

**DEPARTMENT OF COMMERCE****National Telecommunications and Information Administration****15 CFR Part 2301**

[Docket No. 960524148-6243-02]

RIN 0660-AA09

**Public Telecommunications Facilities Program**

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This document revises and clarifies the rules governing administration of the Public Telecommunications Facilities Program (PTFP). The PTFP is authorized to provide matching grants to plan and construct public telecommunications facilities.<sup>1</sup>

**EFFECTIVE DATE:** November 8, 1996.

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**SUPPLEMENTARY INFORMATION:** In 61 FR 27230, the National Telecommunications and Information Administration (NTIA) announced proposed revisions of the rules that govern the PTFP and requested public comments on those revisions. In response to the notice of proposed rulemaking NTIA received comments from 7 different organizations.<sup>2</sup>

There was general support for the overall direction of the proposed revision. APTS, NPR, and NFCB supported the general thrust of the proposed clarifications and the reorganization of the rules. No opposition was received to many of NTIA's proposed changes to the rules including the incorporation of the priorities from the Appendix into the

body of the rules and the changes proposed in the following sections: § 2301.1 *Program Purposes*; § 2301.3 *Applicant Eligibility*; § 2301.6 *Amount of Federal Funding*; § 2301.7 *Eligible and Ineligible Project Costs*; § 2301.9 *Deferred Applications*; § 2301.12 *Federal Communications Commission Authorizations*; § 2301.13 *Public Comments*; § 2301.14 *Supplemental Application Information*; § 2301.15 *Withdrawal of Applications*; § 2301.16 *Technical Evaluation Process*; § 2301.18 *Selection Process*; § 2301.19 *General Conditions Attached to the Federal Award*; § 2301.20 *Schedules and Reports*; § 2301.21 *Payment of Federal Funds*; § 2301.22 *Protection, Acquisition and Substitution of Equipment*; § 2301.23 *Completion of Projects*; § 2301.24 *Final Federal Payment*; § 2301.25 *Retention of Records and Annual Status Reports*; and § 2301.26 *Waivers*.

Comments on the proposed rules were mainly focused on two sections: § 2301.4 *Scope of Projects and* § 2301.17 *Evaluation Criteria*. The subject that prompted the most public comments, however, was not a section of the proposed rules, but rather a discussion in the Supplemental Information section of the Notice regarding the conversion of public broadcasting to advanced digital technologies.<sup>3</sup> We discuss each of these three subjects and several other issues raised by the public in the following sections.

**Section 2301.4 Scope of Projects**

Section 2301.4 relates to the scope of projects eligible for PTFP funding and moved a section that was an Appendix in prior years into the body of the Rules. APTS supported the incorporation of the priorities in the Rules as part of its general support for the reorganization of the PTFP Rules.

There were several comments on the proposed changes to this section. RMCPB suggested that the title of this section was nondescriptive of the content. RMCPB recommended this section be titled "Types of Projects, Priorities." We agree that this is an improvement and so have modified the title to "Types of Projects and Broadcast Priorities" in the Final Rules.

Three organizations, NFCB, NTU and RMCPB, commented on NTIA's proposal to place all broadcast applications within the five funding priorities and revise the scope of the *Special Applications* category to consist solely of nonbroadcast projects. NFCB supported NTIA's proposal and thought that reserving the *Special Applications*

category for non-broadcast would be useful for considering applications utilizing new technologies. NTU hoped that the proposed reorganization did not change the priority status that PTFP has developed for distance learning projects over the past decade. RMCPB questioned whether, under the proposed rules, NTIA continued to possess the discretionary authority to award grants to eligible *broadcast* as well as nonbroadcast applicants with unique/innovative proposals. NTIA encourages the submission of applications that propose unique and innovative telecommunications projects, whether using broadcast or nonbroadcast technologies. We have therefore clarified this position through the creation of § 2301.4(b)(6) *Other Cases* within the Broadcast Applications section. This section provides broadcast applicants the same opportunities for submission of unique or innovative applications as contained in the *Special Applications* § 2301.4(a) for nonbroadcast applicants.

RMCPB proposed that, if NTIA were to place broadcast and nonbroadcast applications in different categories, NTIA should establish a set of priority distinctions for the nonbroadcast applications similar to that of the broadcast applications. While NTIA has established specific priorities for broadcast applications and continues to refine those priorities in the current regulations, we have chosen not to establish a fixed set of priorities for nonbroadcast applications for two reasons. The first reason is that under the Act, NTIA can only fund construction applications that establish or expand a nonbroadcast facility,<sup>4</sup> which are comparable to Priority 1A and 1B broadcast applications. Nonbroadcast applications are not eligible for equipment replacement, improvement or augmentation, which are Priorities 2, 4 and 5 of the broadcast applications. Priority 3 in the broadcast priorities, first local origination, is not applicable for nonbroadcast since NTIA considers the service provided by a nonbroadcast facility rather than the service area and recognizes that different technologies and services may provide a unique service in a particular service area. In effect, nonbroadcast applications are already grouped into a single category, *Special Applications*, which is comparable to Priority 1. NTIA has not broken the *Special Applications* category into different priorities for a second reason. We recognize that nonbroadcast applicants propose many

<sup>1</sup> See 47 U.S.C. §§ 390-393, and 397-399b (1994), The Communications Act of 1934, as amended. Unless otherwise noted, all statutory citations are to title 47 of the United States Code.

<sup>2</sup> Comments were submitted by the following organizations: Association of America's Public Television Stations (APTS); Indiana University Radio and Television Services, operator of WFIU-FM/WTIU-TV (IURTS); the National Federation of Community Broadcasters (NFCB); National Public Radio (NPR); the National Technological University, Ft. Collins, CO (NTU); the Public Broadcasting Service (PBS); and the Rocky Mountain Corporation for Public Broadcasting, Albuquerque, NM (RMCPB).

<sup>3</sup> See *NPRM* at 27230.

<sup>4</sup> Section 390 of the Act, which is included as § 2301.1 of these final rules.

different technologies, each technology with its own strengths in meeting the needs of a particular community, whether that community is a city, state, region or the nation. In encouraging the submission of innovative and unique applications, NTIA prefers not to establish rigid priorities but to let applicants propose projects which identify and serve needs in their chosen service area. We have, therefore, not published a set of priorities for Special Applications but have made minor changes to the Special Applications category to further clarify the intent of this category.

NFCB and APTS commented on NTIA's proposal to consider projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities within the Priority 4A, *Improvement of Public Broadcasting Services*. APTS supported the proposal to place these "second station" applications within the broadcast priorities but suggested that a lower priority—Priority 5A—would be more appropriate. APTS noted that given limited Federal funding, it was important to support existing public broadcasting facilities that are serving distinct and unserved needs before supporting new facilities. APTS indicated that stations in multi-station markets are treated as Priority 4A and that treating applicants for new second stations under Priority 5A would insure that existing facilities receive support before applications for new facilities to serve underserved needs.

