

Rules and Regulations

Federal Register

Vol. 66, No. 154

Thursday, August 9, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1744

RIN 0572-AB48

Post-Loan Policies and Procedures Common to Guaranteed and Insured Loans

AGENCY: Rural Utilities Service, USDA.
ACTION: Final rule.

SUMMARY: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. To facilitate the financing of those projects and services, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems in an expedited manner based on the financial strength of the borrowers operations. This will help enable RUS telecommunications providers to compete in an expanding number of telecommunications services may be critical to their financial strength and stability.

EFFECTIVE DATE: This rule is effective August 9, 2001.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a 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).

Executive Order 12988

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

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on 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 economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements have been

approved by emergency clearance under OMB Control Number 0572-0126.

Comments on this information collection must be received by October 9, 2001.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250-1522.

Title: 7 CFR part 1744, subpart B, "Lien Accommodation and Subordination Policy"

Type of Request: New collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per respondent.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690-1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this 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 rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 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, DC 20402-9325.

Unfunded Mandates

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

Background

RUS is amending its regulations covering lien accommodations under certain circumstances where the borrower's financial strength is sufficient to protect security for the Government's loans and the lender seeking a lien accommodation.

Since the passage of the Telecommunications Act of 1996, which provides for a competitive, deregulated national telecommunications policy framework, the Federal Communications Commission (FCC) has been working to implement the provisions of the law. As those provisions begin to be integrated through the FCC's rulemaking process, the FCC is focusing on the types of telecommunications service that must be made available to all Americans; *i.e.* part of universal service, and the benefits to all Americans from advanced services for schools, libraries, and rural health care providers. The newly competitive environment will undoubtedly affect the rural telecommunications marketplace. For the industry as a whole—urban and rural—competition will offer the means for delivering the universal service concept envisioned by the Telecommunications Act of 1996. In the competitive marketplace of the future, investment in infrastructure will be lucrative in markets where local exchange carriers seek to attract high-usage, low-cost subscribers. Competition will be fierce and

customers will be the winners as their demands for new and improved service at affordable rates will be met. Yet in rural and high-cost areas, where quality of service and advanced service offerings are just as important, there is less potential for investment based on competition. Investment will need to be encouraged in the form of incentives through the universal support mechanisms and the lending programs of RUS, as well as private sources of financing. RUS will continue its partnership with rural America to ensure that telecommunications providers will have the means to modernize their networks; however, industry deregulation and new technological developments have caused RUS borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders.

Due to the changing environment of the telecommunications industry, large or predominately non-rural local exchange carriers (LECs) are selling their more rural exchanges in order to concentrate on their more lucrative service areas. This "sell-off" provides an opportunity for rural LECs to expand their service territories. Typically, these acquired exchanges will need infrastructure improvements and the rural LECs will work hard to provide state-of-the-art service. This will require increased investment. RUS loans for infrastructure building can enable rural LECs to upgrade plant and service territories that may have been neglected for years. All subscribers, urban and rural, benefit from improvements to the national network. While opportunities exist for rural LECs to expand their markets and continue the tradition of providing the best possible service available to rural residents, uncertainties regarding future revenue streams and the availability of funds from universal service support may hamper some small LECs' investment decisions. The amendments to this regulation will help to facilitate funding from non-RUS sources in order to meet the growing capital needs of rural LECs. Depending on the purposes for which a lien accommodation is being sought, RUS will provide "automatic" approval for borrowers that meet the financial

tests described in this rule. RUS believes that borrowers that are financially sound should be afforded more flexibility with regard to financial arrangements with outside lenders for the purpose of promoting rural telecommunications. The tests are designed to ensure that the financial strength of the borrower is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

In addition to providing for automatic lien accommodations, this amendment removes the requirement for borrowers seeking lien accommodations to comply with competitive bid procedures under 7 CFR part 1753. Further, RUS proposes to address other concerns involved in the accommodation of the Government's lien for those borrowers that do not qualify for an automatic lien accommodation in a subsequent revision to this subpart.

Comments

A proposed rule was published December 15, 1999, at 64 FR 69946.

During the comment period that ended February 14, 2000, RUS received comments from the following organizations:

- (1) Cooper, White & Cooper LLR, representing: National Rural Telecom Association; Organization for the Protection and Advancement of Small Telecommunications Companies; United States Telecom Association; and Western Rural Telephone Association
- (2) Rural Telephone Finance Cooperative; and
- (3) CoBank.

