Tennessee Electric Cooperative Association
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September 10, 2018

Michele Brooks
Rural Development Innovation Center
Regulations Team Lead
U.S. Department of Agriculture
1400 Independence Avenue, SW
Stop 1522, Room 1562
Washington, DC 20250

Re: Docket No. RUS-18-TELECOM-0004

Dear Ms. Brooks,

Please find the enclosed comments of the Tennessee Electric Cooperative Association regarding the Rural Utility Service e-Connectivity Pilot.

Should you need additional statements or clarification of the information enclosed, I may be reached at mknotts@tnelectric.org and at the phone number listed below.

Yours most truly,

Mike Knotts
Vice President of Government Affairs

Enclosure

Comments of the Tennessee Electric Cooperative Association on Rural Utilities Service e-Connectivity Pilot Program (RUS-18-TELECOM-0004)

COMMENTS

The Tennessee Electric Cooperative Association ("TECA") is pleased to provide comments in response to the July 27, 2018 Notice of Inquiry (83 Fed. Reg. 35,609 (2018)) regarding the Rural Utilities Service ("RUS") pilot program to improve e-Connectivity in rural America. We appreciate the opportunity to participate in the formation of this program, which has the opportunity to significantly impact rural broadband access in ways previously unachieved by Federal programs.

Introduction

TECA is the statewide service organization dedicated to representing the interests of rural electric cooperatives across Tennessee. TECA's membership includes the 22 privately owned, not-for-profit electric distribution utilites that provide electric energy and related services to approximately 2.5 million people across roughly 75% of the landmass of the state. Additionally, a municipally-owned utility electric-utility (who is currently a broadband provider) and an electric membership corporation from the state of Georgia are also members of the organization.

Electric cooperatives' urgent desire for e-Connectivity is driven primarily by two purposes:

First, electric system operational needs and adoption of new technologies (often referred to as the Smart Grid) have led to increased need for robust communications facilities. In fact, the rural nature of most co-ops have driven them to become leaders in deploying advanced communication and automation technologies to improve service, decrease outages, and help to control electricity costs for co-op members. These advancements result in reduced operational costs and reduced outage times, both of which have immediate and tangible impact to the communities we serve. The ability to capitalize on the benefits of Smart Grid advancements, however, is dependent on high-quality communications networks providing low-latency two-way telecommunications services.

Second, in recent years a number of electric cooperatives have expanded their operations to provide voice, video and broadband services to the communities they serve in one of three ways: either directly, through wholly-owned subsidiaries, or in partnership with third parties. In years past, Tennessee state law restricted an electric cooperative's ability to provide these types of services. Therefore, electric cooperative investment in communications facilities had been generally limited to interconnection of facilities and internal communications needs.

However, passage of the Tennessee Broadband Accessibility Act in 2017 removed these restrictions and allowed electric cooperatives to move quickly to become broadband providers.

In the short time since passage, 8 of the 22 electric cooperatives in Tennessee have entered into broadband related ventures. Numerous others are currently conducting feasibility studies to further consider providing broadband services in some fashion.

The combination of these two factors, a need for low-latency telecommunication facilities to undergird reliable operation of the electric grid and the desire of cooperative members for their co-op to provide broadband services, has encouraged many TECA member utilities to act decisively and begin investing capital to bridge the digital divide. The RUS e-Connectivity Pilot Program has tremendous potential to speed the deployment of existing broadband projects and provide the financial incentive necessary to begin new projects.

Affirmation of Comments by the National Rural Electric Cooperative Association

TECA affirms and supports the comments submitted by the National Rural Electric Cooperative Association in response to this Notice of Inquiry.

We particularly affirm NRECA's comments concerning:

- Program eligibility should be determined by the existence (or lack thereof) of 25/3 service

- Solely relying upon FCC form 477 data to determine areas of existing service would result in gross overstatement(s) of access to existing service

- Population density is the most important metric in determining amount(s) of grant awards

  NOTE: It is TECA's belief that customer density is the primary consideration in any broadband deployment decision making. A recent study by the State of Tennessee confirms a key link between population density and the lack of broadband access. [1]

- Projects that vastly outperform minimum speed standard and/or provide symmetrical download and upload speeds should be incentivized over projects that only meet minimum standards

Additional Comments

[1] https://www.tn.gov/assets/entities/tacir/attachments/2017_Broadband.pdf

Page 72-76, the report concludes that "Access to broadband lags in sparsely populated rural areas." The study compares broadband availability to population density, and the chart on page 76 demonstrates that population density is the clear impediment to deployment.

Additionally, the electric cooperatives of Tennessee request favorable consideration of seven suggestions:

1. *Projects that achieve universal service inside a provider's service territory should be incentivized over similar projects that leave significant gaps in coverage between communities*

   Electric cooperatives in Tennessee who enter the retail broadband business are required by statute to provide area coverage – meaning deployment decisions are based on achieving universal coverage to its electric customers, and not on "cherry-picking" of profitable or densely arranged customers. This "no one left behind" requirement is one of a kind in Tennessee and, to our knowledge, is unique across the United States.

   While the legislature's policy goal was to ensure that the most remotely populated persons in the state (who primarily receive electric service from co-ops) are provided broadband service, the requirement places additional financial burden on cooperatives who willingly choose to accept the laudable challenge.

   This legal requirement in Tennessee aligns well with RUS' goal to provide broadband service to the hardest to reach areas of rural America. When considering the process by which projects will be selected for a Pilot Project grant or loan, applications that contribute toward the provision of universal service should be recognized as unique and be rewarded through prioritized consideration. This could be accomplished by awarding applications that meet this requirement additional points in the scoring process that determines winning applications.