NFCB, however, supported NTIA's placement of projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities within the Priority 4A. NFCB noted that public radio is a targeted medium and that even the best stations can only hope to serve a portion of their communities of license. NFCB felt that placement of second stations within Priority 4A recognized the need for such stations in an increasingly multicultural American society.

In the Notice of Proposed Rulemaking, NTIA proposed that projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities would be considered in Priority 4A so they could be considered with other applications from stations in areas already served by another public broadcasting facility. NTIA believes that not only is it important to maintain the existing services of second stations, but it is also important that communities with

underserved needs have the opportunity to receive additional service from new facilities. We expect that new second service stations will be radio facilities that serve demonstrated needs in their community, and we do not anticipate that this provision will have a major impact on television facilities. We recognize that there is a delicate balance between supporting applications for new such services and maintaining those second stations already in place, but we believe that there is no clear reason to favor one type of application over the other. Therefore, we believe that Priority 4A is the appropriate placement for these applications.

In a related matter, RMCPB raised an issue under §§ 2304.4(b) (2) and (4), regarding those instances where two full-service public radio stations serve the same area with two discrete and distinct program services. RMCPB noted that even when utilizing different national program services and distinctive local programming, neither station can qualify as "essential" (existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area) and therefore neither may be eligible for Priority 2 replacement. These applications are accordingly placed in Priority 4A. RMCPB suggested that "PTFP discretionary consideration differing from that given either of two such stations without discrete service" be given.<sup>5</sup> NTIA appreciates RMCPB's concern regarding the priority of stations in multi-station areas. NTIA notes that some stations in a multi-station area may in fact qualify for Priority 2 as an "essential" station as the term is used in the PTFP regulations. Applicants are encouraged to provide information as part of their applications documenting whether they provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area. NTIA, however, is reluctant to distinguish between stations on the basis of their programming services as proposed by RMCPB. NTIA has been able to fund Priority 4A applications in the past and expects to be able to do so in the future, dependent on the availability of funds.

RMCPB supported NTIA's clarification of how PTFP considers the presence of AM daytime only stations in determining the Priority for proposed FM facilities serving a similar coverage

area. RMCPB raised the question regarding the priority for a public radio FM station serving an area covered by a student noncommercial educational station that does not operate full-time or year-round. NTIA's long-time practice is not to consider student noncommercial educational stations that do not operate full-time or year-round as providing a public telecommunications service. The presence of a student noncommercial educational radio station in an area, therefore, does not preclude Priority 1 consideration of an application for a public radio FM station proposing to provide a public telecommunications service.

#### *Section 2301.17 Evaluation Criteria for Construction and Planning Applications.*

Four organizations addressed the issue of evaluation criteria and each supported the combination of construction and planning into a single set of evaluation criteria.<sup>6</sup> The four organizations supported the criteria proposed by NTIA, though APTS and IURTS both opposed deleting the community support criterion from the past evaluation criteria.

APTS noted that public broadcasting stations exist to serve their local communities and that NTIA should not make grants to applicants who cannot demonstrate significant ties to their community. APTS suggested that financial support is the clearest objective evidence that an applicant is providing service valued by their community and that NTIA continue to require that applicants demonstrate that they receive local financial support. IURTS suggested that demonstration of community support is a good check to insure that the purposes of the PTFP program are being served.

NTIA agrees with the thrust of both the APTS and IURTS comments. We believe that demonstration of community support is an important element in the evaluation of an application. Indeed, we intend to incorporate demonstration of community support into the evaluation of several of the evaluation criteria proposed. As noted by APTS, community support is an important element in an applicant's ability to raise funds. This is true both for determining whether an applicant can raise both the short-term local match required by the PTFP application and the long-term funds necessary to operate the system

<sup>6</sup>APTS, and NPR specifically supported a common set of criteria for evaluation of planning and construction applications and NFCB and RMCPB supported the common evaluation criteria by reference.

<sup>5</sup>Comments of RMCPB, p. 3.

during the Federal interest period. NTIA believes that demonstration of community support, therefore, is important for the financial qualifications criterion but also believes the demonstration of community support will be useful in evaluating other criteria as well. In most applications, demonstration of community support will be useful in documenting an applicant's fulfillment of the project objectives criterion. In many applications, demonstration of community support can be used to document urgency, applicant qualifications and special consideration. Rather than making community support an independent criterion, we have chosen to give applicants the opportunity to document community support for those criteria that are most appropriate to their application. Information on how this documentation can be included in the application will be contained in the Application Guidelines distributed to each applicant.

In a similar manner, we will include information within the Guidelines on another matter which was not included on the list of new criteria in the proposed rules—coordination of the application with other telecommunications organizations. NTIA continues to believe that coordination of a project with other telecommunications organizations is an important issue but as with demonstration of community support, this information could support several evaluation criteria, depending on the nature of the applicant's project.

The four organizations each addressed the question raised by NTIA in the Notice which solicited comments on the appropriate weight to be assigned to each criteria.<sup>7</sup> Three of the four organizations presented suggestions on how the criteria should be weighted and all three suggested that "project objectives" and "urgency" be given the greatest weight.<sup>8</sup> NFCB and RMCPB each suggested that "urgency" and "project objectives" be given the greatest weight. NPR indicated that "urgency" and "project objectives" (proposed criteria #3 and #1) have traditionally distinguished the most worthy applications. NPR cautioned, however, that "the most urgent need may not warrant a grant if the applicant

lacks sufficient financial or other qualifications to implement the project."<sup>9</sup> Likewise, RMCPB suggested that the "financial qualifications" and "applicant qualifications" (proposed criteria #2 and #4) are in effect threshold criteria and should be given minimal weight but that NTIA might disqualify applications that did not meet a minimum on these two criteria. NFCB also felt that these two criteria would have to be met for a project to succeed but cautioned that there should be some evaluative process on these criteria which enables small public radio stations with limited staff and budget to compete equally for PTFP funds against larger stations. NFCB indicated that the "technical/planning qualification" (criterion 5(a) or 5(b)) should be a criterion that indicates whether a project is a go or a no-go. RMCPB recommended that criterion 5 and "special consideration" (criterion 6) should be equally weighted.

NTIA appreciates the thoughtful responses received on this issue. We agree that "project objectives" and "urgency" are the most significant of the criteria and so these criteria will be given the greatest weight during evaluation. We also agree that NTIA should not award a grant for a proposal, no matter how well the application meets the "project objectives" and "urgency" criteria, if the applicant is not financially qualified or otherwise able to complete the project. Therefore, the applicant's qualifications and financial qualifications will each serve as qualifying criteria. An application must meet a minimum threshold as defined in each of these criteria for further consideration during the evaluation process. The two remaining criteria, technical/planning qualifications and special consideration will be given lesser weight in evaluation than that awarded to "urgency" and "project objectives."

