensive broadband service offered by any provider anywhere in the state.

In addition, the subsidized broadband service should be available for purchase by every individual in the eligible community within 5 years of the receipt of the loan or grant. Failure to offer the service within this time period should result in the repayment of the grant in full or repayment of the loan in full with annual interest at a rate double the level established in the loan agreement.

Service should not be offered to the wealthiest individuals and wealthiest areas of a community first. Applicants for funds should explain the intended build out of services, with a description of the demographics of the areas to be served, in terms of income, race and ethnicity.

The applicants should indicate how they have given priority to deploying broadband to government facilities, schools, law enforcement, medical services and libraries.

The applicants should describe the network capability of its preferred broadband service.

3. Priorities Among Communities and Providers

Loans and grants should be offered to applicants serving communities in the following order of priority: a) communities that presently have no broadband service, b)

communities where less than 10 percent of the population is being served, and c) all other communities.

4. Applicants

To ensure that RUS has the best and broadest range of applicants, and so all applicants will have a fair and equal opportunity to be chosen, RUS should require new application submissions based on the new legislation and regulations. No credit or priority should be given to unfunded applicants of the pilot program.

5. Eligibility of State and Local Governments

State and local governments are eligible to be awarded funds 90 days after regulations are promulgated, so long as there is no provider of broadband services in the community or no private provider has made a commitment to offer such services. It was clear from the discussion of this provision in the House-Senate Conference Committee that an existing broadband provider had to be offering more than a *de minimis* level of service. The RUS should award financing to a qualified provider in communities where another entity is only providing service to only a portion of the eligible community. First, the RUS should make it clear in its rules that the burden is on the "other entity" that is providing service to demonstrate that its service is to the entire community before the RUS would disqualify a municipality from the broadband program. Service to only a portion of the community should not be sufficient to disqualify a municipality from the program. Second, the RUS should define a commitment to serve in the following manner: a) that the private provider has filed with the state public service commission or the appropriate state, regional or local government board a binding promise that it will offer broadband service to the total residential community within a 5 year period of time, b) that the private provider has worked with the community as evidenced by a majority

approved public referendum or local government board majority vote approving the agreement to serve, and c) that the private provider has obtained a bank letter of credit for the estimated total cost of the community broadband build out that may be drawn upon by the community if the private awardee fails to complete the build out within the 5 year commitment period.

6. Sale of Subsidized Assets

In order to assure that broadband RUS funds are being used to provide broadband service to unserved and underserved rural communities and at the same time are being used to promote competition, no private provider, or successor in interest, of broadband services that has received a RUS loan or grant to support such services in the community should be able to sell or otherwise transfer the benefits of ownership, directly or indirectly, to any provider that is at time of the sale or transfer providing broadband services any where in the state, for a period not to exceed 5 years after the date the loan is repaid or 10 years from the date the grant is received. Further, any sale or transfer of ownership interest in the RUS supported assets should require the approval of RUS. Any proceeds from such sale or transfer should be used first to repay in full all outstanding principal and interest of a loan received, and in the case of a grant, to repay the grant in full if the sale or transfer is within 10 years of the date of award.

CONCLUSION

It is widely believed that ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance economic opportunity for the American public." APPA agrees that ubiquitous broadband deployment is vitally important to our Nation. In fact, APPA has worked diligently since the enactment of the Telecommunications Act of 1996 to ensure that its members have a full and fair opportunity to

contribute to the rapid deployment of broadband infrastructure, particularly in unserved or underserved areas.

There is no reasonable basis for believing that the private sector will deploy new broadband facilities outside of the major population centers any time soon. With so many CLECs and overbuilders bankrupt or in serious financial trouble, with even the major telephone companies and cable operators pressed for capital in part the result of investor lack of confidence in the telecommunications sector, and with substantial unfilled demand for broadband in areas close to the major population centers, elementary principles of economics indicate that profit-seeking entities will first seek to fill demand in the most lucrative markets available – those nearest to the major population centers. It is precisely for this reason that it is so crucial for public power systems to be able to move forward as soon as possible with RUS support in the deployment of broadband in rural areas.

Respectfully submitted,

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