

**Rural Utilities Service, USDA**

**§ 1735.1**

15. Date Discussed with Board of Directors \_\_\_\_\_

Remarks: \_\_\_\_\_

**EXPLANATORY NOTES**

Item No. \_\_\_\_\_ Comments \_\_\_\_\_  
 Rated by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Reviewed by \_\_\_\_\_ Manager \_\_\_\_\_ Date \_\_\_\_\_  
 Reviewed by \_\_\_\_\_ RUS GFR \_\_\_\_\_ Date \_\_\_\_\_

**PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM**

**Subpart A—General**

- Sec.
- 1735.1 General statement.
- 1735.2 Definitions.
- 1735.3 Availability of forms.
- 1735.4-1735.9 [Reserved]

**Subpart B—Loan Purposes and Basic Policies**

- 1735.10 General.
- 1735.11 Area coverage.
- 1735.12 Nonduplication.
- 1735.13 Location of facilities and service for nonrural subscribers.
- 1735.14 Borrower eligibility.
- 1735.15 Civil rights.
- 1735.16 Minimum loan amount.
- 1735.17 Facilities financed.
- 1735.18 Additional equity.
- 1735.19 Mergers and consolidations.
- 1735.20 Acquisitions.
- 1735.21 Refinancing loans.
- 1735.22 Loan security.
- 1735.23-1735.29 [Reserved]

**Subpart C—Types of Loans**

- 1735.30 Hardship loans.
- 1735.31 RUS cost-of-money and RTB loans.
- 1735.32 Guaranteed loans.
- 1735.33 Variable interest rate loans.
- 1735.34-1735.39 [Reserved]

**Subpart D—Terms of Loans**

- 1735.40 General.
- 1735.41 Notes.
- 1735.42 [Reserved]
- 1735.43 Payments on loans.
- 1735.44 Prepayment premiums.
- 1735.45 Extension of payments.
- 1735.46 Loan security documents.
- 1735.47 Rescissions of loans.
- 1735.48-1735.49 [Reserved]

**Subpart E—Basic Requirements for Loan Approval**

- 1735.50 Administrative findings.
- 1735.51 Required findings.
- 1735.52 Findings required for particular loan purposes.
- 1735.53-1735.59 [Reserved]

**Subpart F—Mortgage Controls on Acquisitions and Mergers**

- 1735.60 Specific provisions.
- 1735.61 Approval criteria.
- 1735.62 Approval of acquisitions and mergers.
- 1735.63-1735.69 [Reserved]

**Subpart G—Acquisitions Involving Loan Funds**

- 1735.70 Use of loan funds.
- 1735.71 Nonrural areas.
- 1735.72 Acquisition agreements.
- 1735.73 Loan design.
- 1735.74 Submission of data.
- 1735.75 Interim financing.
- 1735.76 Acquisition of affiliates.
- 1735.77 Release of loan funds, requisitions, advances.
- 1735.78-1735.79 [Reserved]

**Subpart H—Acquisitions or Mergers Not Involving Additional Loan Funds**

- 1735.80 Submission of data.
- 1735.81-1735.89 [Reserved]

**Subpart I—Requirements for All Acquisitions and Mergers**

- 1735.90 Preliminary approvals.
- 1735.91 Location of facilities.
- 1735.92 Accounting considerations.
- 1735.93 Notes.
- 1735.94 Final approval and closing procedure.
- 1735.95 Unadvanced loan funds.
- 1735.96-1735.99 [Reserved]

**Subpart J—Toll Line Acquisitions**

- 1735.100 Use of loan funds.
- 1735.101 With nonloan funds.

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

**Subpart A—General**

**§ 1735.1 General statement.**

- (a) Subparts A through E of this part set forth the general policies, types of loans and loan requirements under the Telephone loan program.
- (b) The standard RUS security documents (see 7 CFR 1744 subpart D or

## § 1735.2

RUS Bulletins 320-4, 320-22, 321-2, 322-2, 323-1, 326-1) contain provisions regarding acquisitions, mergers, and consolidations. Subparts F through J of this part implement those provisions by setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with RUS loan or other funds, or planning to merge or consolidate with another system. This part supersedes all RUS Bulletins that are in conflict with it.

(c) Subparts F through J of this part also detail RUS's requirements with respect to mergers and acquisitions involving RUS loan funds.

[55 FR 39395, Sept. 27, 1990; 55 FR 41170, Oct. 9, 1990]

### § 1735.2 Definitions.

As used in this part:

*Access line* means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

*Acquisition* means the purchase of another telephone system, lines, or facilities whether by acquiring telephone plant in service or majority stock interest of one or more organizations.

*Acquisition agreement* means the agreement, including a sales agreement, between the seller and purchaser outlining the terms and conditions of the acquisition. Acquisition agreements also include any other agreements, such as options and subsidiary agreements relating to terms of the transaction.

*Administrator* means the Administrator of RUS.

*Advance of funds* means the transferring of funds by RUS to the borrower's construction fund.

*Appropriated* means funds appropriated based on subsidy.

*Affiliate* means an organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

*Borrower* means any organization which has an outstanding loan made or

## 7 CFR Ch. XVII (1-1-04 Edition)

guaranteed by RUS, or which is seeking such financing.

*Cash distribution* means investments, guarantees, extensions of credit, advances, loans, non-affiliated company joint ventures, affiliated company investments, and dividend and capital credit distributions. Not included in this definition are qualified investments (see 7 CFR part 1744, subpart D).

*Composite economic life* as applied to facilities financed by loan funds means the weighted (by dollar amount of each class of facility in the loan) average economic life of all classes of facilities in the loan.

*Consolidation* means the combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

*Construction fund* means the RUS Construction Account required by §2.4 of the standard loan contract into which all RUS loan funds are advanced.

*Depreciation* means the loss not restored by current maintenance, incurred in connection with the consumption or prospective retirement of telecommunications plant in the course of service from causes which are known to be in current operation, against which the company is not protected by insurance, and the effect of which can be forecast to a reasonable approach to accuracy.

*Economic life* as applied to facilities financed by loan funds, means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) approved by the regulatory body with jurisdiction over the telephone service provided by the borrower for the class of facility involved or, if no approved rate exists, by the median depreciation rate expressed as a percent as published by RUS in its Statistical Report, Rural Telephone Borrowers for all RUS and RTB borrowers for that class of facility.

*Exchange access* means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

*Feasibility study* means the pro forma financial analysis performed by RUS to

determine the economic feasibility of a loan. See 7 CFR part 1737.

*Forecast period* means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the project. Feasibility projections are usually for 5 years, see §1737.70(a) of this chapter. For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

*Funded reserve* means a separate asset account, approved by RUS, consisting of any or all of the following:

- (1) Federal government securities purchased in the name of the borrower;
- (2) Other securities issued by an institution whose senior unsecured debt obligations are rated in any of the top three categories by a nationally recognized rating organization; or
- (3) Cash.

*GFR* means the RUS general field representative.

*Guaranteed loan* means a loan guaranteed by RUS under section 306 of the RE Act bearing interest at a rate agreed to by the borrower and the lender.

*Hardship loan* means a loan made by RUS under section 305(d)(1) of the RE Act bearing interest at a rate of 5 percent per year.

*Interim financing* means funding for a project which RUS has acknowledged could be included in a loan, should said loan be approved, but for which RUS funds have not yet been made available. See 7 CFR part 1737, subpart E.

*Loan* means any loan made or guaranteed by RUS.

*Loan contract* means the loan agreement between RUS and the borrower, including all amendments thereto.

*Loan funds* means funds provided by RUS through direct or guaranteed loans.

*Local exchange carrier (LEC)* means an organization that is engaged in the provision of telephone exchange service or exchange access.

*Majority noteholders* means the holder or holders of a majority in principal

amount of the notes outstanding at a particular time.

*Merger* means the combining, pursuant to state law, of one or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations. While the terms merger and consolidation have different meanings, for the purpose of this part, "mergers" also include consolidations as defined above. Furthermore, "mergers" also include acquisitions where the acquired systems, lines, or facilities and the acquiring system are operated as one system.

*Mobile telecommunications service* means radio communication voice service between mobile and land or fixed stations, or between mobile stations.

*Modernization Plan (State Telecommunications Modernization Plan)* means a State plan, which has been approved by RUS, for improving the telecommunications network of those telecommunications providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR 1751, subpart B.

*Mortgage* means the security agreement between RUS and the borrower, including any amendments and supplements thereto.

*Net worth* means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Capital stock .....	4510
(2) Additional paid-in capital .....	4520
(3) Treasury stock .....	4530
(4) Other capital .....	4540
(5) Retained earnings .....	4550

Note: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

*Public switched network* means any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile telecommunications service providers, that use the North American Numbering Plan in connection with the provision of switched services.