NTIA has, therefore, modified this section to reflect the evaluation weighting adopted. The criteria in § 2301.17(b) have been reordered to list first the two qualifying criteria, "applicant qualifications" and "financial qualifications" as numbers 1 and 2. "Project objectives" will be criterion number 3 and "urgency" has been placed as criterion number 4. Since the financial qualification criterion has been made a qualifying criterion, the requirement that applicants "adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(2)), if requested for

equipment replacement, improvement, or augmentation projects" has been relocated to the project objectives criterion. The justification for more than 50% Federal funding only relates to the level of potential Federal funding and should not be a part of a criterion which is used to qualify the application for further consideration. A sentence has also been added to the project objective criterion which clarifies that evaluation of the applicant's proposal includes evaluation of the applicant's ability to implement the proposal, if funded. A sentence reading "that the condition of existing equipment justifies its prompt replacement" has been relocated from criterion 5(a) "technical qualifications", to criterion 2 "urgency" to reflect the weight given this criterion. Several new phrases have been added to clarify the "urgency" and "applicant qualifications" criteria. Finally, new language has been added to § 2301.17(a) which incorporates the weighting adopted by NTIA.

#### *Conversion to Digital Technology*

Although not a part of the proposed rules itself, six of the seven organizations commented on the statement in NTIA's Notice which welcomed applications which will assist in planning for the digital conversion of public broadcasting facilities.<sup>10</sup> Five of these six organizations supported NTIA's interest in supporting projects to plan for digital conversion of public broadcasting facilities. NFCB supported the concept in general, as did NPR, which cautioned that NTIA should bear in mind the program's broader objectives so that the funding of digital conversion planning projects promotes, rather than undermines, the availability of public telecommunications services, particularly in rural areas. RMCPB was supportive of NTIA's recognition of the issue of conversion to digital technologies but suggested that public broadcasters capable of practicable conversion are also capable of planning without PTFP grants. RMCPB concluded that NTIA funds might better be devoted to funding acquisition of digital components through construction grants.

Both APTS and PBS suggested changes in NTIA policy to encourage digital conversion. APTS expressed concern that the number of applications for planning grants for ATV conversion could swamp the PTFP funds if a large number of public television stations seek planning grants. APTS noted that

<sup>10</sup> See *NPRM* at 27230. The only organization not addressing this issue was NTU.

<sup>7</sup> See *NPRM* at 27230.

<sup>8</sup> APTS opposed giving the criteria different weights, indicating it was not clear which criterion was more important than the others. APTS also felt NTIA had already decided what factors it considers most significant by establishing priorities for grants and that applicants would tailor their proposals to match the weighting.

<sup>9</sup> Comments of National Public Radio, p. 3.

it and PBS have launched efforts to coordinate public television's transition to digital technology. APTS urged NTIA to clarify that these coordinated efforts, such as reducing the cost of digital transition by pooling engineering resources, establishing model planning programs for different types of stations, and consolidating buying power in order to obtain volume discounts, would be eligible for PTFP planning funds. APTS requested that these coordinated efforts be afforded a high priority in receiving Federal grants. APTS also urged that NTIA make it clear that planning for capital campaigns to finance the transition to ATV at individual public television stations will be eligible for planning grants. APTS noted that for a number of stations, the cost of planning capital campaigns will itself be a significant drain on their finances.

PBS addressed two issues in its comments regarding digital conversion: fund allocation priority and the percentage of costs that may be funded. Because digital television is intended to replace, rather than to supplement, analog television and because the FCC plans to mandate a transition to digital and abandonment of analog operation, PBS urged that NTIA consider the coordinated planning of digital facilities as a first service to an unserved area, with no diminution of priority because of the existence of analog service. PBS also urged that such applications be considered new or extended service, thereby qualifying the proposals for 75% rather than only 50% funding.

PBS also suggested that some aspects of the proposed regulations may require modification after the FCC adopts its digital television regulations. PBS noted as an example that the FCC may not require the filing of applications for digital conversion or may establish timetables which may not conform to that required under the PTFP regulations. NTIA recognizes that the FCC has the lead in establishing policy regarding television's transition to digital technology and will indeed be mindful of FCC requirements for digital conversion. NTIA will ensure that the PTFP regulations do not restrict public television's ability to seek Federal funding or FCC authorizations during the conversion to digital technology. NTIA will also keep an open mind on the use of ancillary data streams on NTIA-funded facilities.

PBS suggested that NTIA should be flexible in releasing the Federal interest in analog equipment that becomes obsolete because of the transition to digital equipment. PBS further noted that a ten-year Federal interest period

may be inappropriate for digital equipment, since the useful life span of this equipment is as yet unknown. In a similar comment, IURTS noted that even traditional broadcast-grade products cannot remain current for the duration of the ten-year Federal interest period. IURTS commented that PTFP should consider reducing the federal interest period from ten years. IURTS is concerned that due to the rapid advancements in computer platforms and operating systems in today's market, the hardware and software will be obsolete in about half the Federal interest period described by PTFP. IURTS recommended that NTIA expand its support of computer-based PC-type technology in place of traditional broadcast products. Specific reference was made to PC based character generators, still-store devices, digital special effects devices, replacement for audio carts, digital audio workstations, etc. With the development of PC-based technology, IURTS noted that these less-expensive solutions can reduce station's costs while still providing service to the community. Acknowledging that these PC-based solutions will not last the ten-year Federal interest period, IURTS recommended both a shortening of the Federal interest period and a corresponding reduction in the recommended funding level. IURTS gave an example of a dual channel still-store normally funded by PTFP at a \$50,000 level which could be reduced to \$25,000 and provide many stations with digital options they could not otherwise afford or support.

NTIA acknowledges the problem in a rapidly changing technical environment that some analog or digital broadcast equipment may not have a useful life of ten years. PTFP is mandated by statute to maintain a ten-year Federal interest period. See 47 U.S.C. 392(g). While we appreciate the concerns expressed by PBS and IURTS, until such time as the statute is changed, NTIA is bound to maintain this requirement. NTIA notes that grantees may have alternatives in satisfying NTIA's Federal interest in equipment and calls grantees attention to § 2301.22(g) *Transfer of Federal interest to different equipment* of the final rules. Under this provision, a grantee may request that the Agency transfer the remaining Federal interest in a piece of equipment to another item of equipment presently owned or to be purchased by the grantee with non-Federal funds. Grantees may also dispose of the equipment at any time in accordance with the Uniform Administrative Requirements under OMB Circular A-110, section 34 and 15

CFR 24.32. The recipient may request disposition of the equipment from the agency; and, if the fair market value of the equipment at the time of disposition is under \$5,000, there is no further obligation to the Federal Government.

NTIA appreciates the support shown by the public comments for its interest in participating in the digital conversion of public broadcasting facilities. We have carefully considered the suggestions for changes in the proposal offered by the respondents, including changes to priorities and funding levels. We believe that it is premature to make those changes at this time since so much about the transition to digital technology is still unknown. The FCC has neither adopted technical standards for digital television nor established its digital television regulations. It has yet to set a timetable for the transition of television facilities from analog to digital technology. NTIA will work with the public broadcasting community and closely monitor the development and transition to digital technologies. As conditions warrant, NTIA can revise its policies towards digital conversion through publication of the annual closing date notice or through other publications. For the moment, we will adopt the suggestion of RMCPB, which noted that, despite the Agency's recognition of the issue of digital conversion, there was no provision in the proposed rules for addressing the issue or welcoming applications to plan for conversion. We have modified the language in § 2301.4(b)(6) *Other Cases* within the Broadcast Applications section to specifically reference planning applications for digital conversion as a unique or innovative project. NTIA has been routinely funding digital equipment for replacement which is compatible with the proposed standards for digital television. Under *Other Cases*, NTIA would also accept applications for construction of digital facilities that could be considered unique or innovative.

