

The pending, unfunded applications received under the broadband pilot program were returned to the applicants as required in the **Federal Register** at 67 FR 3140. Therefore, RUS has given these applicants a 30-day window to reapply under the requirements of this section. Applications which are submitted and determined to be complete within 30 days of publication of this section will be given priority for funding over new applicants under this program. Only completed applications which are technically and economically feasible will be considered for funding.

Availability of broadband service. As state above, Title VI directs RUS to give priority to eligible rural communities in which broadband service is not available. RUS took into consideration its long history in the telecommunications program in setting forth the criteria for determining the availability of broadband service and decided to consider not only whether broadband was physically available but also the quality of any existing broadband service in a community in granting priority status for funding.

RUS will first consider applications proposing to provide service where none is physically available, the "unserved" communities.

Second, RUS will consider applications proposing to provide service where rates are not comparable to similar service in urban and suburban areas, or quality of service is not satisfactory, the "underserved" communities.

In determining whether broadband service is available, RUS requires the applicant to publish a legal notice stating its intent to provide service in a community and requesting any incumbent provider to submit certain information to RUS including service territory, cost of service, rates of data transmission. RUS understands that this may be Confidential Business Information and will protect the confidentiality of the information.

Acquisitions. Title VI permits the use of loan funds for the acquisition of facilities and equipment for the provision of broadband facilities. However, RUS believes the primary intent of the legislation is to provide funding for broadband deployment in rural communities where residential service is not available. RUS will fund the acquisition of eligible facilities and equipment only if the applicant demonstrates it is necessary and incidental to furnishing or improving rural broadband service and the acquisition is less than 50 percent of the loan amount requested.

Refinancing. Title VI permits RUS to refinance existing RUS telecommunications debt if the use of the proceeds will further the construction, improvement, or acquisition of facilities and equipment for broadband service. RUS will limit the funds lent for refinancing to 40 percent of the total loan amount.

Competition with Existing RUS Telecommunications Borrowers. RUS believes that loan security for an existing telecommunications borrower may be at risk should RUS fund a competing service which could also offer traditional telephone service in addition to broadband service. However, residents in RUS telecommunications borrower service areas should not be denied the opportunity to subscribe to broadband service if the incumbent is not willing to provide the service. RUS will give existing telecommunication borrowers a two-year window in which RUS would not consider applications proposing to offer broadband service in an existing RUS telecommunications borrower's service area 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.

The incumbent RUS telecommunications borrower must provide, prior to October 1, 2004, support of its intent through submitting either a loan application to construct broadband facilities to RUS or another lender or proof that construction of broadband facilities has begun. Should the existing telecommunications borrower construct or begin to construct broadband facilities during the two-year window, RUS will not consider any applications proposing to provide competitive broadband service in that incumbent borrower's territory. RUS will monitor the incumbent's compliance with the letter of intent through onsite inspections or any other means necessary. If the borrower is not making satisfactory progress in providing broadband service in its local exchange service territory, RUS will consider applications proposing to provide broadband service in their territory.

This same principle will hold for borrowers under the Rural Broadband Access Loan and Loan Guarantee Program. In order to protect loan security, RUS will not fund applications proposing to construct broadband facilities in communities served by

borrowers using funds under this part regardless of the definition used for broadband service at the time of loan approval.

Rate-of-data transmission criteria for defining broadband service. Title VI states that the Secretary shall review and recommend modifications of rate-of-data transmission criteria for purposes of the identification of broadband service technologies. Given the rate of change in technology RUS feels that the rate-of-data transmission criteria may need to be changed within the 6-year time frame of the broadband loan program. Therefore, RUS will publish the criteria in the **Federal Register** at the beginning of each fiscal year. The newly published rate will be the minimum for all new applicants in that fiscal year. Unfunded, complete applications from the previous fiscal year will not be required to meet the new rate-of-data transmission criteria. Those applications will be evaluated for approval on the basis of the criteria in place as of the date of completion.

Conference language also suggests that RUS continue the use of the FCC definition of broadband service, as was used in the pilot program, in order to " * * * continue the current high standard used by RUS in determining what broadband service is." In the broadband pilot program, RUS used the FCC standard for "advanced telecommunications capability" as the rate-of-data transmission criteria for broadband. As of the date of publication of this regulation, the FCC uses the term "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed exceeding 200 kilobits per second. RUS will continue to use this current standard for the rate-of-data transmission criteria unless the FCC changes the rate used in "advanced telecommunications capability". If FCC changes the rate, RUS will revisit its definition of broadband. RUS recognizes the value of coordinating with other agencies in determining rate-of-data transmission criteria for the purpose of determining broadband, and will continue to do so.

Notice of application deadline. At the beginning of each fiscal year, RUS will publish in the **Federal Register** a Notice of Application Deadline. The notice will cover those items in the regulation which are subject to annual review and change, including loan levels in each type of loan, rate-of-data transmission criteria, density and income requirements for 4-percent direct loans, and the dollar amounts available in each State under the allocation.