*RE Act* means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

*RUS cost-of-money loan* means a loan made under section 305(d)(2) of the RE Act bearing an interest rate as determined under §1735.31(c). RUS cost-of-money loans are made concurrently with RTB loans.

*RTB loan* means a loan made by the Rural Telephone Bank (RTB) under section 408 of the RE Act bearing an interest rate as determined under 7 CFR 1610.10. RTB loans are made concurrently with RUS cost-of-money loans.

*Rural area* means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 5,000 inhabitants. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.

*Specialized telecommunications service* means any telephone service other than telephone exchange service, exchange access, or mobile telecommunications service.

*Subscriber* means the same as access line.

*Survivor* means (1) the successor corporation formed by the consolidation of one or more borrowers, (2) the corporation remaining after completion of a merger involving one or more borrowers, and (3) a corporation assuming all or a portion of an RUS loan in connection with an acquisition.

*Telecommunications* means the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

*Telephone exchange service* means: (1) Service provided primarily to fixed locations within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or

(2) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

*Telephone service* means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems to render such service. It does not mean:

- (1) Message telegram service;
- (2) Community antenna television system services or facilities other than those intended exclusively for educational purposes; or
- (3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

*Times Interest Earned Ratio (TIER)* means the ratio of a borrower's net income (after taxes) plus interest expense, all divided by interest expense. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

*Total assets* means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current assets .....	1100s through 1300s.
(2) Noncurrent Assets .....	1400s through 1500s.
(3) Total telecommunications plant.	2001 through 2007.
(4) Less: Accumulated depreciation.	3100 through 3300s.
(5) Less: Accumulated amortization.	3400 through 3600s.

Note: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

## Rural Utilities Service, USDA

## § 1735.12

[54 FR 13351, Apr. 3, 1989; 54 FR 16194, Apr. 21, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26596, June 10, 1991; 58 FR 66253, Dec. 20, 1993; 62 FR 46869, Sept. 5, 1997; 65 FR 42619, July 11, 2000; 65 FR 54402, Sept. 8, 2000]

### § 1735.3 Availability of forms.

Single copies of RUS forms and publications cited in this part are available from Program Support Regulatory Analysis, Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. These RUS forms and publications may be reproduced. The terms "RUS form", "RUS standard form", and "RUS specification" have the same meanings as the terms "REA form", "REA standard form", and "REA specification", respectively, unless otherwise indicated.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 59 FR 66441, Dec. 27, 1994; 62 FR 46870, Sept. 5, 1997]

### §§ 1735.4-1735.9 [Reserved]

## Subpart B—Loan Purposes and Basic Policies

SOURCE: 54 FR 13351, Apr. 3, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

### § 1735.10 General.

(a) The Rural Utilities Service (RUS) makes loans to furnish and improve telephone service in rural areas. Loans made or guaranteed by the Administrator of RUS will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. RUS provides borrowers specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities when necessary to aid the development of rural telephone service and to protect loan security.

(b) RUS will not make hardship loans, RUS cost-of-money loans, or RTB loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication moderniza-

tion plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

(c) A borrower receiving a loan to provide mobile telecommunications services or special telecommunications services shall be considered to be participating in the state telecommunications plan (TMP) with respect to the particular loan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan, except that a borrower must comply with any portion of a TMP made applicable to the borrower by a state commission with jurisdiction.

(d) RUS will not deny or reduce a loan or an advance of loan funds based on a borrower's level of general funds.

(e) No fees or charges are assessed for any type of loan or guarantee provided by RUS or the Rural Telephone Bank (RTB).

(f) The Administrator may use consultants funded by the borrower for financial, legal, engineering, and other technical advice in connection with the review of a borrower's loan application.

[58 FR 66253, Dec. 20, 1993, as amended at 59 FR 17464, Apr. 13, 1994; 65 FR 42619, July 11, 2000; 65 FR 54403, Sept. 8, 2000]

### § 1735.11 Area coverage.

Borrowers must make adequate telephone service available to the widest practical number of rural subscribers during the life of the loan. Both the nature of the service area and the cost per subscriber must be fully considered. The borrower must seek to provide service to all interested potential subscribers in the service area. Borrowers are not required to extend service in situations where the costs would be exorbitant. The loan contract shall contain appropriate provisions to effect this requirement. See 7 CFR 1737.11(a), Preapplication Determinations: Area to be Served.

### § 1735.12 Nonduplication.

(a) In states having a state regulatory body with authority to regulate

§ 1735.12

7 CFR Ch. XVII (1-1-04 Edition)

telephone service and to require certificates of convenience and necessity, the borrower must obtain such a certificate before RUS will make a loan. Facilities or services not specifically covered by such certificate will be subject to the provisions of § 1735.12(b).

(b) In states where there is no such regulatory body, a loan will not be made unless the Administrator determines that no duplication of lines, facilities, or systems already providing reasonably adequate services shall result from such a loan.

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service provided by a local exchange carrier (LEC) in determining whether such service is reasonably adequate:

(1) The LEC is providing area coverage as described in § 1735.11.

(2) The LEC is providing all one-party service or, if the State commission has mandated a lower grade of service, the LEC is eliminating that service in accordance with the requirements of the Telecommunications Act of 1996, 47 U.S.C. 151 *et seq.*

(3) The LEC's network is capable of providing transmission and reception of data at a rate of at least 1,000,000 bits per second (1 Mbps) with reasonable modification to any subscriber who requests it.

(4) The LEC makes available custom calling features (at a minimum, call waiting, call forwarding, abbreviated dialing, and three-way calling).

(5) The LEC is able to provide E911 service to all subscribers, when requested by the government entity responsible for this service.

(6) The LEC is able to offer local service with blocked toll access to those subscribers who request it.

(7) The LEC's network is capable of accommodating Internet access at speeds of at least 28,800 bits per second (28.8 Kbps) via modem dial-up from any subscriber location.

(8) There is an absence of frequent service interruptions.

(9) The LEC is interconnected with the public switched network.

(10) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability,

or reliability of the service provided is inadequate.

(11) Services are provided at reasonably affordable rates.

(12) Any other criteria the Administrator determines to be applicable to the particular case.

(d) RUS shall consider the following criteria for any of mobile telecommunications service in determining whether such service is reasonably adequate:

(1) The extent to which area coverage is being provided as described in 7 CFR 1735.11.

(2) Clear and reliable call transmission is provided with sufficient channel availability.

(3) The mobile telecommunications service signal strength is at least -85dBm (decibels expressed in milliwatts).

(4) The mobile telecommunications service is interconnected with the public switched network.

(5) Mobile 911 service is available to all subscribers, when requested by the local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a significant number of rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service a duplication of existing wireline local exchange service or similar fixed-station voice service. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

(f) RUS shall consider the following criteria for any provider of a specialized telecommunications service in determining whether such service is reasonably adequate:

## Rural Utilities Service, USDA

## § 1735.14

(1) The provider of a specialized telecommunications service is providing area coverage as described in § 1735.11.

(2) An adequate signal strength is provided throughout the largest practical portion of the service area.

(3) There is an absence of frequent service interruptions.

(4) The quality and variety of service provided is comparable to that provided in nonrural areas.

(5) The service provided complies with industry standards.

(6) No Federal, State, or local regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Services are provided at reasonably affordable rates.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 65 FR 42619, July 11, 2000; 65 FR 54403, Sept. 8, 2000]

### § 1735.13 Location of facilities and service for nonrural subscribers.

(a) When it is determined by the Administrator to be necessary in order to furnish or improve telephone service in rural areas, loans may be made for the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems without regard to their geographical location.

(b) To the greatest extent practical, loans are limited to providing telephone facilities that serve subscribers in rural areas. In order to furnish and improve service to rural subscribers it may at times be necessary to provide loan funds to finance telephone facilities which (1) will also serve nonrural subscribers, or (2) are located in nonrural areas. Loans may be approved to finance such facilities if the Administrator determines, on a case-by-case basis, that (i) the primary purpose of the loan is to provide service to rural areas and (ii) the financing of facilities for nonrural subscribers is necessary and incidental to furnishing or improving telephone service in rural areas.

(c) Loan funds may be approved for facilities to serve nonrural subscribers only if (1) the principal purpose of the loan is to furnish and improve rural

service and (2) the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. The following are examples of purposes for which such loans may be made (such loans are not limited to these examples):

(1) In the case of construction of a new system, if the loan would not be economically feasible and self-liquidating unless the nonrural as well as the rural portions of the telephone service area are included in the proposed system, the loan may include funds for both portions.

(2) Where the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition.

(3) When a system is being converted to modern service for rural subscribers, the loan may include funds for the conversion of the nonrural facilities, if the rural service will be improved as a result of such nonrural improvements and it is impractical to finance and serve the nonrural and rural areas separately.

