

§ 1735.2

7 CFR Ch. XVII (1-1-03 Edition)

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

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

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

§ 1735.2 Definitions.

As used in this part:

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

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

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

Administrator means the Administrator of RUS.

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

Appropriated means funds appropriated based on subsidy.

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

Borrower means any organization which has an outstanding loan made or

guaranteed by RUS, or which is seeking such financing.

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

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

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

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

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

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

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

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

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

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

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

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

GFR means the RUS general field representative.

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

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

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

Loan means any loan made or guaranteed by RUS.

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

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

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

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

amount of the notes outstanding at a particular time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subscriber means the same as access line.

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

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

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

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

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

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

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

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

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

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

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

§ 1735.3 Availability of forms.

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

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

§§ 1735.4–1735.9 [Reserved]

Subpart B—Loan Purposes and Basic Policies

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

§ 1735.10 General.

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

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

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

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

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

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

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

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

§ 1735.11 Area coverage.

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

§ 1735.12 Nonduplication.

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