

110TH CONGRESS  
1ST SESSION

# S. 1439

To reauthorize the broadband loan and loan guarantee program under title VI of the Rural Electrification Act of 1936.

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IN THE SENATE OF THE UNITED STATES

MAY 21, 2007

Mr. ROBERTS (for himself and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To reauthorize the broadband loan and loan guarantee program under title VI of the Rural Electrification Act of 1936.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Rural Broadband Improvement Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Rural broadband access reauthorization.
- Sec. 3. Clarification of eligible rural area.
- Sec. 4. Acceleration of loan applications.

- Sec. 5. Elimination of 2-percent limit.
- Sec. 6. Grant program.
- Sec. 7. Loan security.
- Sec. 8. Expansion of the terms of loans.
- Sec. 9. Clarification of neutrality standard.

1 **SEC. 2. RURAL BROADBAND ACCESS REAUTHORIZATION.**

2 (a) EXTENSION OF LOAN PROGRAM.—Section 601(k)  
 3 of the Rural Electrification Act of 1936 (7 U.S.C.  
 4 950bb(k)) is amended by striking “September 30, 2007”  
 5 and inserting “September 30, 2012”.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—Section  
 7 601(j) of the Rural Electrification Act of 1936 (7 U.S.C.  
 8 950bb(j)) is amended—

9 (1) in paragraph (1)—

10 (A) in subparagraph (A), by striking  
 11 “2002 through 2005” and inserting “2008  
 12 through 2010”; and

13 (B) in subparagraph (B), by striking  
 14 “2006 and 2007” and inserting “2011 and  
 15 2012”; and

16 (2) in paragraph (3), by striking “2007” and  
 17 inserting “2012”.

18 **SEC. 3. CLARIFICATION OF ELIGIBLE RURAL AREA.**

19 (a) IN GENERAL.—Section 601(b)(2) of the Rural  
 20 Electrification Act of 1936 (7 U.S.C. 950bb(b)(2)) is  
 21 amended to read as follows:

22 “(2) ELIGIBLE RURAL AREA.—The term ‘eligi-  
 23 ble rural area’ means any area other than—

1           “(A) a city or town that has a population  
2 of greater than 20,000 inhabitants;

3           “(B) the urbanized area contiguous and  
4 adjacent to such a city or town; and

5           “(C) an area determined by the Secretary  
6 to be predominantly urban in character.”.

7           (b) CONFORMING AMENDMENT.—Section 601 of the  
8 Rural Electrification Act of 1936 (7 U.S.C. 950bb) is  
9 amended—

10           (1) by striking “eligible rural community” each  
11 place that term appears and inserting “eligible rural  
12 area”; and

13           (2) by striking “eligible rural communities”  
14 each place that term appears and inserting “eligible  
15 rural areas”.

16           (c) NON-DUPLICATION REQUIREMENT.—Section  
17 601(c) of the Rural Electrification Act of 1936 (7 U.S.C.  
18 950bb(c)) is amended by adding at the end the following:

19           “(3) NON-DUPLICATION REQUIREMENT.—

20           “(A) IN GENERAL.—No loan shall be made  
21 under this section unless the Secretary deter-  
22 mines (and set forth his reasons therefor in  
23 writing) that no duplication of terrestrial lines,  
24 facilities, or systems, providing broadband serv-  
25 ices will result therefrom.

1 “(B) EXCEPTION.—

2 “(i) IN GENERAL.—The non-duplica-  
3 tion prohibition under subparagraph (A)  
4 may be waived if the Secretary, in his dis-  
5 cretion, determines that such duplication is  
6 necessary and incidental in order to fur-  
7 nish or improve broadband service in an el-  
8 igible rural area.

9 “(ii) LIMITATION.—The waiver au-  
10 thority granted to the Secretary under  
11 clause (i) may only be used to provide  
12 loans or loan guarantees for duplication of  
13 service when at least 75 percent of the  
14 total end users served by the proposed  
15 project to be funded by such loan or loan  
16 guarantee are without access to broadband  
17 service.

18 “(4) SUBMISSION AND NOTIFICATION OF RE-  
19 QUIRED INFORMATION.—

20 “(A) IN GENERAL.—No loan shall be made  
21 under this section unless the entity eligible to  
22 obtain such loan or loan guarantee—

23 “(i) submits to the Secretary the fol-  
24 lowing information relating to each incum-  
25 bent broadband service provider that pro-

1           vides broadband service in the area to be  
2           served by the entity:

3                   “(I) Name and physical address  
4                   of such provider.

5                   “(II) The rate such provider  
6                   charges for use of its network or serv-  
7                   ices.

8                   “(III) The service area of such  
9                   provider; and

10                   “(ii) provides notice, in writing, to  
11                   each such provider when the entity has  
12                   submitted such information to the Sec-  
13                   retary.

