



June 19, 2008

MEMORANDUM TO CLIENTS

Re: Congress Adopts Changes to the Rural Utilities Service's Broadband Loan Program

The "Farm Bill" recently enacted by Congress – over a Presidential veto – includes revisions supported by the cable industry to the manner in which the federal Rural Utilities Service ("RUS") administers its Loan and Loan Guarantee Program. Briefly stated, the program is designed to make loans available on favorable terms (or make loan guarantees) to service providers to deploy broadband networks to traditionally underserved areas. Under the Farm Bill, Congress has directed that loans be restricted to areas that actually are unserved or underserved, although some questions remain, as indicated below.

Eligibility for Funding

In order to qualify for funds under the new law, an applicant generally must demonstrate that at least 25% of households in the proposed service area do not have broadband access from more than one provider. If an area already is served by three or more providers, funds will not be made available, except when used to improve service by an "incumbent" provider (*i.e.*, an entity that currently is providing service to 5% or more of the households in the proposed service territory). Applicants also must agree to complete the proposed buildout within three years of receiving funds.

Under the new law, funding is limited to areas that meet the definition of "eligible rural community," which generally includes any area that is not a city, town or incorporated area with a population in excess of 20,000 inhabitants. Also excluded are urbanized areas contiguous and adjacent to any city or town with more than 50,000 inhabitants.

The Farm Bill eliminated a provision that prevented an entity from receiving funds if it served more than 2% of telephone subscriber lines nationwide. All providers are now eligible to receive loans; however, entities providing telecom or broadband service to 20% or more of U.S. households are limited to a maximum of 15% of the funds appropriated by the RUS each year.

Terms, Conditions and Other Requirements

The Farm Bill provides for a total of \$25 million to be made available under the RUS program for each of fiscal years 2008-2012, although it is anticipated that at least \$500 million will be carried over from previous years. Loans are available at favorable interest rates and can be repaid over a 35-year period. Entities that are projected to serve 20% or more of a particular area may be required to submit a “market survey” to the RUS.

The RUS also must publish a notice of each loan application identifying the applicant, the area it proposes to serve, and the estimated number of households in such area without terrestrial-based broadband service. Presumably, such notice will appear on the agency’s website or in the *Federal Register* and will give third parties (particularly, incumbent service providers) an opportunity to comment on whether grant of the application is consistent with the program’s objectives.

Remaining Items

Among other things, the RUS likely will have to promulgate rules that define “broadband” service and set forth the manner in which to measure the penetration rate benchmarks referenced above. In addition, as you may be aware, a rulemaking proceeding currently is pending before the RUS that proposes new eligibility, market survey and legal notice requirements with respect to the Loan and Loan Guarantee Program (See our “Memorandum to Clients,” dated May 15, 2007.) With the adoption of the Farm Bill, any future agency action must be in compliance with the provisions of the new law.

The Farm Bill also directs the Chairman of the FCC to coordinate with the Secretary of Agriculture to develop a comprehensive rural broadband strategy in a report to Congress that includes recommendations to facilitate rapid broadband deployment and to streamline broadband programs and policies in place at both agencies. We will keep you posted regarding further developments at the RUS and the FCC with respect to these issues. In the meantime, we would be pleased to respond to any questions regarding such matters.

FLEISCHMAN AND HARDING LLP