(4) A loan may include funds to serve nonrural subscribers located in community centers frequently called by the rural subscribers if the construction to serve such nonrural subscribers will be incidental to, and contribute substantially to, the provision of adequate service for the rural subscribers.

(d) RUS may also approve financing for facilities to serve nonrural areas if, at the time financing was first approved by RUS:

(1) The nonrural area had a population of 1,500 or less when first financed by RUS and that financing was approved prior to November 1, 1993; or

(2) The nonrural area had a population of 5,000 or less when first financed by RUS and that financing was approved on or after November 1, 1993.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 58 FR 66253, Dec. 20, 1993]

### § 1735.14 Borrower eligibility.

(a) RUS makes loans to:

## § 1735.15

(1) Entities providing, or who may hereafter provide, telephone service in rural areas;

(2) Public bodies providing telephone service in rural areas as of October 28, 1949; and

(3) Cooperative, nonprofit, limited dividend or mutual associations.

(b) RUS does not make loans to individuals.

(c) RUS gives preference to those borrowers (including initial loan applicants) already providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations. To be eligible for a loan, a borrower:

(1) Must have sufficient authority to carryout the purposes of the RE Act; and

(2) Must be incorporated or a limited liability company.

[58 FR 66253, Dec. 20, 1993, as amended at 64 FR 50429, Sept. 17, 1999; 65 FR 42619, July 11, 2000]

### § 1735.15 Civil rights.

Borrowers are required to comply with certain regulations on non-discrimination and equal employment opportunity. See RUS Bulletin 320-19 and RUS Bulletin 320-15, respectively.

### § 1735.16 Minimum loan amount.

Recognizing plant costs, the borrower's cost of system design, and RUS's administrative costs, RUS will not consider applications for loans of less than \$50,000.

### § 1735.17 Facilities financed.

(a) RUS makes hardship and guaranteed loans to finance the improvement, expansion, construction, acquisition, and operation of systems or facilities (including station apparatus owned by the borrower, headquarters facilities, and vehicles not used primarily in construction) to furnish and improve telephone service in rural areas, except as noted under paragraph (c) of this section.

(b) RUS makes concurrent RUS cost-of-money and RTB loans to finance the improvement, expansion, construction, and acquisition of systems or facilities (excluding station apparatus owned by the borrower, headquarters facilities, and vehicles not used primarily in con-

## 7 CFR Ch. XVII (1-1-04 Edition)

struction) to furnish and improve telephone service in rural areas, except as noted under paragraph (c) of this section.

(c) RUS will not make any type of loan to finance the following items:

(1) Station apparatus (including PBX and key systems) not owned by the borrower and any associated inside wiring;

(2) Certain duplicative facilities, see § 1735.12;

(3) Facilities to provide service other than 1-party; and

(4) System designs or facilities to provide service that cannot withstand or are not designed to minimize damage caused by storms and other natural catastrophes, including, but not limited to hurricanes, floods, tornadoes, mudslides, lightning, windstorms, hail, fire, and smoke, unless an alternate design or facility for modern telecommunications is more economically or technically feasible. Economic and technical feasibility will be determined using total long range economic costs and risk analysis.

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an incumbent RUS telecommunications borrower providing such service. RUS may, however, consider an application for a loan to provide the same type of service being provided by an incumbent RUS borrower if the Administrator determines that the incumbent borrower is unable to meet its obligations to the government, including the obligation to provide service set forth in its loan documents and to repay its loans.

(e) If an unadvanced loan, or portion thereof, is rescinded, a new loan shall not be made for the same purposes as in the rescinded loan, except as provided in § 1735.47.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66253, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997; 65 FR 42619, July 11, 2000]

### § 1735.18 Additional equity.

If determined by the Administrator to be necessary for loan security, a borrower applying for an initial loan shall increase its net worth as a percentage of assets to the highest level recorded,

## Rural Utilities Service, USDA

## § 1735.22

not to exceed 40 percent, at the end of any calendar quarter in the period beginning 2 years prior to the receipt by RUS of the borrower's loan application form (RUS Form 490). This restoration to the higher level of net worth shall take place before RUS will determine the feasibility of the proposed loan.

### § 1735.19 Mergers and consolidations.

RUS does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, RUS will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas. See RUS Bulletins 320-4, 321-2, 325-1, and 326-1.

### § 1735.20 Acquisitions.

(a) RUS finances the acquisition by a borrower of another system, lines, or facilities only when the acquisition is necessary and incidental to furnishing or improving rural telephone service. See 7 CFR 1735.13.

(b) RUS determines the amount it will lend for each acquisition. If the acquisition price exceeds this amount, the borrower shall provide the remainder.

(c) For additional policies on acquisitions, see subpart F through J of this part.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66253, Dec. 20, 1993]

### § 1735.21 Refinancing loans.

(a) Hardship loans and guaranteed loans may include funds to refinance outstanding indebtedness of corporations furnishing telephone service when such refinancing is necessary and incidental to furnishing or improving telephone service in rural areas. Refinancing may not constitute more than 40 percent of the loan.

(b) Loans for refinancing are not made solely to enable borrowers to obtain a lower interest rate or a longer amortization period. RUS requires borrowers, to the greatest extent possible, to liquidate outstanding indebtedness through the use of nonloan funds.

(c) If deemed necessary by RUS to provide itself with adequate security, RUS will consider loans for refinancing

outstanding indebtedness secured by a lien on property offered as security for the loan, if the property covered by the lien is integral to the operation of the system.

(d) RUS will consider loans for refinancing when the borrower would otherwise be unable to meet payments on both the outstanding indebtedness and the loan as they become due.

(e) RUS may consider loans for refinancing in other situations.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 58 FR 66254, Dec. 20, 1993]

### § 1735.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid within the time agreed. See 7 CFR 1735.18 and 7 CFR 1735.51.

(b) RUS generally requires that borrowers provide it with a first lien on all of the borrower's property. See 7 CFR 1735.46.

(c) In the case of loans that include the financing of telephone facilities that do not constitute self-contained operating systems or units (such as lines switched by other systems), the borrower shall, in addition to the mortgage lien on all of the borrower's telephone facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that continuous and efficient telephone service will be rendered.

(d) The borrower shall provide RUS with a satisfactory Area Coverage Survey. See 7 CFR 1737.30 and 1737.31.

(e) RUS makes loans only if the borrower's entire system, including the facilities to be constructed with the proceeds of the loan, is economically feasible, as determined by RUS. In addition, RUS considers a system to be feasible only if the system, in addition to being feasible in all other respects, is year 2000 compliant or if the borrower provides RUS with a certification, satisfactory to RUS, that the system will be year 2000 compliant at a reasonable time before December 31, 1999. *Year 2000 compliant* means that product performance and function are not affected by dates before, during, and after the year 2000.

(f) For purposes of determining compliance with TIER requirements, unless a borrower whose existing mortgage contains TIER maintenance requirements notifies RUS in writing differently, RUS will apply the requirements described in paragraph (g) of this section to the borrower regardless of the provisions of the borrower's existing mortgage.

(g) For loans approved after October 6, 1997 loan contracts and mortgages covering hardship loans, RUS cost-of-money loans, RTB loans, and guaranteed loans will contain a provision requiring the borrower to maintain a TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the borrower shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

(h) Nothing in this section shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's TIER requirement to a level above that established in paragraph (g) of this section.

(i) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by RUS.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26597, June 10, 1991; 58 FR 66254, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997; 63 FR 45678, Aug. 27, 1998]

§§ 1735.23–1735.29 [Reserved]

**Subpart C—Types of Loans**

**§ 1735.30 Hardship loans.**

(a) RUS makes hardship loans under section 305(d)(1) of the RE Act. These loans bear interest at a rate of 5 percent per year. To qualify for a hardship loan on or after November 1, 1993, a borrower must meet each of the following requirements:

(1) The average number of proposed subscribers per mile of line in the service area of the borrower is not more than 4;

(2) The borrower has a projected TIER (including the proposed loan or loans) of at least 1.0, but not greater than 3.0, as determined by the feasibility study prepared in connection with the loan, see 7 CFR part 1737, subpart H; and

(3) The Administrator has approved and the borrower is participating in a telecommunications modernization plan for the state, see 7 CFR part 1751, subpart B.

(b)(1) Hardship loan funds shall not be used to finance facilities located in any exchange of the borrower that has:

(i) More than 1,000 existing subscribers; and

(ii) An average number of proposed subscribers per mile of line greater than 17.

(2) Those facilities may, however, be financed with concurrent RUS cost-of-money and RTB loans or a guaranteed loan if the borrower is eligible for such financing.

(c) The Administrator may waive the TIER requirement in paragraph (a)(2) of this section in any case in which the Administrator determines, and sets forth the reasons therefor in writing, that the requirement would prevent emergency restoration of the telephone system of the borrower or result in severe hardship to the borrower.