In addition to the comments on these three major sections, there were public comments on several other changes in the Notice of Proposed Rulemaking.

#### *Section 2301.2 Definitions*

APTS expressed concern about its perceived change to the Federal interest period to the useful life of the equipment under the definition contained in § 2301.2 of the proposed rule. We did not change the federal interest period, as mandated in 47 U.S.C. 392(g), from ten years to the useful life. The federal interest period remains at ten years and is primarily a

financial interest within which PTFP must collect a proportionate share of the Federal funds expended under an award if a grantee ceases to be a public telecommunications entity or the facilities cease to be used for the provision of public telecommunications services. We intended to clarify that Federal Constitutional interests, for example, the First Amendment's protections under the Establishment of Religion and the Freedom of Speech Clauses, and the Fourteenth Amendment's equal rights protections, extend for the useful life of the facilities. Even where a grant program statute establishes a federal interest period, the Supreme Court has ruled that certain Constitutional guarantees remain for the useful life of Federally-funded facilities.<sup>11</sup> We have inserted "Constitutional" to clarify what federal interests extend for the useful life of property.

RMCPB suggested we define the term "useful life." A definition of "useful life" has been added as the last defined term in § 2301.2.

#### *Section 2301.5 Special Consideration*

As mandated by Congress under § 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. This statutory provision remains and over the past nine years, the Corporation for Public Broadcasting has assembled a report to Congress on the provision of services to minority and diverse audiences by public telecommunications entities, which evidences the continued need for these services. NTIA is particularly concerned with the provision of services to minorities, women, and diverse audiences by public telecommunications entities. Therefore, NTIA will continue to evaluate how well applicants demonstrate significant diversity in the ownership of, operation of, and participation in public telecommunications facilities. Special consideration, therefore, remains as one of several evaluation criteria contained in the regulation, specifically, at 15 CFR 2301.17(b)(6).

NFCB expressed concern over the elimination of the 50% minimum participation of minorities an/or women in order to qualify for special consideration. NFCB argued that the elimination of the 50% minimum requirement may open up special consideration to such a degree that it becomes useless as a factor in evaluating

applications. NTIA does not believe that it is necessary to establish any minimum minority or women participation requirements for special consideration in PTFP evaluations in order to carry out the objectives of the statute. Rather, NTIA believes that the congressional intent can be achieved in a fair and flexible manner by taking into account all factual circumstances that might lead to special consideration.

PTFP applies special consideration to encourage all applicants to assist the program to achieve one of its statutory purposes, to increase the amount of public telecommunications facilities owned by, operated by and participated in by minorities and women. Employment of minorities or women is not the only way in which NTIA may assess whether an application promotes significant diversity in the ownership of, operation of, and participation in by minorities and women. NTIA is also interested in outreach efforts, audience development, and programming strategies. One stated purpose of this program is to respond to the educational, cultural and related programming needs of diverse groups. If an applicant can demonstrate to the NTIA that its application is furthering the statutory objective, that application will be more highly rated under the special consideration factor.

The language of this section has been modified to clarify NTIA's policy on special consideration and an accompanying modification has been made in the *Special Consideration* evaluation criterion in § 2301.17(b)(6). To the degree there is any discrepancy of interpretation, this final rule will take precedence and is intended to describe special consideration as required by 47 U.S.C. 392(f).

#### *Section 2301.6 Amount of Federal Funding*

RMCPB observed that § 2301.6(a) permits 100% Federal funding of planning grants and noted that this provision is permissive and not obligatory. Since NTIA has limited funds for the PTFP program, RMCPB suggested that 75% be the general presumption for planning purposes. NTIA appreciates this suggestion and notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. Modifying § 2301.6(a) as suggested by RMCPB would codify what already has become PTFP practice. We are, however, mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new

facilities in unserved areas. We have, therefore, included a provision at § 2301.6(a)(2) that NTIA will continue to award up to 100% of total project costs in cases of extraordinary need. We have also modified the evaluation criteria with a new section at § 2301.17(b)(3) to reflect the need for applicants to justify a request for more than 75% Federal funding for planning projects.

#### *Section 2301.8 Submission of Applications*

RMCPB expressed concern in a change in the proposed § 2301.8(d) which removed the number of copies of applications required by NTIA from the specific number "2" to the more flexible "the number of copies specified by the Agency." RMCPB pointed out that any increase in the number required will be an added burden on the small station and community broadcaster applicants. We note that under 5 CFR 1320.5(d)(2)(iii), an agency can only require an original plus two copies of an application. Any request for additional copies would have to be justified to and cleared by the Office of Management and Budget. The flexibility in the number of applications which NTIA can request is, therefore, extremely limited. For the first time in FY 1996, NTIA requested three copies of an application to permit concurrent processing of the applications by NTIA reviewers and thereby enable issuance of timely awards.

APTS expressed its concern about NTIA's proposal to delete from the rules the specific showings required of applicants and to specify those requirements in the application form in the bid solicitation. APTS indicated that, while the deletion of this information is intended to give NTIA flexibility to reduce application burdens, the proposal can create uncertainty as to the showing required of applicants. APTS continued that the flexibility conferred would also permit NTIA to impose additional burdensome requests without affording public broadcasters the opportunity to comment meaningfully.

NTIA appreciates the concerns expressed by APTS. It was NTIA's intention in removing the specific requirements from the Rules to give NTIA the flexibility of future reductions in requirements on the application form to lessen the burden on applicants. We believe that this flexibility will be beneficial to applicants in several ways. First, it will permit NTIA to lessen the burden on applicants during the FY 97 grant cycle while using the existing PTFP application form. These

<sup>11</sup> See *Tilton v. Richardson*, 403 U.S. 672 (1971).

improvements will include several changes supported by APTS which are contained in the proposed rules, such as the proposal to modify the requirement that an applicant report changes in its board structure and to require applicants to provide only summaries of their application to the State Single Point of Contact rather than complete copies of the application. Second, flexibility in these final rules will permit NTIA to further lessen the burden on applicants through modification of the PTFP application form in 1997 without having to promulgate another set of accompanying PTFP rules.<sup>12</sup> Promulgation of a set of PTFP rules is a lengthy administrative process and one that cannot be done every year. The average PTFP rules are in force for a period of three to five years. Therefore, removing the specific application requirements from the final rules also gives NTIA the flexibility of continually making improvements in lessening applicant burdens during the periods between formal revisions of the PTFP rules. NTIA supports a continuing dialog with members of the public telecommunications community to improve the responsiveness of the PTFP. PTFP continually solicits comments on the application process from those who are sent the application packet, both from applicants and those who choose not to submit an application.<sup>13</sup> NTIA will also discuss application guidelines with members of NTIA's National Advisory Panel of Public Broadcasting Organizations at its annual meetings.

