

Response. The language providing for the elimination of party line service has been revised to focus this requirement on the capability of providing one-party service.

8. Comment Summary. Many commenters argued that the powering requirement in § 1751.106(h)(2)(ii) and § 1751.106(i)(2)(iv) in the proposed rule is not supported by industry consensus at this time. Some suggested that this item be approached from a reliability standpoint. Some commenters believed this requirement covered powering of fax machines and PBXs.

Response. RUS does not want to see the reliability of basic telecommunications service decline as a result of modernization. Such a decline will most certainly occur if local powering is relied upon even for basic voice telephone service, because the average annual outage time for a residential line connected to the public switched network is estimated at 105 minutes, whereas the average annual outage time for residential power users is over 300 minutes. The final rule has been revised to require that the Plan Developer make "provision for" service continuation during local power failure. Regarding the confusion over what has to be resilient to local power failure, this provision was carefully written in the proposed rule to cover only basic voice communications in the event of a local power failure. RUS has rewritten this provision to make this point without mentioning specific equipment and technologies that need not be provided with alternative power.

9. Comment Summary. Many commenters expressed opposition to the medium-term requirement for switched 1.544 Mb/sec service. Some commenters suggested that this would be very expensive to provide. Others suggested that only a few central office switches could provide the service. One commenter suggested the capability would be useless unless interexchange carriers could carry such signals. One commenter noted that in Alaska, where satellites play an important role in connecting exchanges to the network, this requirement would be very difficult.

Response. The substance of the comments received has caused RUS to reconsider this requirement. The requirement for switched 1.544 Mb/sec service in the proposed rule has been changed to a requirement for the transmission and reception of at least 1 Mb/sec and the reception of video. The Plan Developer may specify how this is to be accomplished.

10. Comment Summary. Two commenters observed that the

Modernization Plan would apply to all Borrowers, and as defined that would include past as well as present and future Borrowers. This would mean that RUS would apply RELRA requirements retroactively.

Response. This was not RUS's intent. The language has been changed to clarify that the Modernization Plan for a State will only act to set requirements on Borrowers for certain kinds of loans, and further, only if the loan is approved after the date that the Modernization Plan is approved by RUS.

11. Comment Summary. Some commenters thought that § 1751.106(i)(2)(iii) in the proposed rule was intended to eliminate plain old telephone service ("POTS") as a new service offering, and that this long-term requirement would force subscribers to purchase digital telephones.

Response. This requirement has been deleted from the regulation as part of the recasting of the Modernization Plan discussed above.

12. Comment Summary. One commenter suggested that § 1751.105 be revised to state that no amended Modernization Plan could increase the requirements of a previously-approved Modernization Plan.

Response. RUS disagrees. This could unreasonably limit a State or group of Borrowers in their efforts to continue to modernize telecommunications systems in the State.

13. Comment Summary. One commenter is concerned whether RUS will follow 5 U.S.C. § 553 regarding notice and comment procedures if the rule is changed in the future. Another commenter felt that RUS has no statutory authority to revise the rule after the final rule is issued.

Response. The underlying purpose of the Modernization Plan is to stimulate the continuing modernization of telephone service. RUS believes that it has the obligation to provide guidance to Plan Developers for updating their Modernization Plans. As is stated in § 1751.105(e), RUS, if it revises the rule, must follow the Administrative Procedures Act.

14. Comment Summary. One commenter expressed concern that under § 1751.103 as written in the proposed rule, RUS could deny loans to all Borrowers in a State if any Borrower does not participate in the Modernization Plan.

Response. This was not RUS's intent. Language in this subsection has been revised to clarify that only the Borrower who does not participate in the Modernization Plan is denied certain types of loans.

15. Comment Summary. Many commenters expressed displeasure with the one year period for State eligibility with no extensions, and the rejection of Borrower-prepared plans before the end of that year. Also, one commenter recommended that States be required to notify other interested parties 180 days before the expiration of the one year period of their intent to file or not to file a proposed Modernization Plan.

Response. Beginning with the publication of this Final Rule, States have a one year period of eligibility for preparing a Modernization Plan. There is no provision in RELRA for any party other than a State to prepare a Modernization Plan until the expiration of that one year. Regarding the suggestion for advance notice of the State's intent to file, RUS agrees and has added language to § 1751.102 (b) to request a State to inform RUS if it does not intend to submit a proposed Modernization Plan. RUS will inform its Borrowers as well as telephone industry associations when it has been notified that a State does not intend to develop a Modernization Plan.

16. Comment Summary. Several commenters expressed opposition to § 1751.106(e) in the proposed rule, which provides for Modernization Plan guidelines for the development of affordable tariffs for medical links and distance learning services. Two commenters argued that this provision would usurp a PUC's rate regulatory authority by mandating a subsidy.

Response. One of the requirements of RELRA is that the "Modernization Plan must provide for the availability of telecommunications services for improved business, educational, and medical services." If such services are to be "available" in any reasonable sense, they must be affordable.

17. Comment Summary. Several commenters suggested that RUS should provide a model Modernization Plan.

Response. RUS believes, and most commenters have strongly asserted, that Modernization Plans can best be developed by local State groups and Telecommunications Providers. In view of the preponderance of comments received on the proposed rule, RUS declines to issue suggested language that might be seen as an ad hoc standard for Modernization Plans.

18. Comment Summary. One commenter suggested that requirements for improvements under Modernization Plans should be made conditional upon adequate available federal capital and cost recovery mechanisms.

Response. Unless the PUC decides otherwise, the Modernization Plan requirements only apply to RUS