The comments and RUS' responses follow:

Comment summary. The respondents commented that RUS should utilize consolidated financial reports when determining a borrower's eligibility for an "automatic" lien accommodation under this rule, rather than unconsolidated borrower financial statements that reflect only the telecommunication company's or cooperative's financial condition.

RUS response. When dealing with the security of the government's loans, RUS must rely on the financial strength of the borrower and its ability to survive economically based on its "telecommunications service" operations. Basing financial tests on consolidated statements may distort the true health of the borrower's financial position with regards to its operations. In addition, the RUS mortgage does not provide a lien on assets not held by the

borrower and therefore, RUS believes the best measure is to use unconsolidated statements.

Comment summary. The respondents request that RUS implement rule changes that would allow a borrower to effect the release of lien of the government's mortgage on after-acquired property upon a showing of sufficient financial strength to ensure that the government's security interest is adequate to protect the RUS loan.

RUS response. RUS disagrees with this position. RUS views each borrower as an 'on-going' project whereby the strength of its operations as a whole is needed to adequately secure the government's interests. Commercial operations are oftentimes cyclical and evidence of current financial strength is not an insurance of future financial performance.

Comment summary. The respondents requested that RUS clarify whether TIER and Debt Service were calculated on a before or after-tax basis.

RUS response. As noted in the definition section, both ratios use 'net income', denoting that the calculations are after income taxes.

Comment summary. The respondents requested that RUS eliminate the requirement that the weighted average life of the new private lender notes does not exceed the remaining weighted average life of the notes being refinanced, stating that in some cases, longer maturity periods that would reduce debt service payment could improve cash flow. In addition, the respondents requested that the terms of the loans be measured by the borrowers ability to repay the loan as indicated by TIER and Debt Service Coverage.

RUS response. Increasing the life of the loan beyond the remaining original life could have the effect of severely under-collateralizing the debt, thereby putting the lenders at risk of not having sufficient assets to provide adequate security. An open-ended maturity period, as suggested by relying on TIER and Debt Service Coverage indicators, only exacerbates the lenders' risks.

Comment summary. RUS should increase the principal amount of a loan from a private lender to refinance or refund the Government's loan from not greater than 105 percent of the of the balance of the notes being refunded or refinanced to not less than 112 percent, or eliminate the percentage limitation altogether. The respondents propose that this would allow borrowers to cover additional closing and fees associated with the new financing.

RUS response. RUS recognizes that loans from private lenders may contain fees and equity contribution

requirements, and therefore, will raise the percentage limitation from not more than 105 percent to not more than 112 percent. This should provide a reasonable level at which borrowers seeking to finance closing costs and associated fees and equity contributions would be able to do so.

Comment summary. Sections 1744.30(c)(2)(iii) and (iv) could be in conflict with each other if the number of years remaining on a loan to be refinanced is less than five. Paragraph (c)(2)(iv) requires the refinancing to be amortized for a period of not less than five years.

RUS response. RUS agrees that there is the potential for conflict in the way the proposed rule worded those sections. The final rule has been modified to allow for the amortization period of the loan to be, at a minimum, the original remaining years to maturity.

Comment summary. The respondents stated a preference for a net assets to long-term debt test instead of the proposed net plant to long-term debt test in §§ 1744.30(d)(2) and 1744.30(e)(2). As stated in the rule, the ratio includes, on a pro-forma basis, the new private lender debt but does not include the plant associated with that debt. In addition, where the proceeds of the private lender debt go to a subsidiary, even if the formula accounted for the new assets, they would not be recorded on the borrower's balance sheet, thereby reducing the borrower's ability to meet the test. The respondents argued that using net assets, where the borrower owns assets that are not counted as plant, would be better since many borrowers have substantial assets that are not plant.

RUS response. The premise behind providing "automatic" lien accommodations is based on the strength of a borrower's financial condition and a negligible potential for loan security risk based on that strength. Using net plant rather than net assets counts only those assets on which the government's mortgage provides a perfected first lien. RUS has, however, revised the ratio test to include, on a pro-forma basis, the associated plant to be added by the private lender debt, when that plant is owned directly by the borrower. In the case of a borrower flowing through the proceeds of the private lender debt to a subsidiary, RUS believes that the borrower should have sufficient net plant need to provide RUS with adequate security necessary for the "automatic" lien accommodation, since the subsidiary's assets (financed through the lien accommodation) are not covered by the government's mortgage.