APTS felt that NTIA's proposal could create uncertainty as to the showing required of applicants since, "the solicitation of bids is typically published with only a few weeks notice before applications are due."<sup>14</sup> NTIA has typically published formal announcements of the acceptance of applications approximately 3 months before the closing date.<sup>15</sup> We believe that this is sufficient time for preparation of applications since the major objectives and priorities of the program are well known and have not

significantly changed in these final rules. PTFP distributes a detailed set of Guidelines to assist applicants in the preparation of applications, and applicants may contact PTFP for technical assistance in the preparation of application during the period prior to the application deadline.

APTS also commented on the financial responsibility requirements contained in §§ 2301.8 (g), (h) and (i). APTS believes that the financial responsibility requirements "confers virtually unfettered discretion on NTIA as to which applicants will be subject to the request for data," "the scope of the inquiry is astonishingly broad," can be "potentially burdensome" and contain "vague provisions".<sup>16</sup>

Sections 2301.8 (g) and (h) are based on the "Department of Commerce Financial Assistance Name Check Procedures." This policy has been in effect since 1988, has served as a reasonable attempt to protect the public interest, and has not proven to be overburdensome. NTIA does not intend to use the "responsibility determination" process in a punitive or detrimental manner against potential award recipients. As an agency which has been provided authority to make discretionary decisions for the Federal Government, it is reasonable for NTIA to make every effort to determine that potential award recipients are responsible. To the extent possible, the regulation is intended to ensure that there are no matters facing potential award recipients that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activity. We think that the trust vested in NTIA demands that it makes a reasonable attempt to protect the public interest by trying to ensure that it deals with only responsible parties. Therefore, no changes have been made to this section.

Based on "a reasonable person" standard which is employed throughout these regulations, we feel that § 2301.8(i) is clear. Unsatisfactory performance essentially means that one does not substantially achieve his or her project goals and objectives. As project goals and objectives vary from one project to another, unsatisfactory performance must, to some extent, be situationally determined. It would be unreasonable to attempt to precisely define "unsatisfactory performance" in the regulation for all projects, all circumstances and for all times.

#### *Section 2301.10 Applications Resulting From Catastrophic Damage or Emergency Situations*

APTS and RMCPB commented on NTIA's addition of a phrase regarding "complete equipment failure" to this section on applications resulting from catastrophic damage or emergency situations. RMCPB characterized the proposal as being "a box of Pandoras". APTS warned that NTIA may inadvertently create a loophole in the funding priorities by creating incentives for applicants to claim that the imminent loss of an essential piece of equipment warrants an immediate grant. APTS continued that unlike a catastrophic loss, a clearly defined unanticipated event, the complete loss of essential equipment lacks any clearly defining moment. APTS concluded that, in many cases, the "loss" may have been avoided by a timely request for funding.

NTIA believes that APTS and RMCPB raise valid concerns, which are shared by the Agency. NTIA's intent in making this proposal was to be able to quickly respond to the emergency of a complete failure of basic equipment essential to a station's continued operation, whether that failure was caused by natural or manmade causes. This section is limited to equipment essential to a station's continued operation. We do not believe this section would include most program origination equipment but rather would be applicable to equipment such as transmitters, tower, antennas, STL's or similar equipment which, if the equipment failed, would result in a complete loss of service to the community. For example, NTIA recently received an emergency request from an applicant regarding the strengthening of a tower. A recent engineering study on the tower indicated that the tower was dangerously overloaded and in danger of imminent collapse. NTIA felt that it was both prudent and good business sense to make the modest investment in strengthening the tower on an emergency grant basis rather than risking loss of service to a community and incur the greater expense of replacing a collapsed tower.

NTIA will, therefore, retain the originally proposed language in this section but will add clarifying language in regarding the nature of the equipment eligible for emergency applications, as well as language indicating that an applicant claiming complete equipment failure must document the circumstances of the equipment failure and demonstrate that the equipment has

<sup>12</sup> The current PTFP application form expires October 1, 1997. The new form will be adopted after public comment in conjunction with Office of Management and Budget review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501., *et. seq.*

<sup>13</sup> See for example the "Special Note" on the inside back cover of the FY 96 PTFP *Guideline for Preparing Applications*.

<sup>14</sup> Comments from APTS, p. 4.

<sup>15</sup> For fiscal year 1996, the Department of Commerce did not receive a final appropriation until April 26, 1996. See Department of Commerce and Related Agencies Appropriations Act, 1996, P.L. 104-134. This, in turn, left PTFP with five months to review, evaluate and make awards.

<sup>16</sup> Comments from APTS, p. 5-7.

been maintained in accordance with standard engineering practice.

#### *Section 2301.11 Service of Applications*

NPR and RMCPB supported NTIA's proposal in § 2301.11 that the applicant's notification to the SPOC, the FCC and the state telecommunications agencies need only be a summary of the application, rather than the full application required in prior PTFP Rules. Both organizations cautioned, however, that if selecting/compiling excerpt materials is too complicated, it will be an added burden on applicants instead of a benefit. RMCPB noted that the New Mexico Commission on Public Broadcasting only needs to review pages 1 and 2 of the PTFP application form and the narrative. NTIA's intent in proposing that applicants submit a summary of the application rather than the full application to the SPOC and other appropriate agencies was intended to reduce the paperwork burden on applicants. We did not intend this summary to be a burdensome exercise and the information suggested by RMCPB appears to be reasonable notification. In making notification to the appropriate agencies, applicants should make clear that additional information regarding their PTFP application is available upon request. Future application materials will provide guidance as to what should be included in the summary to provide adequate notification to the requisite agencies while reducing the notification burden on all applicants.

#### *Section 2301.18 Selection Process*

NTIA is making two revisions to this section to clarify internal procedures in the selection process for the public. At § 2301.18(a) and the new § 2301.18(b), we have added language which clarifies that the PTFP Director presents recommendations to the OTIA Associate Administrator for review and approval prior to their submission to the NTIA Administrator. We have also clarified in the new § 2301.18(a)(4) that NTIA may consider in the selection of a grant recipient whether the applicant has any current NTIA grants. This provision recognizes that in some instances the presence of a current NTIA grant is relevant in the decision to make a new award and does not prohibit the award of new grants to current grant recipients.