(d) In order to fairly and equitably approve hardship loans to ensure that borrowers most in need receive hardship financing first, RUS will prioritize for approval all applications qualifying for hardship loans. The criteria in this paragraph will be used by the Administrator to rank, from high to low, applications that have been determined to qualify for hardship financing. Subject to the availability of funds, applications receiving the highest number of points will be selected for loan approval each fiscal year quarter (the application with the most points will be approved first, the second highest next, etc.) The following ranking methodology and loan approval conditions apply:

(1) *Ranking criteria.* Borrowers will receive points based on each of the following criteria applicable to the proposed loan:

(i) *Forecasted Average Number of Subscribers Per Mile of Line (Density).* The

number of points assigned to a borrower will be the value 4 less the value of the borrower's forecasted density as determined by the Feasibility Study prepared in connection with the loan (i.e., if a borrower's forecasted system density is 2.75, the borrower would receive 4 less 2.75 points, or 1.25 points).

(ii) *Forecasted TIER*. The number of points assigned to a borrower will be the value 3 less the value of the borrower's forecasted TIER as determined by the Feasibility Study prepared in connection with the loan (i.e., if a borrower's forecasted TIER is 1.75, the borrower would receive 3 less 1.75 points, or 1.25 points).

(iii) *Unserved Territories*. Borrowers will receive points for loan funds included in the application to provide telephone service in areas previously unserved because it was considered cost prohibitive (for example, high costs resulting from the terrain, remoteness, or system design). In particular, borrowers will receive one tenth of a point, up to a maximum of 2 points, for each subscriber added (in connection with the loan) that currently resides in an unserved area.

(iv) *Plant Modernization*. Borrowers will receive 1 point for loan funds included in the application for at least one of the following basic plant modernizations or system improvements:

(A) Providing digital switching capabilities where those capabilities did not previously exist; and/or

(B) Upgrading to equal access; and/or

(C) Conversion of service to 1-party making an entire exchange all 1-party service.

(v) *Distance Learning and Medical Link Facilities*. Borrowers will receive 2 points for loan funds included in the application for the purpose of providing distance learning or medical link transmission facilities. If loan funds are included for both distance learning and medical link transmission facilities, borrowers will receive 3 points. (See 7 CFR part 1703 for definitions of distance learning and medical link.)

(vi) *Time Factor*. If a borrower's application has been ranked but cannot be approved due to the lack of funds available for loans in that quarter, the borrower will receive .25 points for each

quarter in which its loan is pending but not approved.

(2) *Ranking and approval of loans*. Eligible loan applications (satisfying the requirements of 7 CFR 1737.21) will be ranked during the quarter in which the application is received. If an application is received in which insufficient time remains in that quarter to process and rank the application, it will be ranked in the next quarter. At the beginning of the quarter and as soon as practical, RUS will approve all eligible hardship loans ranked in the previous quarter to the extent loan funds are available, beginning with the borrowers that received the highest number of points and working downwards. Any qualified application that is not approved due to the lack of funds will be carried forward to the next quarter and ranked with all other eligible hardship loan applications in that quarter. Upon completion of the ranking and approval of loans, all borrowers will be informed in writing of the status of their loan applications.

(e) *Optimal use of funds*. RUS retains the right to limit the size of hardship loans made to individual borrowers in order to more equitably distribute the amount of hardship funds appropriated among the greatest number of qualified borrowers. Generally, no more than 10 percent of the funds appropriated in any fiscal year may be loaned to a single borrower. In addition, RUS retains the right to approve loans to borrowers that are ranked lower in the priority system, or without regard to when the application was received and ranked, if it is necessary to:

(1) Expedite restoration of service outages due to natural disasters; or

(2) Maximize the use of all available hardship funds appropriated for loans in that fiscal year.

(f) On request of any borrower who is eligible for a hardship loan for which funds are not available, the borrower shall be considered to have applied for concurrent RUS cost-of-money and RTB loans under sections 305 and 408, respectively, of the RE Act.

(g) Hardship loans may be made simultaneously with concurrent RUS cost-of-money and RTB loans or guaranteed loans.

[58 FR 66254, Dec. 20, 1993]

**§ 1735.31**

**7 CFR Ch. XVII (1-1-04 Edition)**

**§ 1735.31 RUS cost-of-money and RTB loans.**

(a) RUS makes cost-of-money loans, under section 305(d)(2) of the RE Act, concurrently with RTB loans made under section 408 of the RE Act. To qualify for concurrent RUS cost-of-money and RTB loans on or after November 1, 1993, a borrower must meet each of the following requirements:

(1) The average number of proposed subscribers per mile of line in the service area of the borrower is not more than 15, or the borrower has a projected TIER (including the proposed loans) of at least 1.0, but not greater than 5.0, as determined by the feasibility study prepared in connection with the loans, see 7 CFR part 1737, subpart H; and

(2) The Administrator has approved and the borrower is participating in a telecommunications modernization plan for the state, see 7 CFR part 1751, subpart B.

(b) The loan amounts from each program (RUS cost-of-money and RTB, including amounts for class B stock) will be proportionate to the total amount of funds appropriated for the fiscal year for RUS cost-of-money loans and RTB loans. To determine the RUS cost-of-money portion, the total loan amount will be multiplied by the ratio of RUS cost-of-money funds appropriated for the fiscal year to the sum of RUS cost-of-money and RTB funds appropriated for the fiscal year in which the loan is approved. The same method would be used to calculate the RTB portion (see 7 CFR 1610.6(b)). If during the fiscal year the amount of funds appropriated changes, the ratio will be adjusted accordingly and applied only to those loans approved afterwards.

(c) The RUS cost-of-money loan shall bear interest as described in paragraphs (c)(1) and (c)(2) of this section (the actual rate of interest on the RTB loan shall be determined as provided in 7 CFR 1610.10):

(1) Each advance of funds included in RUS cost-of-money loans shall bear interest at a rate (the "Cost of Money Interest Rate") equal to the current cost of money to the Federal Government for loans of a similar maturity. The Cost of Money Rate is determined when the funds are advanced to the borrower but cannot exceed 7 percent per year.

(2) RUS shall use the Federal Treasury Statistical Release (the "Statistical Release") issued by the United States Treasury to determine the interest rate for each advance of RUS cost-of-money loan funds. Generally, the Statistical Release is issued each Monday to cover the preceding week. RUS shall determine the Cost of Money Interest Rate as follows:

(i) Each advance shall bear the interest rate stated in the applicable Statistical Release for Treasury constant maturities with a maturity similar to that of the advance.

(ii) RUS shall determine the interest rate for an advance bearing a maturity other than those stated in the applicable Statistical Release by straight-line interpolation between the next higher and next lower stated maturities.

(iii) The first Statistical Release published after the date of an advance shall apply to that advance.

(iv) If the interest rate determined under paragraph (c)(2)(i) or (c)(2)(ii) of this section is higher than 7 percent, then the advance shall bear interest at the rate of 7 percent per year.

(v) Advances with maturities greater than 30 years shall bear interest at the rate stated in the applicable Statistical Release for 30-year maturities.

(vi) RUS may use an alternative method to determine the Cost of Money Interest Rate if the Treasury ceases to issue the Statistical Release or changes its format or frequency of issue so that it is no longer appropriate for use in the manner described in paragraph (c)(2) of this section. In this eventuality, RUS shall immediately notify all borrowers with unadvanced RUS cost-of-money loan funds. RUS may, with the borrower's consent, determine the Cost of Money Interest Rate on a case-by-case basis for subsequent advances of RUS cost-of-money loan funds but may also decide, in its discretion, that it is unable to continue advancing funds until an alternative method is in effect.

(vii) Refer to §1735.43(a) for additional information on maturities of RUS loans.

(viii) RUS shall provide borrowers with prompt written confirmation of the Cost of Money Interest Rate borne

by each advance of funds included in a RUS cost-of-money loan.

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for RUS cost-of-money and RTB loans may be loaned to a single borrower. RUS will publish by notice in the FEDERAL REGISTER the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved RUS and RTB lending authority.

(e) On request of any borrower who is eligible for concurrent RUS cost-of-money and RTB loans for which funds are not available, the borrower shall be considered to have applied for a loan guarantee under section 306 of the RE Act.

(f) Concurrent RUS cost-of-money and RTB loans may be made simultaneously with hardship loans or guaranteed loans.

[58 FR 66255, Dec. 20, 1993, as amended at 62 FR 46870, Sept. 5, 1997]

#### § 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). RUS provides loan guarantees pursuant to section 306 of the RE Act. Guaranteed loans may be made simultaneously with hardship loans or concurrent RUS cost-of-money and RTB loans. No fees or charges are assessed for any guarantee of a loan provided by RUS. In view of the Government's guarantee, RUS generally obtains a first lien on all assets of the borrower (see § 1735.46).