Comment summary. The respondents stated that RUS should consider including "non-plant" costs, such as transaction fees, working capital, and goodwill, associated with exchanges or purchases as eligible costs for lien accommodations under the regulation. They stated that these costs are typically contemplated in the purchase of existing systems as well as in new projects and that if private lenders were willing to finance these "non-plant" costs, RUS should not object to inclusion of these costs under the lien of the mortgage.

RUS response. The "soft costs" associated with the construction or acquisition of assets provide little or no tangible security. Accommodating payment of such costs under the lien of the mortgage would dilute the security of the other mortgage.

Comment summary. The respondents questioned the need for the certification from the borrower's CPA to the financial tests required in sections 1744(d)(5) and (e)(5), and stated that since RUS already had borrowers' CPA audits, certification should only be required when the audit had not yet been received by RUS.

RUS response. The CPA audit does not calculate nor attest to a borrower's achievement of TIER or Debt Service Coverage. The assurance provided by the CPA's certification of the borrower's achievement of the financial requirements is crucial to the "automatic" lien accommodation process. To expedite the process, borrowers may wish to have the CPA prepare the certification at the completion of the annual audit, thereby eliminating the need for further participation by the CPA.

Comment summary. The respondents objected to the provision that the financing agreement between the borrower and the private lender provide for the private lender to terminate advances on its loan to the borrower when the borrower is in default under the terms of its mortgage with RUS. They argue that this places an undue burden on the private lender that is contractually obligated to advance funds under the terms of its loan. The respondents stated that once the terms of the "automatic" lien accommodation have been met, RUS should take the risk for the facility financed. Further, the respondents stated that the burden should be placed on the borrower to cease the request for advances, not on the private lender.

RUS response. As a provision for obtaining an automatic lien accommodation (which does not require RUS approval when the criteria contained in the regulation are met), to

protect the security for the Government's loans, the borrower should cease to incur additional private debt when it is in default on the Government's loans. Further, the respondents incorrectly view the burden as being placed on the private lender, and not on the borrower. The regulation clearly states that the financing agreement, a document prepared and executed prior to the advance of funds, contain the provision for termination of advance of funds upon request by RUS. In the event of a default, RUS would notify the borrower and the private lender so that they could comply with the termination of advance of funds provision. Therefore, notice to the private lender would not place the private lender under two inconsistent obligations.

Comment summary. Section 1744.30(e) pertains only to "wholly-owned" subsidiaries and is silent as to structures in which a borrower is a participant in a joint venture or partnership. The respondents argue that these types of projects are often undertaken for the mutual benefit of numerous telecommunications providers and that the regulation should make provision for these increasingly common ventures.

RUS response. At the present time, RUS believes that limiting the applicability of "automatic" lien accommodations to wholly-owned subsidiaries is prudent and in the best interest of protecting security for the Government's loans. Borrowers are, of course, not prevented from requesting approval for a lien accommodation under the traditional procedures for these types of projects. The comment is, however, beneficial and RUS will take it under advisement for future policy discussion.

Comment summary. The respondents argue that the financial tests in §§ 1744.30(e)(1) (TIER not less than 2.5 and DSC not less than 1.5) and (e)(3) (equity percentage not less than 45 percent) seem excessive and may result in most RUS or RTB borrowers failing to qualify for automatic lien accommodations when the assets are to be owned by a subsidiary.

RUS response. The financial tests required when the assets are to be owned by a subsidiary are more stringent, by design, and are intended to ensure that only the healthiest, strongest borrowers qualify, since there is no direct tie to assets being funded in relation to the security that RUS is giving up. By RUS' calculation, based on the most recent financial data available, 40% of RUS' telecommunications borrowers qualify.

As noted before, in the case of a borrower flowing through the proceeds of the private lender debt to a subsidiary, RUS believes that the borrower should have sufficient financial strength to provide RUS with adequate security, since the subsidiary's assets (financed through the lien accommodation) are not subject to the lien of the borrower's mortgage with RUS.

Comment summary. The respondents inquired whether an equity investment in a subsidiary, as opposed to a loan, would be permissible. In addition, the respondents believed there may be some conflict in RUS' treatment of loans to subsidiaries as investments allowed under the borrower's current mortgage with RUS.

