

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

November 9, 2011

Mr. Jonathan Adelstein  
Administrator, Rural Utilities Service  
U.S. Department of Agriculture  
1400 Independence Ave., S.W., Room 5135  
STOP 1510  
Washington, D.C. 20250-1535

Dear Mr. Adelstein:

Pursuant to Rules X and XI of the United States House of Representatives, the Energy and Commerce Committee is examining the Rural Utilities Service's (RUS) \$267 million loan to Open Range Communications, Inc. (Open Range), which recently filed a petition for reorganization under the U.S. bankruptcy laws.<sup>1</sup>

In March 2008, RUS approved Open Range's loan pursuant to a program established by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), which amended the Rural Electrification Act of 1936 to provide grants, loans, and loan guarantees to support broadband development in rural communities.<sup>2</sup> Open Range apparently received the largest loan issued through the program.<sup>3</sup> On October 6, 2011, Open Range filed for protection under federal bankruptcy law.<sup>4</sup> As of the date of its filing, RUS has extended \$73.5 million of the \$267 total loan amount to Open Range.<sup>5</sup>

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<sup>1</sup> *In re Open Range Comms. Inc.*, No. 11-13188-KJC (Bankr. D. Del. filed Oct. 6, 2011).

<sup>2</sup> P.L. 107-171, section 6103.

<sup>3</sup> Stacey Higginbotham, *A big bet on rural WiMax by the U.S. hits the skids*, Gigaom, Oct. 5, 2011, available at <http://gigaom.com/broadband/a-big-bet-on-rural-wimax-by-the-u-s-hits-the-skids/>.

<sup>4</sup> Phil Milford, *Open Range, Rural Wireless Provider, Files for Bankruptcy*, Bloomberg News, Oct. 6, 2011, available at <http://www.bloomberg.com/news/2011-10-06/open-range-rural-wireless-provider-files-for-bankruptcy-1-.html>.

<sup>5</sup> Ann Schrader, *Open Range Communications on hook for balance of federal loan*, Denver Post, Oct. 8, 2011, available at [http://www.denverpost.com/business/ci\\_19067791](http://www.denverpost.com/business/ci_19067791).

In your May 27 response to follow-up questions for the record relating to your appearance at the Subcommittee on Communications and Technology hearing on April 1, 2011, you spoke positively about RUS's 60-year history of providing loans and grants for advanced telecommunications networks. You also noted RUS's default rate, which stood at 4 percent as of the date of your response. You stated that this percentage represents the number of loans in default, rather than losses, as the agency works with borrowers to seek the recovery of debt.

The U.S. Department of Agriculture's Inspector General, however, has raised concerns about ongoing oversight of the broadband loan programs. Specifically, the Inspector General testified to the Subcommittee on Communications and Technology on February 10, 2011, that of the \$599 million expended in broadband programs it reviewed, it "questioned the expenditure of \$340 million for reasons including incomplete applications, loans that defaulted, and grant funds used for inappropriate purposes."<sup>6</sup> The Inspector General also testified that RUS "had not maintained its focus on rural communities lacking preexisting broadband service."<sup>7</sup>

Open Range's bankruptcy potentially puts \$73.5 million of taxpayer money at risk. Moreover, according to filings from its 30 largest unsecured creditors, Open Range owes as much as \$26 million to businesses that performed work for Open Range. .<sup>8</sup>

In light of Open Range's bankruptcy, the Energy and Commerce Committee requests a bipartisan briefing to explain the RUS application review process for the Open Range loan and the oversight RUS conducted to ensure taxpayer funds were used as intended. At the briefing provided by you or your staff, please be prepared to provide additional information about the total number and amount of broadband loans provided pursuant to the 2002 and 2008 Farm Bills, whether any of the recipient companies have experienced or are experiencing financial difficulties, and the oversight RUS conducts to monitor their progress.

In addition, we ask that you please provide the following documents to the Committee:

1. The complete Open Range project application together with any documents related to the project that have been added since the initial application was filed.
2. All documents relating to the Open Range loan application, the decision to approve the loan, and any subsequent developments with respect to the loan.

We request that you schedule a briefing with our staff at RUS's earliest convenience, at which time we will discuss a schedule for document production. An attachment to this letter provides additional information about how to respond to the Committee's request.

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<sup>6</sup> See *ARRA Broadband Spending: Hearing Before the Subcomm. On Communications and Technology of the House Energy and Commerce Committee*, 112<sup>th</sup> Cong., Written Testimony of Inspector General Phyllis K. Fong, U.S. Dept. of Agriculture, (Feb. 10, 2011), available at <http://go.usa.gov/0mt>.

<sup>7</sup> *Id.*

<sup>8</sup> See List of Creditors Holding the Thirty Largest Unsecured Claims Against the Debtor, *In re Open Range Comms. Inc.*, No. 11-13188-KJC (Bankr. D. Del. filed Oct. 6, 2011).

We appreciate your prompt attention to the Committee's request. Please contact Stacy Cline at (202) 225-2927 if you have any questions and to schedule the briefing.

Sincerely,



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Fred Upton  
Chairman



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Henry A. Waxman  
Ranking Member



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Cliff Stearns  
Chairman  
Subcommittee on Oversight  
and Investigations



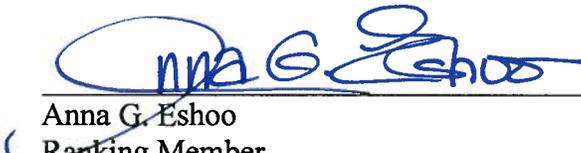
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Diana DeGette  
Ranking Member  
Subcommittee on Oversight  
and Investigations



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Greg Walden  
Chairman  
Subcommittee on Communications  
and Technology



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Anna G. Eshoo  
Ranking Member  
Subcommittee on Communications  
and Technology

cc: The Honorable Tom Vilsack, Secretary  
U.S. Department of Agriculture

The Honorable Julius Genachowski, Chairman  
Federal Communications Commission

Enclosure