(b) *Requirements.* To qualify for a guaranteed loan, a borrower must have a projected TIER (including the proposed loan or loans) of at least 1.2 as determined by the feasibility study prepared in connection with the loan. In addition, a borrower must meet all requirements set forth in the regulations applicable to a loan made by RUS with the exception that it is not required to participate in a state telecommunications modernization plan and is not subject to a subscriber per mile eligibility requirement, as provided in § 1735.31(a).

(c) *Net worth requirements.* RUS generally requires that borrowers seeking guaranteed loans have a net worth in excess of 20 percent of assets. RUS will, however, consider loan guarantees for borrowers with a net worth less than 20 percent.

(d) *Full amount guaranteed.* Loans are guaranteed in the full amount of principal and interest. Because of the Government's full faith and credit 100 percent guarantee of these loans, only RUS obtains a mortgage on the borrower's assets.

(e) *Federal Register notice.* After RUS has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project and if the borrower has not specified that the loan be made from the FFB, RUS shall publish a notice in the FEDERAL REGISTER. The Notice will include a description of the proposed project, the estimated total cost, the estimated amount of the guaranteed loan, a statement that the Federal Financing Bank (FFB) has a standing loan commitment agreement with RUS, and the name and address of the borrower to which financing proposals may be submitted.

(f) *Qualified lenders.* RUS considers loan guarantees on a case by case basis for loans made by the FFB and any other legally organized lending agency or by a combination of lenders that the Administrator determines to be qualified to make, hold and service the loan. "Legally organized lending agency" and "lender" include commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money. The borrower is responsible for evaluating all proposals received from lenders other than FFB. The borrower furnishes RUS with a report on the evaluations and its choice of proposals. However, at the request of the borrower, the guaranteed loan shall be made by the FFB.

(g) *Interest rate.* Guaranteed loans shall bear interest at the rate agreed upon by the borrower and lender. Guaranteed FFB loans shall be at a rate of interest that is not more than the rate of interest applicable to other similar

§ 1735.33

7 CFR Ch. XVII (1-1-04 Edition)

loans then being made or purchased by FFB.

(h) *Condition of guarantee.* RUS will not guarantee a loan if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purpose of chapter I of the Internal Revenue Code of 1954.

(i) *Contract of guarantee.* If RUS is satisfied with the engineering and economic feasibility of the project and approves the borrower's choice of proposal, subject to the submission of satisfactory financing documents and to the satisfaction of other pertinent terms and conditions, RUS will prepare a contract of guarantee to be executed by the borrower, the lender, and RUS within a specified time. The lender, or its representative, shall have the right to examine the borrower's application and supporting data submitted to RUS in support of its request for financial assistance.

(j) *Loan servicing.* The contract of guarantee will require that arrangements satisfactory to RUS be made to service the loan. Required servicing by the lender will include:

(1) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security instruments have been fulfilled. Such determinations may be met by obtaining RUS approval of each advance.

(2) Billing and collecting loan payments from the borrower.

(3) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submitting a report, as soon as possible thereafter, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(4) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might

lead to nonpayment, violation, or other default.

(k) *Payments under the contract of guarantee.* Upon receipt of the notification required in §1735.32(j)(3) of this section, RUS will pay the lender the amount in default with interest to the date of payment. When RUS has made a payment under a contract of guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest at the rate of interest specified in the lending agreement. RUS will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible. RUS may also proceed with other remedies available under its security instruments.

(l) *Pledging of contract of guarantee.* Subject to applicable law, RUS will consider, on a case by case basis, permitting pledging of the contract of guarantee in order to facilitate the obtaining of funds by the lending agency to make the guaranteed loan.

[54 FR 13351, Apr. 3, 1989; 54 FR 16194, Apr. 21, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26597, June 10, 1991; 58 FR 66255, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997]

§ 1735.33 Variable interest rate loans.

After June 10, 1991, and prior to November 1, 1993, RUS made certain variable rate loans at interest rates less than 5 percent but not less than 2 percent. For those borrowers that received variable rate loans, this section describes the method by which interest rates are adjusted. The interest rate used in determining feasibility is the rate charged to the borrower until the end of the Forecast Period for that loan. At the end of the Forecast Period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan

feasibility study will be revised annually by RUS (beginning within four months after the end of the Forecast Period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on July 1 of the year in which the adjustment was determined. If the Administrator determines that the borrower is capable of meeting the minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent on a loan made as described in this section, then the loan interest rate shall be fixed, for the remainder of the loan repayment period, at the standard interest rate of 5 percent.

[62 FR 46870, Sept. 5, 1997]

§§ 1735.34–1735.39 [Reserved]

### Subpart D—Terms of Loans

SOURCE: 54 FR 13351, Apr. 3, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

#### § 1735.40 General.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Provisions of the mortgage and loan contract are implemented by provisions in RUS Bulletins and Regulations. Forms of the mortgage, note, and loan contract can be obtained from RUS.

#### § 1735.41 Notes.

Loans are represented by one or more notes. Interest accrues only on funds advanced. There are no loan commitment fees or charges. See RUS Bulletin 320–12 for additional information. This CFR part supersedes those portions of RUS Bulletin 320–12 “Loan Payments and Statements” with which it is in conflict.

§ 1735.42 [Reserved]

#### § 1735.43 Payments on loans.

(a) Except as described in this paragraph (a), RUS loans approved after October 6, 1997 must be repaid with interest within a period that, rounded to the nearest whole year, equals the expected composite economic life of the facilities to be financed, as calculated by

RUS; expected composite economic life means the depreciated life plus three years. The expected composite economic life shall be based on the depreciation rates for the facilities financed by the loan. In states where the borrower must obtain state regulatory commission approval of depreciation rates, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower has received state commission approval. In cases where a state regulatory commission does not approve depreciation rates, the expected composite economic life shall be based on the most recent median depreciation rates published by RUS for all borrowers (see 7 CFR 1737.70). Borrowers may request a repayment period that is longer or shorter than the expected composite economic life of the facilities financed. If the Administrator determines that a repayment period based on the expected composite economic life of the facilities financed is likely to cause the borrower to experience hardship, the Administrator may agree to approve a period longer than requested. A shorter period may be approved as long as the Administrator determines that the loan remains feasible.

(b) Borrowers with RTB loans approved after October 6, 1997 with a maturity that exceeds the expected composite economic life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower establishing and maintaining, pursuant to a plan approved by RUS, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the loan. Funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the expected composite economic life of the facilities financed.

(c) Borrowers that have demonstrated to the satisfaction of the Administrator an inability to maintain the funded reserve or net plant to secured debt ratio requirements, if any, contained in their mortgage, may elect

#### § 1735.44

to replace notes with an original maturity that exceeded the composite economic life of the facilities financed with notes bearing a shorter maturity approximating the expected composite economic life of the facilities financed, if this will result in a shorter maturity for the loan. The principal balance of the notes (hereinafter in this section called the "refunding notes") issued to refund and substitute for the original notes would be the unpaid principal balance of the original notes. The refunding notes would mature at a date no later than the remaining economic life of the facilities financed by the loan, plus three years, as determined by the original feasibility study prepared in connection with the loan. Interest on the original note must continue to be paid through the closing date. All other payment terms, including the rate of interest on the refunding notes, would remain unchanged. Disposition of funds in the funded reserve will be determined by RUS at the closing date. RUS will notify the borrower in writing of the amendment of loan payment requirements and the terms and conditions thereof.

(d) A borrower qualifying under paragraph (c) of this section shall not be required to pay a prepayment premium on such portion of the payments under its new notes as exceeds the payments required under the notes being replaced.

(e) To apply for refunding notes, borrowers must send to the Area Office the following:

(1) A certified copy of a board resolution requesting an amendment of loan payment requirements and that certain notes be replaced;

(2) If applicable, evidence of approval by the regulatory body with jurisdiction over the telecommunications service provided by the borrower to issue refunding notes; and

(3) Such other documents as may be required by the RUS.

(f) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments

#### 7 CFR Ch. XVII (1-1-04 Edition)

on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. This CFR part supersedes those portions of RUS Bulletin 320-12, "Loan Payments and Statements" with which it is in conflict.

[56 FR 26598, June 10, 1991, as amended at 62 FR 46871, Sept. 5, 1997]

#### § 1735.44 Prepayment premiums.

The loan documents normally provide that RUS insured loans may be repaid in full at any time without prepayment premiums. Depending upon the lender, there may be prepayment premiums on loans guaranteed by RUS. See 7 CFR part 1610 for prepayment premiums on RTB loans. See RUS Bulletin 320-12 for additional information. This CFR part supersedes those portions of RUS Bulletin 320-12, "Loan Payments and Statements", with which it is in conflict.