RUS response. Equity investments or contributions are clearly different from loans with defined repayment terms and contractual agreements. RUS intended to only provide for loans to the subsidiary. RUS further has provided, in section 1744.30(i)(2), that such loans, when made in accordance with the terms of this regulation, do not require RUS approval as investments in affiliated companies, thereby releasing the borrower from obtaining "double" approval for the same investment.

Comment summary. Clarification was requested with regard to § 1744.30(e)(6)(vii), regarding the submission, upon request by RUS, of the financing or guarantee agreement between the borrower and the subsidiary.

RUS response. This section is only intended to ensure that RUS has the right to review the terms and conditions, if merited, of the borrower's loan or guarantee of a loan to its subsidiary. With regard to loan guarantees, where the debt exists at the subsidiary level, and the borrower is guaranteeing the debt, automatic approval of a lien accommodation under this section would permit the guarantee of the debt without having it count against the borrower's allowable distribution of capital as contained in the borrower's mortgage with RUS.

Comment summary. The respondents requested that RUS provide acknowledgement for an automatic lien accommodation to the private lender in addition to the acknowledgement to the borrower.

RUS response.

RUS agrees and will provide such acknowledgment.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and

recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

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

Subpart B—Lien Accommodations and Subordination Policy

2. Sections 1744.20 and 1744.21 are revised to read as follows:

§ 1744.20 General.

(a) Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing such telecommunications services.

(b) To facilitate the financing of new services and other services not ordinarily financed by RUS, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems or accommodating or subordinating the Government's lien on after-acquired property of telecommunications borrowers. To expedite this process, requests for lien accommodations meeting the requirements of § 1744.30 will receive automatic approval from RUS.

(c) This subpart establishes RUS policy with respect to all requests for lien accommodations and subordinations for loans from private lenders. For borrowers that do not qualify for automatic lien accommodations in accordance with § 1744.30, RUS will consider lien accommodations for RE Act purposes under § 1744.40 and non-Act purposes under § 1744.50.

§ 1744.21 Definitions.

The following definitions apply to this subpart:

Administrator means the Administrator of RUS and includes the Governor of the RTB.

Advance means transferring funds from RUS, RTB, or a lender guaranteed by RUS to the borrower's construction fund.

After-acquired property means property which is to be acquired by the borrower and which would be subject to the lien of the Government mortgage when acquired.

Amortization expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Amortization expense	6560.2
(2) Amortization expense—tangible	6563
(3) Amortization expense—intangible	6564
(4) Amortization expense—other ..	6565

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Asset means a future economic benefit obtained or controlled by the borrower as a result of past transactions or events.

Automatic lien accommodation means the approval, by RUS, of a request to share the Government's lien on a pari passu or pro-rata basis with a private lender in accordance with the provisions of § 1744.30.

Borrower means any organization that has an outstanding telecommunications loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

Construction Fund means the RUS Construction Fund Account into which all advances of loan funds are deposited pursuant to the provisions of the loan documents.

Debt Service Coverage (DSC) ratio means the ratio of the sum of the borrower's net income, depreciation and amortization expense, and interest expense, all divided by the sum of all payments of principal and interest required to be paid by the borrower during the year on all its debt from any source with a maturity greater than 1 year and capital lease obligations.

Default means any event or occurrence which, unless corrected, will, with the passage of time and the giving of proper notices, give rise to remedies under one or more of the loan documents.

Depreciation expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Depreciation expense	6560.1
(2) Depreciation expense—telecommunications plant in service	6561
(3) Depreciation expense—property held for future telecommunications use	6562

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Disbursement means a transfer of money by the borrower out of the construction fund in accordance with the provisions of the fund.

Equity percentage means the total equity or net worth of the borrower expressed as a percentage of the borrower's total assets.

FFB means the Federal Financing Bank.

Financial Requirement Statement (FRS) means RUS Form 481 (OMB—No. 0572—0023). (This RUS Form is available from RUS, Program Development and Regulatory Analysis, Washington, DC 20250-1522).

Government mortgage means any instrument to which the Government, acting through the Administrator, is a party and which creates a lien or security interest in the borrower's property in connection with a loan made or guaranteed by RUS whether the Government is the sole mortgagee or is a co-mortgagee with a private lender.

Hardship loan means a loan made by RUS under section 305(d)(1) of the RE Act.

