

## § 1735.51

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

### § 1735.51 Required findings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### §§ 1735.53-1735.59 [Reserved]

## Subpart F—Mortgage Controls on Acquisitions and Mergers

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

### § 1735.60 Specific provisions.

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

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

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

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

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

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

### § 1735.61 Approval criteria.

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

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

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

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

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

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

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

### § 1735.62 Approval of acquisitions and mergers.

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

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

Among the conditions of approval are the following:

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

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

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

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

### §§ 1735.63–1735.69 [Reserved]

## Subpart G—Acquisitions Involving Loan Funds

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

### § 1735.70 Use of loan funds.

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

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

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

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