#### § 1735.45 Extension of payments.

RUS may extend the time of payment of principal or interest on a loan. Under section 12 of the Rural Electrification Act, as amended, this extension may be up to 5 years after such payment is due. Under section 236 of the Disaster Relief Act of 1970 (Pub. L. 91-606) payment may be deferred by the Secretary of Agriculture as long as necessary in disaster situations so long as the final maturity date is not later than 40 years after the date of the loan. See RUS Bulletin 320-2 for additional information.

#### § 1735.46 Loan security documents.

(a) Loans are to be repaid according to their terms. RUS generally obtains a first lien on all assets of the borrower. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust made by and between the borrower and a trustee, satisfactory to the Administrator, together with such security agreements, financing statements, or other security documents as RUS may deem

necessary in a particular case. Where a borrower is unable by reason of pre-existing encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may, if he determines such security to be reasonably adequate and the form and nature thereof otherwise appropriate, accept other forms of security. See RUS Bulletins 320-4, 320-22, 321-2, 322-2, 323-1, and 326-1 for details. See 7 CFR part 1744, subpart B for information on lien accommodations and subordinations.

(b) Loan security documents of borrowers with loans approved after October 6, 1997 will provide limits on allowable cash distributions in any calendar year as follows:

(1) No more than 25 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 1 percent of its total assets after the distribution is made;

(2) No more than 50 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 20 percent of its total assets after the distribution is made;

(3) No more than 75 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 30 percent of its total assets after the distribution is made; or

(4) No limit on distributions if the borrower's net worth is at least 40 percent of its total assets after the distribution is made.

(c) Borrowers that have not received a loan after October 6, 1997 may request the Administrator to apply these requirements to them. Borrowers may request in writing that RUS substitute the new requirements described in paragraphs (b)(1) through (b)(4) of this section. Upon request by the borrower, the provisions of the borrower's loan documents restricting cash distributions or investments shall not be enforced to the extent that such provisions are inconsistent with this section.

(d) Rural development investments meeting the criteria set forth in 7 CFR part 1744, subpart D, will not be counted against a borrower's allowable cash distributions in any calendar year (7 U.S.C. 926).

(e) References to a borrower's mortgage in this section include deeds of

trust and any other loan document applying the same requirements to a borrower.

(f) This section does not limit the rights of any parties to the mortgage other than RUS or RTB.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 59 FR 29537, June 8, 1994; 62 FR 46871, Sept. 5, 1997]

#### § 1735.47 Rescissions of loans.

(a) Rescission of a loan may be requested by a borrower at any time. To rescind a loan, the borrower must demonstrate to RUS that:

(1) The purposes of the loan being rescinded have been completed;

(2) Sufficient funds are available from sources other than RUS, RTB or FFB to complete the purposes of the loan being rescinded; or

(3) The purposes of the loan are no longer required to extend or improve telephone service in rural areas.

(b) Borrowers submitting loan applications containing purposes previously covered by a loan that has been rescinded shall include in the application an explanation, satisfactory to RUS, of the change of conditions since the rescission that re-establishes the need for those purposes.

(c) RUS shall not initiate the rescission of a loan unless all of the purposes for which telephone loans have been made to the borrower under the Act have been accomplished with funds provided under the Act.

[56 FR 26598, June 10, 1991]

#### §§ 1735.48-1735.49 [Reserved]

### Subpart E—Basic Requirements For Loan Approval

SOURCE: 54 FR 13351, Apr. 3, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

#### § 1735.50 Administrative findings.

The RE Act requires that the Administrator make certain findings to approve a telephone loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these

## § 1735.51

findings. Details on the information required to support these findings are included in 7 CFR part 1737.

### § 1735.51 Required findings.

(a) *Feasibility of and security for the Loan.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and the loan will be repaid on time. This finding is based on the following factors:

(1) Self-liquidation of the loan within the loan amortization period; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

(2) Reasonable assurance of achieving the telephone market projections upon which the loan is based.

(3) Economic feasibility (based on projected revenues, expenses, net income, maximum debt service, and rate of return on investment) for the proposed system using local service rate schedules appropriate for the area served.

(4) Impact of the proposed loan and construction on the ratio of the borrower's secured debt to assets.

(5) Projected growth in the borrower's equity.

(6) Satisfactory experience and reputation of the system's principal owners and manager.

(7) A first lien on the borrower's total system or other adequate security.

(8) Fair market value of the borrower's assets as represented in its financial reports to RUS.

(9) Appropriate financial and managerial controls included in the loan documents.

(10) Other factors determined to be relevant by RUS.

(b) *Area coverage.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that adequate telephone service will be made available to the widest practical number of rural users during the life of the loan.

(c) *Nonduplication or certificate requirement.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine

## 7 CFR Ch. XVII (1-1-04 Edition)

that no duplication of service shall result from a particular loan for those borrowers not required by the state regulatory commission to have a certificate of convenience and necessity (or its equivalent). For borrowers required to have a certificate of convenience and necessity, all portions of the existing and proposed system must be covered by the certificate.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26598, June 10, 1991]

### § 1735.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans that include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1735.21.

(b) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

### §§ 1735.53-1735.59 [Reserved]

## Subpart F—Mortgage Controls on Acquisitions and Mergers

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

### § 1735.60 Specific provisions.

(a) The standard form of RUS mortgage contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.

## Rural Utilities Service, USDA

## § 1735.70

(2) Article II, section 4(b), if made applicable, provides certain exceptions to the requirements of section 4(a).

(b) Similar provisions are contained in other forms of documents executed by borrowers that have not entered into the standard form of mortgage.

(c) Mortgages and loan contracts may contain other provisions concerning mergers and acquisitions.

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 62 FR 46871, Sept. 5, 1997]

### § 1735.61 Approval criteria.

(a) If a borrower is required by the terms of its mortgage or loan contract to obtain RUS approval of a merger or acquisition, the borrower shall request RUS approval and shall provide RUS with such data as RUS may request.

(b) If loan funds are requested, the borrower shall comply with subpart G of this part. If no additional loan funds are involved, the borrower shall comply with subpart H of this part.

(c) In considering whether to approve the request, RUS will take into account, among other matters:

(1) Whether the operation, management, and the economic and loan-repayment feasibility characteristics of the proposed system are satisfactory;

(2) Whether the merger or acquisition may result in any relinquishment, impairment, or waiver of a right or power of the Government;

(3) Whether the proposed merger or acquisition is in the best interests of the Government as note holder; and

(4) Whether the proposed purchase price and terms of an acquisition are reasonable, regardless of the source of funds used to pay for the purchase. RUS will consider the purchase price unreasonable if, in RUS's opinion, it will endanger financial feasibility.

### § 1735.62 Approval of acquisitions and mergers.

(a) If a proposal is unsatisfactory to RUS, then RUS shall inform the borrower in writing of those features it considers objectionable and, as appropriate, recommend corrective action.

(b) If a proposal is satisfactory to RUS, then RUS shall inform the borrower in writing of its approval and any conditions of such approval.

Among the conditions of approval are the following:

(1) RUS shall require a compensating benefit in return for any relinquishment, impairment, or waiver of its rights or powers.

(2) If the survivor is an affiliate of another company, RUS shall require any investments in, advances to, accounts receivable from, and accounts payable to the affiliated company contrary to mortgage provisions shall be eliminated in a manner satisfactory to the Administrator.

(3) RUS requires that the borrower agree not to extend credit to, perform services for, or receive services from any affiliated company unless specifically authorized in writing by the Administrator or pursuant to contracts satisfactory in form and substance to the Administrator.

(4) RUS may require the borrower to execute additional mortgages, loan agreements, and associated documentation.

### §§ 1735.63–1735.69 [Reserved]

## Subpart G—Acquisitions Involving Loan Funds

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

### § 1735.70 Use of loan funds.

(a) See 7 CFR part 1735 and 1737 for RUS's general loan policies and requirements.

(b) RUS will finance an acquisition by a borrower only when the acquisition is necessary and incidental to furnishing or improving rural telephone service and the service area is eligible for RUS assistance.

(c) RUS does not make loans for the sole purpose of merging or consolidating telephone organizations. After a merger or consolidation, RUS will consider making loans to the telephone system to finance the improvement or extension of telephone service in rural areas.

(d) Generally, RUS will not make a loan for the acquisition of an existing borrower unless, in addition to all other requirements, such acquisition

## § 1735.71

will improve the likelihood of repayment of an outstanding RUS loan and all outstanding balances of the previous RUS loans are paid in full.