Interim construction means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

Interest expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Interest and related items	7500
(2) Interest on funded debt	7510
(3) Interest expense—capital leases	7520
(4) Amortization of debt issuance expense	7530
(5) Less Allowance for funds used during construction	7340/ 7300.4
(6) Other interest deductions	7540

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Interim financing means funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS

loan funds have not yet been made available.

Lien accommodation means sharing the Government's lien on a pari passu or pro-rata basis with a private lender.

Loan means any loan made or guaranteed by RUS.

Loan documents means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

Loan funds means the proceeds of a loan made or guaranteed by RUS.

Material and supplies means any of the items properly recordable in the following account of the borrower:

Account names	Number
(1) Material and Supplies	1220.1

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net income/Net margins means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Local Network Services Revenues.	5000 through 5069
(2) Network Access Services Revenues.	5080 through 5084
(3) Long Distance Network Services Revenues.	5100 through 5169
(4) Miscellaneous Revenues	5200 through 5270
(5) Nonregulated Revenues ..	5280
(6) Less Uncollectible Revenues.	5200 through 5302
(7) Less Plant Specific Operations Expense.	6110 through 6441
(8) Less Plant Nonspecific Operations Expense.	6510 through 6565
(9) Less Customer Operations Expense.	6610 through 6623
(10) Less Corporate Operations Expense.	6710 through 6790
(11) Other Operating Income and Expense.	7100 through 7160
(12) Less Operating Taxes ...	7200 through 7250/7200.5
(13) Nonoperating Income and Expense.	7300 through 7370
(14) Less Nonoperating Taxes.	7400 through 7450/7400.5
(15) Less Interest and Related Items.	7500 through 7540
(16) Extraordinary Items	7600 through 7640/7600.4
(17) Jurisdictional Differences and Nonregulated Income Items.	7910 through 7990

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net plant means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment.	2001 through 2007
(2) Less Depreciation and Amortization.	3100 through 3600

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Notes means evidence of indebtedness secured by or to be secured by the Government mortgage.

Pari Passu means equably; ratably; without preference or precedence.

Plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment.	2001 through 2007

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Private lender means any lender other than the RUS or the lender of a loan guaranteed by RUS.

Private lender notes means the notes evidencing a private loan.

Private loan means any loan made by a private lender.

RE Act (Act) means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) RTB means the Rural Telephone Bank.

RUS means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration. The term also includes the RTB, unless otherwise indicated.

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act.

Subordination means allowing a private lender to have a lien on specific property which will have priority over the Government's lien on such property.

Tangible plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Telecommunications Plant in Service—General Support Assets.	2110 through 2124
(2) Telecommunications Plant in Service—Central Office Assets.	2210 through 2232
(3) Telecommunications Plant in Service—Information Origination/Termination Assets.	2310 through 2362
(4) Telecommunications Plant in Service—Cable and Wire Facilities Assets.	2410 through 2441
(5) Amortizable Tangible Assets.	2680 through 2682

Account names	Number
(6) Nonoperating Plant	2006

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Telecommunication services means any service for the transmission, emission, or reception of signals, sounds, information, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

Times interest earned ratio (TIER) means the ratio of the borrower's net income or net margins plus interest expense, divided by said interest expense.

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 to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total equity or net worth means the excess of a borrower's total assets over its total liabilities.

Total liabilities means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current Liabilities	4010 through 4130.2
(2) Long-Term Debt	4210 through 4270.3
(3) Other Liabilities and Deferred Credits.	4310 through 4370

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total long-term debt means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Long-Term Debt	4210 through 4270.3

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Weighted-average life of the loans or notes means the average life of the loans or notes based on the proportion of original loan principal paid during each year of the loans or notes. It shall be determined by calculating the sum of all loan or note principal payments expressed as a fraction of the original loan or note principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan or note. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted-average life would be: $(.2)(1 \text{ year}) + (.2)(2 \text{ years}) + (.2)(3 \text{ years}) + (.2)(4 \text{ years}) + (.2)(5 \text{ years}) = .2 \text{ years} + .4 \text{ years} + .6 \text{ years} + .8 \text{ years} + 1.0 \text{ years} = 3.0 \text{ years}$. If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted-average life would be: $(\$5 \text{ million}/\$5 \text{ million})(5 \text{ years}) = 5 \text{ years}$.