2. *Projects that leverage additional investment in broadband infrastructure beyond the receipt of a grant itself should be incentivized over a similar project(s) that rely solely upon the program itself for its existence*

   TECA recognizes the insufficiency of RUS funds to provide broadband access everywhere it is needed. Therefore, the leveraging of private capital should be encouraged through pilot program awards. This goal was specifically highlighted as a recommended action in the *Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity,* chaired by Secretary Perdue[2]. When considering the process by with projects will be selected for a Pilot Project grant or loan, applications that demonstrate additional private capital being deployed in conjunction with the project should be rewarded through prioritized consideration. This could be accomplished by awarding applications that meet this requirement additional points in the scoring process that determines winning applications.

[2] https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf
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3. *Allow applicant(s) an opportunity to rebut any challenges of eligibility by third parties*

   As referenced in the comments of the National Rural Electric Cooperative Association, there are significant limitations in existing data that purports to demonstrate the location of existing broadband services (primarily the use of census blocks as the main geographic delineator, and over-reporting of access by incumbent providers). <u>RUS should presume that applicants who present evidence of the insufficiency of FCC form 477 data in their initial applications are correct, and the FCC data is wrong</u>.

   Additionally, if a third-party is permitted to challenge an applicant's request for funding under the pilot program based on a claim of existing service, then the applicant should be provided an additional opportunity to produce documentation demonstrating the lack thereof. Most challenges would likely emanate from incumbent providers who do not meet the program's requirements for sufficiency, and who have a vested interest in overstating existing services to alleviate the risk of potential competition from a provider who would offer sufficient services.

4. *Allow flexibility to award funds to any party participating in a partnership or other project that involves multiple eligible parties*

   TECA strongly believes that defraying the initial capital cost of building communications networks, via reduction in cost through grants or low-interest financing, is the most effective incentive to encourage their construction in unserved areas.

   Building on the long history of providing wired infrastructure to remote, rural areas, some electric cooperatives will work to expand e-Connectivity by building and maintaining communications networks that might be operated by third parties. In some cases, these partners will be qualified RUS borrowers. In some cases, they may not.

   In whatever form these partnerships may take shape, grants and loans under the pilot program should be directed to the entity undertaking the significant financial burden for construction and maintenance of the network – regardless of whether a third party may operate the network and ultimately charge the retail customer for broadband services.

5. *Allow grants to be payable in multiple awards, rather than a single payment, if so desired by the recipient*

   Tennessee electric cooperatives are required by state statute to maintain its 501(C)12 tax-exempt status. In order to do so, 85% of its revenue must come from members of the cooperative. Changes to the tax code, brought about by the Jobs and Tax Cut Act of 2017, have resulted in a change to how an electric cooperative must treat the receipt of government grants.

Previously such grants where are considered capital, not income. After the Act, such grants are to be considered income rather than capital. This creates the possibility that receipt of a large government grant (such as a RUS grant to improve broadband access) could result in less than 85% of the cooperative's income for that year being received from its members, and therefore imperil their tax status. In Tennessee, such a situation would also leave the cooperative out of compliance with state statute.

A simple solution would be to allow grants to be funded in "batches" over the course of a window of time, perhaps 12-24 months. This flexibility would allow the recipient to better plan for impacts to its tax status. If grants are envisioned to be awarded on a reimbursable basis, similar flexibility in the timing of reimbursements should be considered.

6. *Allow a small percentage of grants to be usable for start-up expenses of subsidiary entities*

   Tennessee electric cooperatives are required by state statute, as well as by applicable federal regulatory action(s) by the Tennessee Valley Authority (TVA), to structure retail broadband operations inside of subsidiaries.

   Much like existing RUS requirements, any loan made directly to a subsidiary typically requires a pledge of assets as collateral. However, a minor percentage of the expenses associated with an electric cooperative forming a "start-up" broadband subsidiary are soft costs and do not have associated physical assets that could provide surety. Additionally, TVA regulations restrict the ability of the parent organization to guarantee a loan to the subsidiary.

   TECA requests that a small percentage of grants awarded under the pilot program be permitted to be applied to these startup costs, or a small portion of loan proceeds be allowed to be directed to a subsidiary without parent guarantee(s).

7. *Provide loan products inside the pilot program at an interest rate below what is otherwise available by existing RUS programs, including FFB loans, or other more advantageous terms.*

   As stated previously, TECA strongly believes that defraying the initial capital cost of building communications networks, via reduction in cost through grants or low-interest financing, is the most effective incentive to encourage their construction in unserved areas. Therefore, any loan products offered through the pilot program should offer lower life-cycle costs than other products currently available through RUS – electric loan program, telecom program, or FFB loans.

Given the higher compliance burden that RUS lending can sometimes require, loans offered at similar interest rates to other existing loan products would serve little to no advantage to applicants. Likewise, traditional payback and amortization schedules provide no additional incentive to make broadband investments.

TECA encourages RUS to explore terms and conditions of loan products that more closely reflect the revenue cycle of a broadband project constructed in a rural area. For example, allowing interest-only payments for the first 5 years of a loan and amortizing the outstanding principal over the reminder of the life of the loan would produce additional financial flexibility in the early years of broadband project – the period when revenues are lowest, and costs are highest.

If interest rate differential or alternative terms cannot be implemented in an efficient and rapid manner, TECA recommends utilizing all available funding for grant awards.