(e) In determining the amount it will lend for each acquisition, RUS shall place a valuation on all telephone facilities that are to be acquired with loan funds. RUS may consider fair market value, the original cost less depreciation of the facilities, income generating potential, any improvement in the financial strength of the borrower as a result of the acquisition, and any other factors deemed relevant by RUS to determine the reasonableness of the acquisition price and the amount of loan funds RUS will provide for an acquisition. RUS shall not consider the acquisition price reasonable or approve a loan if, in the Administrator's opinion, the acquisition price will endanger financial feasibility. If the acquisition price exceeds the amount RUS will lend, the borrower provides the remainder.

(f) When a borrower intends to request RUS loan funds for an acquisition, it shall present a proposal in writing to the Area Office as soon as possible. The borrower must either obtain RUS approval prior to making any binding commitments with the seller or make the commitments subject to RUS's approval. Failure to comply with these requirements will disqualify the borrower from obtaining an RUS loan for the acquisition unless the Administrator determines there were extenuating circumstances.

## § 1735.71 Nonrural areas.

Loan funds may be approved for the acquisition and improvement of facilities to serve nonrural subscribers only if the principal purpose of the loan is to furnish and improve rural service and only if the use of loan funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. For example, when the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition. Approval for the use of loan funds in these circumstances shall be made only

## 7 CFR Ch. XVII (1-1-04 Edition)

on a case by case basis by the Administrator.

## § 1735.72 Acquisition agreements.

When borrowers are seeking RUS financing, acquisition agreements between the borrower and the seller must be in form and substance satisfactory to RUS and shall be expressly conditioned on approval of the agreement by RUS and on obtaining an RUS loan. Normally, the acquisition agreement will not be approved by RUS until the loan has been approved.

## § 1735.73 Loan design.

When loan funds are requested for an acquisition, details of the proposed acquisition shall be included in the Loan Design. See 7 CFR part 1737.

## § 1735.74 Submission of data.

(a) RUS will not approve any acquisition, other than of toll facilities (see subpart J of this part), financed in whole or in part with loan funds until the borrower submits the following data to the GFR:

(1) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(2) Completed RUS Form 507, "Report on Telephone Acquisition," which provides system data, including the type of purchase and purchase price, a system description, and data by exchange. See §1735.3 for information on obtaining copies of this form.

(3) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(4) A brief statement of the plans for incorporating the acquired facilities into the borrower's existing system.

(5) The number of subscribers currently receiving service in the area to be acquired and the number of new subscribers that will be served over the next 5 years as a result of the acquisition.

(6) The proposed purchase price.

(7) Two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these

## Rural Utilities Service, USDA

## § 1735.75

documents are subject to RUS approval. If the acquisition agreement is approved by RUS, two copies of it shall be returned to the borrower.

(8) An appraisal by the borrower's consulting engineer or other qualified person of the physical plant to be acquired. The appraisal shall include the following:

(i) Inspection of each central office, noting the age and condition of the switch and associated equipment, and the extent and quality of maintenance of the equipment and premises.

(ii) Inspection of the outside plant, noting the general age and condition of cable and wire, poles and related hardware, pedestals, and subscriber drops. Any joint use or ownership shall be explained.

(iii) Inspection of miscellaneous items such as commercial office facilities, vehicles, furniture, tools and work equipment, and materials and supplies in stock, noting age and condition.

(iv) Inspection of all buildings and other structures (such as radio towers), noting age and condition.

(v) Detailed description of all real estate including the present market value that local real estate dealers, bankers, insurance agents, etc., place on the property.

(vi) Any widely accepted method, approved by RUS, may be used to estimate the condition of the facilities in paragraphs (a)(8)(i) through (a)(8)(iv) of this section. The "percent condition" method is recommended, but is not required.

(9) Copies of deeds to real estate to be acquired, with an explanation of the proposed use of the land.

(10) Copies of leases to be acquired.

(11) Copies of any existing mortgages with parties other than RUS, indentures, deeds of trust, or other security documents or financing agreements relating to the property to be acquired and any contracts or other rights or obligations to be assumed as part of the acquisition.

(12) A list of all counties in which the proposed system will have facilities.

(13) If the borrower is a cooperative-type organization, a description of its plans for taking subscribers in as members, membership fees, equity payments required because of the acquisition,

and extent of membership support.

(14) A certification, signed by the president of the borrower, that the borrower is participating in the State's telecommunications modernization plan (for information concerning the plan, see 7 CFR part 1751, subpart B). This certification is not required if the borrower is seeking a guaranteed loan.

(15) Any other data deemed necessary by the Administrator for an evaluation of the acquisition.

(b) For stock acquisitions, the borrower shall submit the following in addition to the items listed in (a) of this section:

(1) A list of all stockholders of the company to be acquired and the number of shares each owns.

(2) Guarantees and indemnifications to be obtained from the sellers of the stock.

(Approved by the Office of Management and Budget under control number 0572-0084)

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990; 58 FR 66256, Dec. 20, 1993]

### § 1735.75 Interim financing.

(a) A borrower may submit a written request for RUS approval of interim financing if it is necessary to close an acquisition before the loan to finance the acquisition is approved. Loan funds shall not be used to reimburse acquisition costs unless RUS has granted approval of interim financing prior to the closing of the acquisition.

(b) RUS will approve interim financing of acquisitions only in cases where loan funds cannot be made available in time for the closing.

(c) RUS will not approve interim financing unless the following information is acceptable:

(1) A written request for approval of interim financing, including a brief description of the acquisition, an explanation of the urgency of proceeding with the acquisition, and the source of funds to be used.

(2) A completed RUS Form 490, "Application for Telephone Loan or Loan Guarantee." See 7 CFR part 1737.

(3) The portions of the Loan Design that cover the proposed acquisition, including cost estimates and information

## § 1735.76

on any investments in nonrural areas. See 7 CFR 1737.

(4) The information required in § 1735.74 (a)(1) through (a)(8), (a)(14) and (b)(1).

(5) Any other data deemed necessary by the Administrator to approve the interim financing of the acquisition.

(d) Furthermore, RUS will not approve interim financing if, in RUS's judgment, the proposed acquisition will not qualify for RUS financing or the proposed interim financing presents unacceptable loan security risks to RUS.

(e) Because RUS approval of interim financing is not a commitment to make a loan, RUS will not approve interim financing unless the borrower is prepared to assume responsibility for financing all obligations incurred.

(f) If the borrower plans to proceed with the closing after receiving RUS approval of interim financing, it must first receive preliminary approval from RUS. See § 1735.90

(g) See 7 CFR part 1737 for regulations on interim financing for construction.

(h) See 7 CFR part 1744, subpart B for conditions under which RUS will provide shared first lien and/or a lien accommodation for non-RUS lenders.

### § 1735.76 Acquisition of affiliates.

A borrower shall not use RUS loan funds to acquire any stock or any telephone plant of an affiliate.

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 62 FR 46871, Sept. 5, 1997]

### § 1735.77 Release of loan funds, requisitions, advances.

(a) RUS will not approve the advance of loan funds until the borrower has fulfilled all loan contract provisions to the extent deemed necessary by RUS.

(b) The first advance of loan funds pursuant to the loan contract normally shall provide funds needed for the acquisition. Unless the borrower has received approval of interim financing, it must submit the requisition in time for the advance to be made by the closing date.

(c) After the borrower has closed the acquisition, it shall furnish RUS all documents necessary to demonstrate

## 7 CFR Ch. XVII (1-1-04 Edition)

to RUS's satisfaction that the transaction has been closed.

(d) Advances for improvements or expansion of the acquired facilities will not be approved until RUS has determined that the transaction has been closed and the borrower has obtained satisfactory title to the acquired facilities.

(e) See 7 CFR part 1737 (or RUS Bulletin 320-4) for additional requirements for releases of loan funds and 7 CFR part 1744, subpart C for additional requirements for requisitions and advances.

### §§ 1735.78-1735.79 [Reserved]

## Subpart H—Acquisitions or Mergers Not Involving Additional Loan Funds

### § 1735.80 Submission of data.

When a borrower is not requesting loan funds for an acquisition or merger, the borrower shall first notify RUS and submit for review by RUS the documents and information listed in (a) through (l) of this section required by RUS.

(a) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(b) Completed RUS Form 507, "Report on Telephone Acquisition."

(c) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(d) A brief statement of the plans for incorporating the acquired facilities into the borrower's existing system.

(e) The number of subscribers currently receiving service in the areas involved in the acquisition or merger and the number of new subscribers that will be served over the next 5 years as a result of the acquisition or merger.

(f) Copies of deeds of real estate to be acquired, with an explanation of the proposed use of the land.

(g) Copies of security documents of any other lenders involved and any contracts or other rights of obligations to be assumed by the survivor.

## Rural Utilities Service, USDA

## § 1735.92

(h) A list of all counties in which the proposed system will have facilities.

(i) If Article II, section 4(b) of the standard mortgage has not been made applicable, plans for operating the unified system.