Weighted-average remaining life of the loans or notes means the remaining average life of the loans or notes based on the proportion of remaining loan or note principal expressed in years remaining to maturity of the loans or notes. It shall be determined by calculating the sum of the remaining principal payments of each loan or note expressed as a fraction of the total remaining loan or note amounts times the number of years and fraction of years remaining until maturity of the loan or note.

Weighted-average remaining useful life of the assets means the estimated original average life of the assets to be acquired with the proceeds of the private lender notes expressed in years based on depreciation rates less the number of years those assets have been in service (or have been depreciated). It shall be determined by calculating the sum of each asset's remaining value expressed as a fraction of the total remaining value of the assets, times the estimated number of years and fraction of years remaining until the assets are fully depreciated.

Wholly-owned subsidiary means a corporation owned 100 percent by the borrower.

3. Sections 1744.30, 1744.40, and 1744.50 are redesignated as §§ 1744.40, 1744.50, and 1744.55, respectively.

4. New § 1744.30 is added to read as follows:

§ 1744.30 Automatic lien accommodations.

(a) *Purposes and requirements for approval.* Automatic lien accommodations are available only for refinancing and refunding of notes secured by the borrower's existing Government mortgage; financing assets, to be owned by the borrower, to provide telecommunications services; or financing assets, to be owned by a wholly-owned subsidiary of the borrower, to provide telecommunications services in accordance with the procedures set forth in this section.

(b) *Private lender responsibility.* The private lender is responsible for ensuring that its notes, for which an automatic lien accommodation has been approved as set forth in this section, are secured under the mortgage. The private lender is responsible for ensuring that the supplemental mortgage is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional documents are required or that RUS must take additional actions to secure the notes under the mortgage, the private lender shall follow the procedures set forth in § 1744.40 or § 1744.50, as appropriate.

(c) *Refinancing and refunding.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of refinancing or refunding any notes secured under the Government mortgage, provided that all of the following conditions are met:

(1) No default has occurred and is continuing under the Government mortgage;

(2) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form set forth in Appendix A of this subpart, providing that:

(i) No default has occurred and is continuing under the Government mortgage;

(ii) The principal amount of such refinancing or refunding notes will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded;

(iii) The weighted-average life of the private loan evidenced by the private lender notes will not exceed the weighted-average remaining life of the notes being refinanced or refunded;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(vi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(d) *Financing assets to be owned directly by a borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of plant and material and supplies to provide telecommunication services and when such assets are to be owned and the telecommunications services are to be offered by the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (d)(1) and

(d)(3) of this section, such certification to be substantially in the form in Appendix B of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix C of this subpart; provided, that:

(i) The borrower has met each of the requirements in paragraphs (d)(2) and (d)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(vii) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(viii) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(e) *Financing assets to be owned by a wholly-owned subsidiary of the borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender

notes are issued for the purpose of financing the purchase or construction of tangible plant and material and supplies to provide telecommunication services and when such services are to be offered and the associated tangible assets are to be owned by a wholly-owned subsidiary of the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (e)(1) and (e)(3) of this section, such certification to be substantially in the form in Appendix D of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix E of this subpart; providing that:

(i) The borrower has met each of the requirements in paragraphs (e)(2) and (e)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization

over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The proceeds of the private lender notes will be lent to a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;

(vii) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;

(viii) The borrower will promptly report to the Administrator any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its loans;

(ix) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(x) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(xi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(f) *Borrower notification.* The borrower shall notify RUS of its intention to obtain an automatic lien accommodation under § 1744.30 by providing the following:

(1) The board resolution cited in § 1744.55(b)(1) and the opinion of counsel cited in § 1744.55(b)(2);

(2) The applicable certification or certifications required by paragraph (c)(2); paragraphs (d)(5) and (d)(6); or paragraphs (e)(5) and (e)(6), respectively, of this section, in substantially the form contained in the applicable appendices to this subpart.

(g) *RUS acknowledgment.* Within 5 business days of receipt of the completed certifications and any other information required under this section, RUS will review the information and provide written acknowledgment to the borrower and the private lender of its qualification for an automatic lien

accommodation. Upon receipt of the acknowledgment, the borrower may execute the private lender notes.