14                   “(B) 30-DAY PUBLIC COMMENT PERIOD.—

15           The Secretary—

16                   “(i) shall make no loan under this sec-  
17                   tion unless the Secretary has provided for  
18                   a 30-day period for public comment on the  
19                   loan and the proposed scope and use of the  
20                   proceeds from such loan; and

21                   “(ii) may, in response to such com-  
22                   ments, make such modifications to the loan  
23                   as he deems appropriate.”.

1 **SEC. 4. ACCELERATION OF LOAN APPLICATIONS.**

2 (a) 180-DAY PROCESSING PERIOD.—Section 601(c)  
 3 of the Rural Electrification Act of 1936 (7 U.S.C.  
 4 950bb(c)), as amended by section 4(c), is further amended  
 5 by adding at the end the following:

6 “(5) 180-DAY PROCESSING PERIOD.—Not later  
 7 than 180 days after the receipt of an application for  
 8 a loan or loan guarantee under this section, the Sec-  
 9 retary shall complete processing of each such appli-  
 10 cation.”.

11 (b) SIMPLIFICATION OF THE APPLICATION PROCESS  
 12 AND POST-APPLICATION AUDIT REQUIREMENTS.—

13 (1) IN GENERAL.—In carrying out title VI of  
 14 the Rural Electrification Act of 1936 (7 U.S.C.  
 15 950bb et seq.), the Secretary of Agriculture, in con-  
 16 sultation with the Administrator of the Rural Utili-  
 17 ties Service, shall—

18 (A) remove any duplicative or unnecessary  
 19 application or audit requirements under that  
 20 title, including allowing parent companies, and  
 21 their wholly owned subsidiaries, to file a single  
 22 consolidated application or audit report, if such  
 23 application or report includes all relevant finan-  
 24 cial information concerning the project which is  
 25 the subject of the loan or loan guarantee;

1 (B) reduce the cost and paperwork associ-  
2 ated with such requirements;

3 (C) ensure that the Secretary examines the  
4 total business plan of each applicant for a loan  
5 or loan guarantee under that title, including the  
6 revenue such applicant generated from sources  
7 unrelated to its broadband service, but con-  
8 nected or otherwise related to the facilities fi-  
9 nanced by the loan or loan guarantee;

10 (D) ensure that the Secretary requires  
11 franchise agreements—

12 (i) only from those areas in which the  
13 funds from any loan or loan guarantee  
14 under that title are to be used; and

15 (ii) from such areas only upon the re-  
16 lease of such funds, as a condition for such  
17 release, and not upon the initial filing of  
18 any application under section 601 of the  
19 Rural Electrification Act of 1936 (7  
20 U.S.C. 950bb);

21 (E) eliminate the required submission of  
22 an area survey under that title; and

23 (F) require that any recipient of a loan or  
24 loan guarantee under that title uses the funds  
25 from such loan or loan guarantee within 3 years

1           after receipt of such funds to build out its  
2           broadband service in the eligible rural area for  
3           which such funds were approved, except if the  
4           Secretary determines that the recipient was un-  
5           able to expend such funds due to circumstances  
6           beyond the control of the recipient.

7           (2) DEFINITION OF SUBSIDIARY.—In this sub-  
8           section, the term “subsidiary” means a business en-  
9           tity controlled, directly or indirectly, by another  
10          business entity or person.

11          (c) ADDITIONAL FUNDING FOR STAFF.—Section 601  
12          of the Rural Electrification Act of 1936 (7 U.S.C. 950bb)  
13          is amended by adding at the end the following:

14          “(1) ADDITIONAL STAFF.—The Secretary, in his or  
15          her discretion, may hire such additional administrative  
16          personnel, including general field representatives and legal  
17          staff, as is necessary to carry out the administrative duties  
18          under this section.”.

19          **SEC. 5. ELIMINATION OF 2-PERCENT LIMIT.**

20          Section 601(d) of the Rural Electrification Act of  
21          1936 (7 U.S.C. 950bb(d)) is amended by striking para-  
22          graph (3).

1 **SEC. 6. GRANT PROGRAM.**

2 Title VI of the Rural Electrification Act of 1936 (7  
3 U.S.C. 950bb et seq.) is amended by adding at the end  
4 the following:

5 **“SEC. 602. RURAL AREA MAP AND CONNECT GRANT PRO-**  
6 **GRAM.**

7 “(a) **PURPOSES.**—The purposes of any grant under  
8 subsection (b) are—

9 “(1) to complement the loan and loan guar-  
10 antee program under section 601 with grants admin-  
11 istered by the Secretary;

12 “(2) to promote public-private partnerships for  
13 the mapping of broadband availability and demand  
14 in rural areas; and

15 “(3) to enhance the feasibility of providing  
16 broadband service to rural areas.

