

LAW OFFICES
TISINGER VANCE, P.C.
100 WAGON YARD PLAZA
CARROLLTON, GEORGIA 30117

DIRECT DIAL AND E-MAIL ADDRESS:
(770)214-5108
CELL (770)841-2854
SMINOR@TISINGERVANCE.COM

WWW.TISINGERVANCE.COM

TELEPHONE: (770) 834-4467
FAX: (770) 834-5426

ROBERT D. TISINGER
1989-1991

MEMO

To: (1) Desk Officer for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 – 17th Street, N.W.
Washington, D.C. 20502

and via email: OIRA_Submission@OMB.EOP.GOV

(2) Departmental Clearance Office
USDA
OCIO
Mail Stop 7602
Washington, D.C. 20250-7602

From: Steven T. Minor, Esquire
c/o Tisinger Vance
P. O. Box 2069 (Mailing Address)
Carrollton, Georgia 30112
100 Wagon Yard Plaza (Street Address)
Carrollton, Georgia 30117
Telephone: (770) 214-5108
Email: sminor@tisingervance.com

Re: Comments Regarding the Rural eConnectivity Pilot Program ("ReConnect Program")
OMB control Number: 0572-0152

Date: October 16, 2019

While assisting several entities submit loan and/or loan and grant applications pursuant to the ReConnect Program, I have some suggestions I would like for RUS to consider.

1. My clients were not able to print their applications—either while the application was being completed or after it was submitted. I believe allowing an applicant to print both partially-completed and fully-completed applications will help ensure all information submitted on an application is consistent. If printing applications is already supported, then I would recommend making the instructions related to print the application easier to find.

2. There appears to be inconsistent references to what will be considered to be adequate security under both the loan and grant programs. Page 6 of the application guide provides as follows:

Award Security The award must be adequately secured, as determined by RUS. *Unless otherwise approved by RUS in writing*, all property and facilities purchased with award funds must be owned by the Awardee. *Emphasis supplied.*

Similarly, page 9 of the application guide provides as follows:

Loan Security The loan portion of the award must be adequately secured, *as determined by RUS*. For Corporations and Limited Liability Companies (LLCs), loans must be secured by all assets of the Awardee. RUS must be given an exclusive first lien on all assets of the Awardee, including all revenues. RUS may share its first lien position with one or more lenders unrelated to the Awardee on a pari passu basis, except with respect to grant funds, if security arrangements are acceptable to RUS. RUS will not share assets with any related party or affiliate of the Awardee. *Emphasis supplied.*

These provisions of the application appear to contemplate that property and facilities acquired with grants and loans need not, in all cases, be owned outright by the Awardee—so long as RUS consents to the arrangement. Indeed, it appears that the main goal is simply to ensure that RUS has a first priority lien (whether alone or shared with other lenders) in all assets acquired with loan or grant funds. This can be easily accomplished regardless of whether the Awardee is actually the “owner” of the assets. However, in completing the application, the applicant must respond to the following question (referenced on page 84 of the application guide):

Are any of the facilities or equipment that the Applicant is proposing to acquire currently owned by an affiliate or subsidiary of the Applicant? Click the applicable radio button.

If an applicant attempts to answer “Yes,” a warning message appears on the screen stating “Acquisition is ineligible and must be removed as part of the Funding Request.” The only way to submit an application is to answer “No.”

It would appear that the inability to complete the application for any arrangement where the applicant seeks to acquire facilities or equipment from an affiliate appears to unnecessarily reduce the applicant's flexibility to choose the most beneficial arrangement for providing rural broadband services. For example, in Georgia, rural electric membership corporations are not permitted to provide retail broadband services directly; an EMC must create and use an affiliated entity if it wishes to provide retail broadband services. However, most EMCs already own fiber optic cable for internal purposes related to the operation of the electric utility. To the extent that there is excess capacity in these existing assets, it would appear fully appropriate that the assets would be transferable, through either a lease or sale, to the EMC's retail broadband affiliate. Adequate protection for RUS could be obtained through a requirement that all such transactions be on a fair market value basis and that the owner of the asset, regardless of whether it is the EMC or its affiliate, grant RUS a first priority lien.

3. There is a concern that the scoring system for "rurality" unfairly harms rural areas that exceed certain population (persons per square mile) thresholds. First, applicants must define a service area that is at least 90% deficient. They're deficient because they're rural. The additional point system appears unnecessary. For example, no county in Georgia has less than the maximum persons per square mile to accrue points under this criteria, even though these counties are clearly rural, and largely unserved or underserved.

4. The on-line application process had problems specifically with the GIS file loading. For environmental matters, it would only take one shape file at a time and each shape file was limited to one shape. We had a shape file with 29,069 line sections to respond to the environmental line locations and could not begin to load those file by file. (I also received reports of several other GIS bugs, although I did not collect the necessary information to report them with these comments.)

5. An applicant followed the Federal Register (Volume 83, No. 240) in preparation for the online submission process. Section V.C.7 states that the project must maintain certain financial ratios. The feasibility study demonstrated that the project would surpass the required ratios. When the applicant began the online application process, the system was set up for financial information based on a merged system of the project with the existing operations of the cooperative. This conflicts with the Federal Register requirements and caused the applicant to attempt to combine financial information at the last minute. In addition, the online system was formatted to mimic the financial statements of telephone cooperatives and not electric cooperatives, which also created several complications for applicants.

6. We would appreciate an opportunity to have a dialog with persons processing ReConnect applications to address these and possibly other concerns from applicants.

Thank you for the opportunity to provide these comments on the ReConnect Program application process.

Should you have any questions about these comments, feel free to contact me using the contact information above.