#### *Restatement of Existing Policies*

We are also taking this opportunity to restate several long-standing PTFP policies which were published in the preambles of previous PTFP rules or as

a separate policy statement. The following policies remain in effect:

#### *Evidence of Tax-exempt Status*

Applicants who are eligible for a section 501(c)(3) exemption from the IRS or the equivalent exemption from the Commonwealth of Puerto Rico must submit a copy of that exemption. Applicants who are ineligible for section 501(c)(3) exemption but who can demonstrate nonprofit status by showing an applicable State tax exemption will be considered on a case-by-case basis. They must submit: (a) Evidence of their State tax-exempt status; (b) citation to, and a copy of, the State statutory provisions governing that exemption; and (c) a brief statement explaining why they lack a section 501(c)(3) exemption. (Fed. Reg. Vol. 44, No. 104, p. 30899)

#### *Equipment Which Becomes Obsolete Before the End of the Ten-year Period of Federal Interest*

In the case of equipment which becomes obsolete or wears out before the ten-year period of Federal interest expires, we will permit the trade-in or sale of the equipment and application of the remaining portion of the ten-year period to the new equipment. (Fed. Reg. Vol. 44, No. 104, p. 30910)

#### *Selection of Priority*

In preparing the narrative portions of its application, each applicant should state under which priority it desires NTIA to consider its application. In doing so, each applicant makes sure that its application contains sufficient documentation to justify its qualification under the selected priority. NTIA will then evaluate the application with the selected priority unless the Agency determines that the priority selected by the applicant is not supported by the documentation provided. Each applicant will be notified of any change in the priority under which its application is to be considered. Such notifications will be in writing and will not be subject to appeal. (Fed. Reg. Vol. 47, No. 228, p. 53653)

#### *Award of Deferred Applications*

The Administrator retains the discretion to award grants to deferred applications at any time where the Administrator can determine with reasonable certainty that the particular project is exceptionally meritorious (on the basis of the Agency's preliminary determination of all other applications within the priority) and that the Agency would fund the project after completing the evaluation of all the applications in

the priority (on the basis of the Agency's prior experience in making grants.) Under this process, the Agency will be able to fund applications that the Agency had deferred in the prior year because of technical problems (such as the inability to obtain the necessary FCC authorizations) which have since been eliminated. (Fed. Reg. Vol. 47, No. 50, p. 11232.)

#### *Support for Salary Expenses*

NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that the competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

Therefore, NTIA generally will not fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation.

As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs.

NTIA will rarely support requests for assistance for the installation of studio and test equipment, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need. (Fed. Reg. Vol. 56, No. 226, p. 59172)

#### *Sectarian Activities*

Applicants are advised that on December 22, 1995, NTIA issued a notice and an amendment to the PTFP regulations in the Federal Register on its policy with regard to sectarian activities. Under NTIA's prior policy, NTIA funds could not be used for any sectarian purposes. Under the revised policy, while religious activities cannot be the essential thrust of a grant, an

application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purposes for which funding is requested. (60 Fed. Reg. 66491).

It has been determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rules were not required to be promulgated as proposed rules before issuance as final rules by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that these rules will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements contained in these rules pursuant to the Paperwork Reduction Act under OMB Control Nos. 0660-0003, 0660-0001 and 0605-0001. The public reporting burden for the application requirements vary from 16 hours to 200 hours with an estimated average of 125 hours per application, including associated exhibits; the reporting and record keeping burden for the grant monitoring reports vary from 1 to 24 hours depending on the respective requirement; and, the reporting burden for the name-check form (CD-346) is estimated at 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing this burden, to the Office of Policy and Coordination and Management, NTIA, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Washington, DC 20503 (Attention: NTIA Desk Officer).

(Catalogue of Federal Domestic Assistance No. 11.550)

#### List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs-communications, Reporting and recordkeeping requirements, Telecommunications.

Larry Irving,

*Administrator.*

For the reasons set out above, part 2301 of title 15, Code of Federal Regulations, is revised to read as follows:

### **PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM**

#### **Subpart A—General**

2301.1 Program purposes.

2301.2 Definitions.

#### **Subpart B—Application Requirements**

2301.3 Applicant eligibility.

2301.4 Types of projects and broadcast priorities.

2301.5 Special consideration.

2301.6 Amount of Federal funding.

2301.7 Eligible and ineligible project costs.

2301.8 Submission of applications.

2301.9 Deferred applications.

2301.10 Applications resulting from catastrophic damage or emergency situations.

2301.11 Service of applications.

2301.12 Federal communications commission authorizations.

2301.13 Public comments.

2301.14 Supplemental application information.

2301.15 Withdrawal of applications.

#### **Subpart C—Evaluation and Selection Process**

2301.16 Technical evaluation process.

2301.17 Evaluation criteria for construction and planning applications.

2301.18 Selection process.

#### **Subpart D—Post-Award Requirements**

2301.19 General conditions attached to the Federal award.

2301.20 Schedules and reports.

2301.21 Payment of Federal funds.

2301.22 Protection, acquisition, and substitution of equipment.

#### **Subpart E—Completion of Projects**

2301.23 Completion of projects.

2301.24 Final Federal payment.

2301.25 Retention of records and annual status reports.

#### **Subpart F—Waivers**

2301.26 Waivers.

Authority: 47 U.S.C. 390-393 and 397-399b.

#### **Subpart A—General**

##### **§ 2301.1 Program Purposes.**

Pursuant to section 390 of the Act, (The Communications Act of 1934, as amended), the purpose of the Public Telecommunications Facilities Program (PTFP) is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(a) Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(b) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(c) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

##### **§ 2301.2 Definitions.**

*Act* means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390-393 and 397-399b, as amended.

*Administrator* means the Assistant Secretary for Communications and Information of the United States Department of Commerce who is also Administrator of the National Telecommunications and Information Administration.

*Agency* means the National Telecommunications and Information Administration of the United States Department of Commerce.

*Broadcast* means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

*Closing date* means the date and time which the Administrator sets as the deadline for the receipt of applications during a grant cycle.

*Construction* (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

*Department* means the United States Department of Commerce.

*FCC* means the Federal Communications Commission.

*Federal interest period* means the period of time during which the Federal government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and

continues for ten (10) years after the official completion date of the project. Although OMB Circular A-110, sections 33 and 34 (58 FR 62992, Nov. 29, 1993) and 15 CFR 24.31 and 24.32, specify that the Federal government maintains a reversionary interest in the facilities for as long as the facilities are needed for the originally authorized purpose, PTFP's authorizing statute (47 U.S.C. 392(g)) limits the reversionary period for ten years for purposes of this program. However, Federal Constitutional limitations on the use of the facilities survive for the useful life of the facilities whether or not this period extends beyond the ten-year Federal interest period.

*Minorities* means American Indians, Alaska Natives, Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin.

*Nonbroadcast* means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast technologies are Instructional Television Fixed Service (ITFS), satellite systems, and coaxial or fiber optic cable.

*Noncommercial educational broadcast station or public broadcast station* means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

*Noncommercial telecommunications entity* means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

*Nonprofit* (as applied to any foundation, corporation, institution, or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the

benefit of any private shareholder or individual.

*Operational cost* means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

*Planning* (as applied to public telecommunications facilities) means activities to form a project for which PTFP construction funds may be obtained.

*Pre-operational costs* means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such costs shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

*PTFP* means the Public Telecommunications Facilities Program, which is administered by the Agency.

*PTFP Director* means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

*Public telecommunications entity* means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

*Public telecommunications facilities* means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave

interconnection facilities, and similar facilities).