(h) *Supplemental mortgage.* If the private lender determines that a supplemental mortgage is required to secure the private lender notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, the private lender may prepare the supplemental mortgage using the form attached as Appendix F to this subpart or the borrower may request RUS to prepare such supplemental mortgage in accordance with the following procedures:

(1) The private lender preparing the supplemental mortgage shall execute and forward the completed document to RUS. Upon ascertaining the correctness of the form and the information concerning RUS, RUS will execute and forward the supplemental mortgage to the borrower.

(2) When requested by the borrower, RUS will expeditiously prepare the supplemental mortgage, using the form in Appendix F to this subpart, upon submission by the private lender of:

(i) The name of the private lender;

(ii) The Property Schedule for inclusion as supplemental mortgage Schedule B, containing legally sufficient description of all real property owned by the borrower; and

(iii) The amount of the private lender note.

(3) The government is not responsible for ensuring that the supplemental mortgage has been executed by all parties and is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional security instruments or other documents are required or that RUS must take additional actions to secure the private lender notes under the mortgage, the private lender shall follow the procedures established in §§ 1744.40 or 1744.50, as appropriate. Except for the actions of the government expressly established in § 1744.40, the government undertakes no obligation to effectuate an automatic lien accommodation. When processing of the supplemental mortgage has been completed to the satisfaction of the private lender, the borrower shall provide RUS with the following:

(i) A fully executed counterpart of the supplemental mortgage, including all signatures, seals, and acknowledgements; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all

requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private

lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

5. Revise newly redesignated § 1744.50(a)(3), to read as follows:

§ 1744.50 Non-Act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

6. In newly redesignated § 1744.55, revise paragraph (a), remove paragraph (b)(5), and redesignate paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250-1590.

* * * * *

7. Appendices A, B, C, D, E, and F are added to subpart B to read as follows:

BILLING CODE 3410-15-P

Appendix A to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Refinancing and Refunding Notes Pursuant to 7 CFR 1744.30(c)

I _____ (Name of President) _____, am President of _____ (Name of Borrower) _____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) _____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(c).

(a) The private lender:

- _____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
- _____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I hereby certify that all other requirements of 7 CFR 1744.30(c) are met; said requirements being as follows:

- (1) No default has occurred and is continuing under the government mortgage;
- (2) The principal amount of such refinancing or refunding notes, which is _____ dollars, will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded; such outstanding principal balance being _____ dollars;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, will not exceed the weighted-average remaining life of the notes being refinanced or refunded, which is _____ years;
- (4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(c) The borrower agrees that the private lender notes will provide for substantially level debt service or level principal amortization.

(d) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, subpart B.

Signed

Date

Name

Name and Address of Borrower:

Appendix B to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes
To Be Issued Pursuant to 7 CFR 1744.30(c)

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

- (a) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

<u>Year</u>	<u>TIER</u>	<u>DSC</u>
_____	_____	_____
_____	_____	_____

- (b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent:

<u>Year</u>	<u>Total Equity</u>
_____	_____

Signed

Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix C to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(d)

I _____ (Name of President), am President of _____ (Name of Borrower) (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(d).

(a) The private lender:

- _____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
- _____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with the private lender notes to be issued pursuant to 7 CFR 1744.30(d) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(d) are met as follows:

- (1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is _____, which is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;
- (2) No default has occurred and is continuing under the government mortgage;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;
- (4) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(d) The borrower agrees that:

- (1) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;
- (2) The private lender notes will provide for substantially level debt service or level principal amortization;
- (3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions; and
- (4) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Signed

Date

Name

Name and Address of Borrower:

Appendix D to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes
To Be Issued Pursuant to 7 CFR 1744.30

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

- (a) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

<u>Year</u>	<u>TIER</u>	<u>DSC</u>
_____	_____	_____
_____	_____	_____

- (b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent.

<u>Year</u>	<u>Total Equity</u>
_____	_____

Signed

Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix E to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(e)

I _____ (Name of President) _____, am President of _____ (Name of Borrower) _____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) _____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(e).

(a) The private lender:

_____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
_____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with private lender notes to be issued pursuant to said § 1744.30(e) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(e) are met; said requirements being as follows:

- (1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is _____, which is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;
- (2) No default has occurred and is continuing under the government mortgage;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;
- (4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service "RUS"; and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender note or notes are to be executed.