17 “(b) **GRANTS AUTHORIZED.**—

18 “(1) **IN GENERAL.**—The Secretary shall award  
19 grants to eligible entities for the development and  
20 implementation of statewide initiatives to identify  
21 and track the availability and adoption of broadband  
22 services within eligible rural areas.

23 “(2) **COMPETITIVE BASIS.**—All grants under  
24 paragraph (1) shall be awarded on a competitive  
25 basis.

1       “(c) APPLICATION.—To be eligible to receive a grant  
2 under subsection (b), an eligible entity shall submit an ap-  
3 plication to the Secretary, at such time, in such manner,  
4 and containing such information as the Secretary may re-  
5 quire.

6       “(d) CAP ON GRANT AMOUNT.—Any grant awarded  
7 under subsection (b) shall not exceed an amount that is  
8 equal to the amount that is 20 percent of the net projected  
9 cost of any initiative to be funded by such amounts.

10       “(e) USE OF FUNDS.—A grant awarded to an eligible  
11 entity under subsection (b) shall be used—

12               “(1) to ensure that such entity works collabo-  
13 ratively with broadband service providers to encour-  
14 age broadband deployment and use in areas without  
15 broadband service;

16               “(2) to identify and track—

17                       “(A) rural areas in each State that do not  
18 have broadband service;

19                       “(B) the rate at which residential and  
20 business end users adopt such service;

21                       “(C) possible suppliers of such service; and

22                       “(D) barriers to the adoption of such serv-  
23 ice, including whether or not—

24                               “(i) the demand for such services is  
25 absent; and

1                   “(ii) the supply for such services is  
2                   capable of meeting the demand for such  
3                   services;

4                   “(3) to create and facilitate in eligible rural  
5                   areas in a State a local rural broadband planning  
6                   team—

7                   “(A) comprised of relevant rural area rep-  
8                   resentatives, including, where applicable, rep-  
9                   resentatives of business, education, health care,  
10                  local government, agriculture, and broadband  
11                  service providers; and

12                  “(B) which shall—

13                   “(i) baseline broadband use across rel-  
14                   evant rural area sectors;

15                   “(ii) set goals for improved broadband  
16                   use within each sector; and

17                   “(iii) develop a tactical business plan  
18                   for achieving its goals;

19                  “(4) to facilitate information exchange regard-  
20                  ing the use, demand, and existence of broadband  
21                  service between the public and private sectors;

22                  “(5) to create within each State a geographic  
23                  inventory map of broadband service in order to iden-  
24                  tify gaps in broadband service in eligible rural areas  
25                  through a method of geographic information system

1 mapping of service availability and geographic infor-  
2 mation system analysis at the census block level;

3 “(6) to provide a baseline assessment of state-  
4 wide broadband deployment in eligible rural areas  
5 within the State; and

6 “(7) to ensure nondisclosure of any proprietary  
7 content or information that may be accessed, discov-  
8 ered, or reported in carrying out any of the activities  
9 described in paragraphs (1) through (6).

10 “(f) PARTICIPATION LIMIT.—

11 “(1) AVOIDING DUPLICATIVE INITIATIVES.—No  
12 State shall have more than 1 eligible entity receive  
13 a grant under this section to perform the activities  
14 described in subsection (d) within that State.

15 “(2) PROHIBITION ON CONTINUING GRANTS.—  
16 For each State, an eligible entity may not receive a  
17 new grant under this section to fund the activities  
18 described in subsection (d) within that State, if such  
19 entity obtained prior grant awards under this section  
20 to fund the same activities in that State in any pre-  
21 vious year.

22 “(g) REPORT.—Each recipient of a grant under sub-  
23 section (b) shall submit a report on the use of the funds  
24 provided by the grant to the Secretary.

1       “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out the provi-  
3 sions of this section \$20,000,000 for each of fiscal years  
4 2008 through 2012.

5       “(i) NO REGULATORY AUTHORITY.—Nothing in this  
6 section shall be construed as giving any public or private  
7 entity established or affected by this section any regu-  
8 latory jurisdiction or oversight authority over providers of  
9 broadband services or information technology.

10       “(j) DEFINITIONS.—In this section:

11               “(1) SECRETARY, BROADBAND SERVICE, AND  
12 ELIGIBLE RURAL AREA.—The terms ‘Secretary’,  
13 ‘broadband service’, and ‘eligible rural area’ have the  
14 same meaning as in section 601 of this Act.

15               “(2) ELIGIBLE ENTITY.—The term ‘eligible en-  
16 tity’ means a nonprofit organization that is selected  
17 by a State to work in partnership with State agen-  
18 cies and private sector partners in identifying and  
19 tracking the availability and adoption of broadband  
20 services in eligible rural areas of that State.