*Public telecommunications services* means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

*Sectarian* means that which has the purpose or function of advancing or propagating a religious belief.

*State* includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

*System of public telecommunications entities* means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

*Useful life* means the normal operating life of equipment.

## Subpart B—Application Requirements

### § 2301.3 Applicant eligibility.

(a) To apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

- (1) A public or noncommercial educational broadcast station;
- (2) A noncommercial telecommunications entity;
- (3) A system of public telecommunications entities;
- (4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes (see also 60 FR 66491 (Dec. 22, 1995)); or
- (5) A state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

(b) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(c) If an applicant does not meet the above eligibility requirements, the application may be rejected and returned without further consideration.

(d) An applicant may request a preliminary determination of eligibility any time prior to the closing date.

### § 2301.4 Types of Projects and Broadcast Priorities.

An applicant may file an application with the Agency for a planning or construction grant. To achieve the objectives set forth at 47 U.S.C. 393(b), the Agency has developed the following categories. Each application shall be identified as a broadcast or nonbroadcast project and must fall

within at least one of the following categories:

(a) Special applications. NTIA possesses the discretionary authority to recommend awarding grants to eligible nonbroadcast applicants whose proposals are unique or innovative and which address demonstrated and substantial community needs (e.g., service to the blind or deaf and nonbroadcast projects offering educational or instructional services).

(b) Broadcast applications. The Broadcast Priorities are set forth in order of priority for funding.

(1) *Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.* Within this category, NTIA establishes three subcategories:

(i) *Priority 1A—Projects that include local origination capacity.* This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs, including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

(ii) *Priority 1B—Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks, and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

(iii) *Priority 1C—Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally distributed programming to a geographic area for the first time.

(iv) Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, i.e., areas that do not receive public telecommunications services. (It should be noted that television and radio are considered separately for the purposes of determining coverage. In reviewing applications from FM stations that propose to serve, or that already serve, areas covered by AM-daytime only stations, PTFP will evaluate the amount of service provided via the AM-daytime only station in determining whether the

FM proposal qualifies for a Priority 1 or Priority 2, as appropriate.)

(v) An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

(2) *Priority 3—Replacement of Basic Equipment of Existing Essential Broadcast Stations.* (i) Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment at "essential stations" (i.e., existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area).

(ii) To show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of repair records, or letters documenting non-availability of parts). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

(iii) The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (i.e., where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

(3) *Priority 3—Establishment of a First Local Origination Capacity in a Geographic Area.* (i) Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters, or cable systems.

(ii) Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

(4) *Priority 4 Improvement of Public Broadcasting Services.*

(i) Projects eligible for consideration under this category are intended to improve the delivery of public broadcasting services to a geographic area. These projects include the establishment of a public broadcast facility to serve a geographic area already receiving public telecommunications services, projects for the replacement of basic obsolete or worn-out equipment at existing public broadcasting facilities and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories: Priority 4A and Priority 4B.

(ii) *Priority 4A.* (A) Applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria because they do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

(B) The establishment of public broadcasting facilities to serve a geographic area already receiving public telecommunications services. The applicant must demonstrate that it will address underserved needs in an area which significantly differentiates its service from what is already available in its service area.

(C) The acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

(D) The acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This

is intended to assist stations that went on the air with a complement of equipment well short of what the Agency considers as the basic complement.

(iii) *Priority 4B*. The improvement and non-urgent replacement of equipment at any public broadcasting station.

(5) *Priority 5 Augmentation of Existing Broadcast Stations*. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

(i) *Priority 5A Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities*. An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios, or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

(ii) *Priority 5B—Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution*. This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

(6) *Other cases*. NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the five Priorities listed in this section. Innovative projects submitted under this category must address demonstrated and substantial community needs or must address issues related to the conversion of public broadcasting facilities to advanced digital technologies.

(c) An applicant may request a preliminary determination of whether a proposed project fits within at least one of the above listed categories any time prior to the closing date.

(d) All applications will be reviewed after the closing date. If an application does not fall within one of the listed categories, it may be rejected and returned without further consideration.

#### § 2301.5 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. Ownership and

operation of includes the holding of management and other positions in the entity, especially those concerned with programming decisions and day-to-day operation and management.

Participation may be shown by the entity's involvement of women and minorities in public telecommunications through its programming strategies as meeting the needs and interests of those groups. Minorities include American Indians or Alaska natives; Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin. The special consideration element is provided as one of several evaluation criteria contained in the regulations at 15 CFR 2301.17(b)(6).

#### § 2301.6 Amount of Federal funding.

(a) *Planning grants*. The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(1) Seventy-five (75) percent Federal funding will be the general presumption for projects to plan for a public telecommunications construction project.

(2) A showing of extraordinary need (e.g., small community group proposing to initiate new public telecommunication service) will be taken into consideration as justification for grants of up to 100% of the total project cost.

(b) *Construction grants*. (1) A Federal grant for the construction of a public telecommunications facility may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(i) Seventy-five (75) percent Federal funding will be the general presumption for projects to activate stations or to extend service.

(ii) Fifty (50) percent Federal funding will be the general presumption for the replacement, improvement or augmentation of equipment. A showing of extraordinary need (i.e. small community-licensee stations or a station that is licensed to a large institution [e.g., a college or university] documenting that it does not receive direct or in-kind support from the larger institution), or an emergency situation will be taken into consideration as justification for grants of up to 75% of the total project cost for such proposals.

(2) Since the purpose of the PTFP is to provide financial assistance for the acquisition of public telecommunications facilities, total project costs do not normally include

the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justifications are provided to PTFP. Obligating funds—either in whole or in part—for equipment before the closing date is considered ownership or acquisition of equipment. In like manner, accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(c) No part of the grantee's matching share of the eligible project costs may be met with funds:

(1) Paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute; or

(2) Supplied to an applicant by the Corporation for Public Broadcasting, except upon a clear and compelling showing of need.

(d) No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates anticipated Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, disallow those costs of the grant. After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment.

#### § 2301.7 Eligible and ineligible project costs.

(a) Each year the Agency reviews its list of eligible and ineligible equipment, supplies, and costs. The list is published in the Federal Register as part of the solicitation for applications and a copy is provided with every application package for PTFP grants.

(b) All broadcast equipment that a grantee acquires under this program shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

(c) Total project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date unless approved by PTFP on a case-by-case basis in writing pursuant to § 2301.6(b)(2).

#### § 2301.8 Submission of applications.

(a) Applications can be obtained from the following address: Public Telecommunications Facilities Program,

NTIA/DOC, 14th Street and Constitution Avenue, NW., Room H-4625, Washington, DC 20230.

(b) The Administrator shall select and publish in the Federal Register a closing date by which applications for funding in a current fiscal year are to be filed.

(c) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual Federal Register announcement requesting applications at or before 5:00 P.M. on the closing date. Applications received after the closing date shall be rejected and returned without further consideration (but see § 2301.26).

