Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service. This proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: Written comments on this proposed rule must be received by RUS or carry a postmark or equivalent by March 13, 2000.

ADDRESSES: Written comments on this proposed rule should be addressed to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection in room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule

is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

RUS regulations currently stipulate that an entity must provide or propose to provide the basic local exchange telephone service needs of rural areas to be eligible for RUS financing (7 CFR 1735.14, Borrower Eligibility) and that loans cannot be made for facilities to serve subscribers outside the borrower's local exchange service area (7 CFR 1735.17, Facilities Financed). The Telecommunications Act of 1996, however, made the term ''basic local exchange service'' obsolete. The law mandates that universally available and affordable telecommunications services, including access to advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telephone services to rural areas is to make certain providers of services, in addition to providers of local exchange services, eligible for RUS financing. Mobile telecommunications services are included among the telephone services financeable under the Rural Electrification Act (RE Act) and contemplated in the Telecommunication Act of 1996. Mobile telecommunications service is fundamentally different from wireline service and RUS believes that, in addition to wireline service, mobile telecommunications services should be made available in all rural areas. Therefore, RUS is deleting its requirement that all borrowers provide local exchange service. Since mobile telecommunications services do not and cannot serve the same function as contemplated in state telecommunications modernization plans (TMPs) for wireline services (see 7 CFR 1751.106), RUS policy is to consider a borrower receiving a loan to finance such services to be participating in the state's plan 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. RUS will continue to follow this policy regardless of whether the borrower provides any local exchange services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service.

RUS regulations are also utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's (the Bank) loan program; therefore, these policy revisions would apply to loans made by the Bank, as well.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

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

The authority citation for part 1735 is revised to read as follows:

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

2. In § 1735.2, the following definitions are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Mobile telecommunications service means the transmission of a radio communication voice service between mobile and land or fixed stations, or between mobile stations.

* * * * *

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.

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

* * * * *

3. Amend § 1735.10 by:

A. Revising paragraph (b);

B. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

C. Add a new paragraph (c).

The revision and addition read as follows:

§ 1735.10 General.

* * * * *

(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 modernization 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 applying for a loan to finance mobile telecommunication services shall be considered to be a participant in the State's telecommunication modernization plan so long as the loan funds are not used in a manner that, in the opinion of the Administrator, is inconsistent with the borrower achieving the goals set forth in the plan.

* * * * *

4. Amend § 1735.12 by:

A. Revising paragraph (c) introductory text; and

B. Adding new paragraphs (d) and (e).

The revision and addition read as follows:

§ 1735.12 Nonduplication.

* * * * *

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

* * * * *

(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 miliwatts).

(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 majority of the rural persons.

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

(e) RUS does not consider mobile telecommunications service facilities a duplication of existing wireline local exchange service or similar fixed-station voice facilities. 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.

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1);

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2), respectively; and

C. Adding paragraph (d).

The addition reads as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an existing RUS telecommunications borrower providing such service.

§ 1735.17 [Amended]

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3); and

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively.

Dated: February 2, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–3040 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1060]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is seeking public comment on a proposed exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The proposed amendment would establish a ''safe harbor'' permitting a bank to offer a credit card that can be used to make purchases from a retailer affiliated with the bank.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Comments should refer to Docket No. R–1060, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW) at any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Andrew S. Baer, Attorney (202/452–2246), Legal Division. Users of Telecommunication Device for Deaf (TTD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying the availability or price of a product or service to the purchase by a customer of another product or service offered by the bank or any of its affiliates. A bank engages in a tie for purposes of section 106 by conditioning the availability of, or offering a discount on, one product or service (the ''tying product'') on the condition that the customer obtain some additional product or service (the ''tied product'') from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the ''statutory traditional bank product exception'') that permits a bank to tie a product or service to a loan, discount, deposit, or trust service (''a traditional bank product'') offered by that bank. The Board has extended this exception by providing that a bank may condition the availability of, or vary the consideration for, any product or service on the condition that the customer obtain a traditional bank product from an affiliate of the bank (the ''regulatory traditional bank product exception'').[1] The Board adopted the regulatory traditional bank product exception in its present form because inter-affiliate transactions do not appear to pose any greater risk of anti-competitive behavior than intra-bank transactions, and because Congress had extended the statutory traditional bank product exception to cover inter-affiliate transactions for savings associations and their affiliates.[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On December 7, 1999, the General Counsel of the Board issued a legal interpretation indicating the Board's view that section 106 does not prohibit a credit card bank from issuing a credit card that may be used to make purchases from a retailer affiliated with the credit card bank (''private-label credit card'').[3] The Interpretation did not address the situation where a bank or its retailer affiliate offer discounts on their respective products in connection with a private-label credit card arrangement, as that situation was not presented by the request for an interpretation. The proposed exception also does not cover that situation.

Proposed Rule

The Board is proposing to use its statutory authority to grant a regulatory exemption to section 106 for private-label credit cards that may be used at a retailer affiliated with the issuing bank. The Board is proposing the exception in order to disseminate the Board's view, as reflected in the Interpretation, that such arrangements are not as a general matter anticompetitive, and to create a rule of more general applicability not limited to the facts on which the Interpretation was based.

[1] *See* 12 CFR 225.7(b)(1).

[2] *See* 62 FR 9289, 9314 (February 18, 1997), and 12 U.S.C. 1464(q)(1)(A).

[3] *See* Letter from J. Virgil Mattingly, Jr., to William S. Eckland, Esq., dated December 7, 1999 (the ''Interpretation'').