(j) In the case of a merger, the proposed articles of merger that are to be used.

(k) In the case of an acquisition, the proposed purchase price, plus two copies of any options, bills of sale, or deeds, and two copies of any acquisition agreements. All of these documents are subject to RUS approval. If the acquisition agreement is approved by RUS, two copies of it shall be returned to the borrower.

(l) Any other data deemed necessary by the Administrator for an evaluation of the acquisition or merger.

(Approved by the Office of Management and Budget under control number 0572-0084)

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990]

### §§ 1735.81-1735.89 [Reserved]

## Subpart I—Requirements for All Acquisitions and Mergers

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

### § 1735.90 Preliminary approvals.

(a) In cases where the borrower's schedule for completion of the proposed action leaves insufficient time for RUS to prepare and process the required documentation, including new mortgages and replacement notes, the borrower may request RUS to give preliminary approval to the acquisition or merger. However, the borrower may not obtain additional loan funds until the documentation is completed to RUS's satisfaction.

(b) Consideration of preliminary approvals generally will not be practicable in cases in which compensating benefits are required.

(c) RUS will not give preliminary approval when the lien of the mortgage on after-acquired property may be affected.

(d) Before RUS will grant preliminary approval, the borrower shall submit:

(1) Merger or acquisition documents required by state law;

(2) Acquisition agreements covering the transaction;

(3) Any required franchises, licenses, and permits;

(4) All required regulatory body approvals;

(5) All required corporate actions;

(6) Leases, contracts, and evidence of titles to be assigned to the purchaser; and

(7) The latest audited financial statements for any nonborrowers involved.

(e) If the information in (d) of this section is acceptable to RUS, the borrower may proceed with the closing.

(Approved by the Office of Management and Budget under control number 0572-0084)

### § 1735.91 Location of facilities.

Telephone facilities to be acquired must be located so that they can be efficiently operated by the borrower and provide adequate security for the RUS loan.

### § 1735.92 Accounting considerations.

(a) Proper accounting shall be applied to all acquisitions and mergers, as required by the regulatory commission having jurisdiction, or in the absence of such a commission, as required by RUS based on Generally Accepted Accounting Principles or other accounting conventions as deemed necessary by RUS.

(b) If RUS determines that the plant accounts are not properly depreciated, the borrower should adjust its depreciation rates. Depending upon the characteristics of the case, commission jurisdiction and requirements, and similar factors, one of the following actions shall be taken:

(1) In states where commission approval of depreciation rates is required, a covenant shall be included in the loan contract that requires the borrower to:

(i) Have the consulting engineer make an original cost less depreciation inventory and appraisal of retained plant as part of the final inventory, and

**§ 1735.93**

(ii) Request commission approval of adjustments to its records on the basis of this inventory.

(2) In states where commission approval is not required, informal discussions between RUS and the borrower may be undertaken to reach satisfactory voluntary adjustments. If this does not resolve the situation to RUS's satisfaction, a covenant similar to that in paragraph (b)(1)(i) of this section shall be included in the loan contract and the borrower shall agree to submit evidence satisfactory to the Administrator that it has adjusted its records on the basis of the inventory.

**§ 1735.93 Notes.**

Substitute notes may be required in the case of an acquisition or merger, regardless of the source of funds.

**§ 1735.94 Final approval and closing procedure.**

(a) Legal documents relating to the acquisition or merger, including copies of required franchises, commission orders, permits, licenses, leases, title evidence, corporate proceedings, and contracts to be assigned to the purchaser shall be forwarded to the Area Office prior to closing.

(b) The Administrator will not give final approval to any acquisition or merger until all RUS requirements relating to the transactions are satisfied.

(c) Following the Administrator's final approval of the proposal, the Area Office shall inform the borrower in writing of the necessary legal and other actions required for the advance of loan funds to finance the acquisition, including the submission, in form and substance satisfactory to the Administrator, of (1) all information and documents necessary to demonstrate that the transaction has been completed, and (2) all loan contracts, notes, mortgages, and related documents and materials required by RUS.

(d) Deeds reflecting the change in ownership, executed bills of sale, and opinions of counsel shall be forwarded to the Area Office following closing.

(e) RUS will not advance loan funds to furnish or improve service in the acquired or merged areas until the Administrator has given final approval and the transaction has been closed.

**7 CFR Ch. XVII (1-1-04 Edition)**

RUS may, however, advance funds if it determines that loan security will not be jeopardized.

(f) At the discretion of RUS, a GFR may be present at the closing to assist the borrower and protect the interests of RUS. Under certain circumstances the closing may take place prior to RUS granting final approval for the transaction and the execution of amended loan security documents.

**§ 1735.95 Unadvanced loan funds.**

(a) The unadvanced loan funds of a borrower that will not be a survivor of an acquisition or merger shall be advanced only to the survivor and only under the following circumstances.

(1) If the funds are to be used for purposes approved in prior loans, the funds shall be advanced after the effective date of the proposed action only when all loan contract prerequisites have been met and documents have been submitted in form and substance satisfactory to the Administrator.

(2) If the funds are to be used for new purposes, then in addition to the requirements in (a)(1) of this section, RUS must also approve the change in purpose.

(b) No loan or other money in the construction fund shall be used to finance facilities outside areas to be served by projects approved by RUS.

**§§1735.96-1735.99 [Reserved]**

**Subpart J—Toll Line Acquisitions**

**§ 1735.100 Use of loan funds.**

An acquisition of toll line facilities financed with loan funds must be necessary and incidental, as determined by the Administrator, to furnishing or improving telephone service in rural areas. The borrower shall submit to RUS the acquisition agreement, the original cost less depreciation of the facilities, any concurrences with the connecting companies involved, and a detailed inventory of the facilities to be purchased. The borrower must submit to RUS evidence, satisfactory to the Administrator, of the borrower's

## Rural Utilities Service, USDA

## § 1737.1

ownership of the toll line facilities before loan funds for improvement of those facilities will be advanced.

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1735.101 With nonloan funds.

When an acquisition is limited to toll line facilities and loan funds are not involved, RUS approval of the acquisition is not required. The borrower, however, shall submit to RUS for its approval all concurrences with the connecting companies involved and any other proof of ownership of the toll facilities required by RUS.

[54 FR 14626, Apr. 12, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990]

## PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

### Subpart A—General

Sec.

- 1737.1 General statement.
- 1737.2 Definitions.
- 1737.3 Availability of RUS forms.
- 1737.4–1737.9 [Reserved]

### Subpart B—Preapplication Stage

- 1737.10 Initial contact.
- 1737.11 Preapplication determinations.
- 1737.12–1737.19 [Reserved]

### Subpart C—The Loan Application

- 1737.20 [Reserved]
- 1737.21 The completed loan application.
- 1737.22 Supplementary information.
- 1737.23–1737.29 [Reserved]

### Subpart D—Preloan Studies—Area Coverage Survey and Loan Design

- 1737.30 General.
- 1737.31 Area Coverage Survey (ACS).
- 1737.32 Loan Design (LD).
- 1737.33–1737.39 [Reserved]

### Subpart E—Interim Financing of Construction of Telephone Facilities

- 1737.40 General.
- 1737.41 Procedure for obtaining approval.
- 1737.42 Procedure for construction.
- 1737.43–1737.49 [Reserved]

### Subpart F—Review of Application Procedures

- 1737.50 Review of completed loan application.
- 1737.51 Approval of loan design.
- 1737.52–1737.59 [Reserved]

### Subpart G—Project Cost Estimation Procedures

- 1737.60 Telephone loan budget.
- 1737.61 Cost allocation for rural and nonrural areas.
- 1737.62–1737.69 [Reserved]

### Subpart H—Feasibility Determination Procedures

- 1737.70 Description of feasibility study.
- 1737.71 Interest rate to be considered for the purpose of assessing feasibility for loans.
- 1737.72–1737.79 [Reserved]

### Subpart I—Characteristics Letter

- 1737.80 Description of characteristics letter.
- 1737.81–1737.89 [Reserved]

### Subpart J—Final Loan Approval Procedures

- 1737.90 Loan approval requirements.
- 1737.91 Approval.
- 1737.92 Loan documents.
- 1737.93–1737.99 [Reserved]

### Subpart K—Release of Funds Procedure

- 1737.100 Prerequisites to the release and advance of funds.
- 1737.101 Amounts spent for preloan activities.
- 1737.102–1737.109 [Reserved]

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 54 FR 13356, Apr. 3, 1989, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

### Subpart A—General

#### § 1737.1 General statement.

(a) This part prescribes policies, procedures and responsibilities relating to applications for RUS loans to finance the improvement and extension of telephone service in rural areas. Requirements for both initial and subsequent loans are discussed, with differences pointed out.

(b) This part sets forth the policies, procedures, and requirements of RUS