(d) The borrower agrees that:

- (1) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;
- (2) The private lender notes will provide for substantially level debt service or level principal amortization;

- (3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions;
 - (4) The proceeds of the private lender notes will be lent to, (Name of Subsidiary), a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;
 - (5) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;
 - (6) The borrower will promptly report to RUS any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its private loans; and
 - (7) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.
- (e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Signed

Date

Name

Name and Address of Borrower:

Appendix F to Subpart B of Part 1744—Form of Supplemental Mortgage

Supplemental Mortgage and Security Agreement, dated as of _____, (hereinafter sometimes called this "Supplemental Mortgage") is made by and among _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"¹), _____ (Supplemental Lender³) (hereinafter called _____), a _____ existing under the laws of _____, and is intend to confer rights and benefits on both the Government and _____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being hereinafter sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage (the "Original Mortgage" as identified in Schedule "A" of this Supplemental Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and _____; and

Whereas, the Original Mortgage as the same may have been previously supplemented, amended or restated is hereinafter referred to as the "Existing Mortgage"; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a Mortgagee and secured party hereunder and under the Existing Mortgage (the Supplemental Mortgage and the Existing Mortgage, hereinafter sometimes collectively referred to the "Mortgage"); and

Whereas, all of the Mortgagor's Outstanding Notes listed in Schedule "A" hereto is secured pari passu by the Existing Mortgage for the benefit of all of the Mortgagees under the Existing Mortgage; and

Whereas, by their execution and delivery of this Supplemental Mortgage the parties hereto do hereby secure the Additional Notes listed in Schedule "A" ((hereinafter called the Supplemental Lender Notes³)) pari passu with the Outstanding Notes under the Existing Mortgage {and do hereby add _____ as a Mortgagee and a secured party under the Existing Mortgage}; and

-
- 1 If the Rural Telephone Bank is a party to the original Mortgage, then "Rural Telephone Bank (herein after called the "Bank")" should be added here and the words "and the Bank" should be added after each reference to the Government.
 - 2 If the Existing Mortgage already defines a Supplemental Lender, then the supplemental lender in the present transaction is to be called the "Second Supplemental Lender" and the supplemental mortgage should refer to both the supplemental lender and the second supplemental lender.
 - 3 If the Second Supplemental Lender is being added to the mortgage, the reference here should be to the "Second Supplemental Lender's Notes."

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and related obligations under the terms of the Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant to the Mortgagees, for the purposes hereinafter expressed, a continuing security interest in all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, in accordance with the Existing Mortgage owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

- A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and
- B. all of those fee and leasehold interests in real property set forth in _____ the Existing Mortgage or in any restatement, amendment or supplement thereto, _____; and
- C. all of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Existing Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing:

- 1. All terms not defined herein shall have the meaning given in the Existing Mortgage.
- 2. The Supplemental Lender Notes are "notes" and "Additional Notes" under the terms of the Existing Mortgage and the Supplemental Mortgage is a supplemental mortgage under the terms of the Existing Mortgage.
- 3. The holders of the Supplemental Lenders Notes shall be considered as a class, so that in those instances where the Existing Mortgage provides that the holders of majority of the notes issued to other Mortgagees, voting as a class, may approve certain actions or make certain demands, so shall the holders of the Supplemental Lender Notes be considered to be a class with rights and authority equal to those of the holders of notes issued to such other Mortgagees.
- 4. The Maximum Debt Limit for the Existing Mortgage shall be as set forth in Schedule "A" hereto.
- 5. The [Second] Supplemental Lender shall immediately cease transfer of funds covered by the Supplemental Lender Notes if it receives notice that RUS has determined that the borrower's financial condition has deteriorated to a level that impairs the security or feasibility of the government's loans to the borrower.

In Witness Whereof, _____ as
Mortgagor⁴

⁴ Spaces are to be provided for the execution by all other parties, together with the printed name and office of the executing individual and the name of the organization represented. Each execution must be acknowledged.

Supplemental Mortgage Schedule A

Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is \$ _____.
2. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows: _____.
3. The Outstanding Notes referred to in the fourth WHEREAS clause above are more particularly described as follows:
4. The Additional Notes described in the fifth WHEREAS clause above are more particularly described as follows:

Supplemental Mortgage Schedule B

Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are more particularly described as follows:

Dated: August 6, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01-19981 Filed 8-8-01; 8:45 am]

BILLING CODE 3410-15-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30263; Amdt. No. 2064]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as

the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97)