21               “(3) NONPROFIT ORGANIZATION.—The term  
22 ‘nonprofit organization’ means an organization—

23                       “(A) described in section 501(c)(3) of the  
24 Internal Revenue Code of 1986 and exempt  
25 from tax under section 501(a) of such Code;

1           “(B) no part of the net earnings of which  
2           inures to the benefit of any member, founder,  
3           contributor, or individual;

4           “(C) that has an established competency  
5           and proven record of working with public and  
6           private sectors to accomplish widescale deploy-  
7           ment and adoption of broadband services and  
8           information technology; and

9           “(D) the board of directors of which is not  
10          composed of a majority of individuals who are  
11          also employed by, or otherwise associated with,  
12          any Federal, State, or local government or any  
13          Federal, State, or local agency.”.

14 **SEC. 7. LOAN SECURITY.**

15          (a) ADEQUACY OF SECURITY.—In carrying out title  
16 VI of the Rural Electrification Act of 1936 (7 U.S.C.  
17 950bb et seq.), the Secretary of Agriculture, in consulta-  
18 tion with the Administrator of the Rural Utilities Service,  
19 shall ensure that—

20           (1) the type, amount, and method of security  
21           used to secure any loan or loan guarantee under  
22           that title is commensurate to the risk involved with  
23           each such loan or loan guarantee, particularly when  
24           a loan or loan guarantee is issued to a financially  
25           healthy, strong, and stable entity; and

1           (2) any loan guarantee issued under that title  
2           is guaranteed for not less than 80 percent of the  
3           amount of the outstanding principal of the loan to  
4           be guaranteed.

5           (b) 10 PERCENT EQUITY REQUIREMENT.—Section  
6 601(d) of the Rural Electrification Act of 1936 (7 U.S.C.  
7 950bb(d)), as amended by section 5, is further amended  
8 by adding at the end the following:

9           “(3) 10 PERCENT EQUITY REQUIREMENT.—

10           “(A) IN GENERAL.—An entity shall not be  
11           eligible for a loan or loan guarantee under this  
12           section unless the entity can demonstrate a  
13           minimum equity position equal to or greater  
14           than 10 percent of the requested loan or loan  
15           guarantee amount.

16           “(B) SHORTFALL EXCEPTION.—If at the  
17           time an entity submits its application for a loan  
18           under this section, the entity cannot meet the  
19           requirement under subparagraph (A), the Sec-  
20           retary may modify or waive the requirement, if  
21           the entity can meet a minimum TIER require-  
22           ment of 1.”.

23           (c) PROOF OF FINANCIAL FEASIBILITY.—Section  
24 601(d) of the Rural Electrification Act of 1936 (7 U.S.C.

1 950bb(d)), as amended by subsection (c) and section 5,  
2 is further amended by adding at the end the following:

3 “(4) PROOF OF FINANCIAL FEASIBILITY.—

4 “(A) IN GENERAL.—An entity shall not be  
5 eligible for a loan under this section unless the  
6 entity can demonstrate the ability to generate  
7 sufficient revenues to—

8 “(i) cover its expenses and service its  
9 debt; and

10 “(ii) meet a minimum TIER require-  
11 ment of 1 by the end of the 5-year forecast  
12 period used by the Secretary to determine  
13 the feasibility of each loan.

14 “(B) LIMITATION.—The Secretary shall  
15 not promulgate regulations requiring eligible  
16 entities to meet a minimum TIER requirement  
17 greater than 1.

18 “(5) DEFINITION OF TIER.—In this subsection,  
19 the term ‘TIER’ or ‘Times Interest Earned Ratio’  
20 means the ratio of an entity’s net income (after  
21 taxes) adding back in any interest expense, divided  
22 by the entity’s interest expense.”.

1 **SEC. 8. EXPANSION OF THE TERMS OF LOANS.**

2 Section 601(g)(2) of the Rural Electrification Act of  
3 1936 (7 U.S.C. 950bb(g)(2)) is amended to read as fol-  
4 lows:

5 “(2) have a term to be decided by the borrower,  
6 provided—

7 “(A) that such term does not exceed 35  
8 years; and

9 “(B) that the loan is adequately secured.”.

10 **SEC. 9. CLARIFICATION OF NEUTRALITY STANDARD.**

11 Section 601(f) of the Rural Electrification Act of  
12 1936 (7 U.S.C. 950bb(g)(2)) is amended by inserting  
13 after “neutral” the following: “, including the use of the  
14 following technologies:

15 “(1) Digital subscriber lines.

16 “(2) Fiber-optic cable.

17 “(3) Coaxial cable.

18 “(4) Wireless technology.

19 “(5) Satellite.”.

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