(d) A complete application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Each copy of the Agency application must contain an original signature of an officer of the applicant who is legally authorized to sign for the applicant.

(f) Applicants must certify whether they are delinquent on any Federal debt.

(g) Applicants may be required to submit Name Check forms (Form CD-346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

(h) Applicant organizations may also be subject to a responsibility determination by the Department which may include but not be limited to reviews of financial and other business activities. Responsibility determinations are intended to ascertain whether potential grantee organizations or their key personnel have been involved in or are facing any matters that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activities.

(i) Unsatisfactory performance by the applicant under prior Federal awards may result in the application not being funded.

#### **§ 2301.9 Deferred applications.**

(a) An applicant may reactivate an application deferred by the Agency in a prior year during the two consecutive years following the application's initial filing with the Agency; provided the applicant has not substantially changed the stated purpose of the application.

(b) To reactivate a deferred application, the applicant must file an updated application, whether mailed or hand delivered, at or before 5:00 P.M. on the closing date.

(c) An updated application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(d) Deferred applications that are resubmitted under this section and contain substantial changes will be considered as new applications.

(e) All deferred applications may be subject to a determination of eligibility during subsequent grant cycles.

#### **§ 2301.10 Applications resulting from catastrophic damage or emergency situations.**

(a) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.26, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of complete equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment. This section is limited to equipment essential to a station's continued operation such as transmitters, tower, antennas, STL's or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

(b) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(c) A waiver will be granted only if it is determined that the applicant either carried adequate insurance or had acceptable self-insurance coverage.

(d) Applicants claiming complete failure of equipment must document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

(e) Applications filed and accepted pursuant to this section must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(f) The application will be subject to the same evaluation and selection process followed for applications received in the normal application cycle, although the Administrator may establish a special timetable for evaluation and selection to permit an appropriately timely decision.

#### **§ 2301.11 Service of applications.**

On or before the closing date, all new or deferred applicants must serve a summary copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554;

(b) The state telecommunications agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and

(c) The state office established to review applications under Executive Order 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by Executive Order 12416, 48 FR 15587, 3 CFR, 1983 Comp., p. 186, in all states where equipment requested in the application will be located and where the state has established such an office and wishes to review these applications.

#### **§ 2301.12 Federal Communications Commission authorizations.**

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date. The applicant should clearly identify itself to the FCC as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low-power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Applications requesting C-band downlinks are not required to submit the FCC application or equivalent engineering data as part of the PTFP application. When such a project is funded, however, grantees will be required to submit evidence of FCC registration of the C-band downlink prior to the release of Federal funds.

(d) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(e) If the project is to be associated with an existing station, the FCC operating authority for that station must be current and valid.

(f) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(g) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may reject and return the application.

(h) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

#### **§ 2301.13 Public comments.**

(a) After the closing date, the Agency will publish a list of all applications received.

(b) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

(c) A copy of the application will be available in the PTFP offices for public inspection during normal business hours.

(d) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Any opposing comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.8(a).

(e) The Agency shall incorporate all comments from the public and any replies from the applicant in the applicant's official file for consideration during the evaluation of the application.

#### **§ 2301.14 Supplemental application information.**

(a) The Agency may request from the applicant any additional information that the Agency deems necessary to clarify the application. Applicants must provide to the Agency additional information that the Agency requests within fifteen (15) days of the date of the Agency's notice. Applicants must submit a copy of the requested information for each copy of the application submitted by the closing date.

(b) Applicants must immediately provide to the Agency information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including

reduction or rejection) of a proposed state appropriation or receipt (or denial) of a proposed substantial matching gift;

(4) Changes that affect the applicant's eligibility under § 2301.3;

(5) Changes in the status of proposed production, participation, or distribution agreements (if relevant to the proposed project);

(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the need for the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application made available for public inspection pursuant to § 2301.13.

(d) Neither the Department nor the Agency will discuss the merits of an application when it is under review.

#### **§ 2301.15 Withdrawal of applications.**

(a) Applicants may request withdrawal of an application from consideration for funding without affecting future consideration. Withdrawn applications will be returned by the Agency.

(b) A request that the Agency defer an application for consideration in a subsequent year will be treated as a request for withdrawal.

#### **Subpart C—Evaluation and Selection Process**

##### **§ 2301.16 Technical evaluation process.**

(a) In determining whether to approve or defer a construction or planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file.

(b) PTFP grants are awarded on the basis of a competitive review process. The evaluation of the applications is based upon the evaluation criteria provided under § 2301.17.

(c) The competitive review process may include the following: evaluation by PTFP staff; technical assessment by engineers; an evaluation by outside reviewers, all of whom have demonstrated expertise in either public broadcasting or distance learning; and rating by a national advisory panel, composed of representatives of major national public radio and television organizations.

(d) In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult (as appropriate) with the FCC, the Corporation for Public Broadcasting, state telecommunications agencies,

public broadcasting agencies, organizations, and other agencies administering programs that may be coordinated effectively with Federal assistance provided under the Act; and the state office established to review applications under Executive Order 12372, as amended by Executive Order 12416.

(e) Based upon the evaluation criteria contained in § 2301.17, the PTFP program staff will prepare summary evaluations. These will incorporate the outside reviewers' recommendations, engineering assessments, and program staff evaluations.

##### **§ 2301.17 Evaluation criteria for construction and planning applications.**

(a) For each application that is filed in a timely manner by an applicant, is materially complete, and proposes an eligible project, the Agency will consider the evaluation criteria listed in § 2301.17(b):

(1) The criteria in paragraphs (b)(1), *Applicant qualifications*, (b)(2), *Financial qualifications*, of this section are qualifying criteria. Applications meeting the minimum qualifications on these criteria will be considered for further review.

(2) The remaining four criteria listed in § 2301.17(b) will be weighted in the evaluation as follows:

(i) Criteria in paragraph (b)(3), *Project objectives*, and (b)(4), *Urgency*, of this section will be given the most weight in the evaluation.

(ii) The remaining criteria in paragraph (b)(5), *Technical/Planning qualifications*, and (b)(4), *Special consideration*, of this section will be given less weight and are listed in descending order.

(b) Evaluation criteria

(1) *Applicant qualifications*:

Documentation that the applicant has or will have the ability to complete the project, including having sufficient qualified personnel to operate and maintain the facility, and to provide services of professional quality.

(2) *Financial qualifications*:

Documentation reflecting the applicant's ability to provide non-Federal funds required for the project, including funds for the local match and funds to cover any ineligible costs required for completion of the project; and to ensure long-term financial support for the continued operation of the facility during the Federal interest period.

(3) *Project objectives*: The degree to which the application documents that the proposed project fulfills the objectives and specific requirements of one or more of the categories set forth

in § 2301.4, documents the applicant's ability to implement the proposed project and adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(2)), if requested for equipment replacement, improvement, or augmentation projects; and, in the case of planning, adequately justifies the need for Federal funds in excess of seventy five (75) percent of total project costs (see § 2301.6(a)(2)), if requested.

(4) *Urgency*: Documentation that justifies funding the proposed project during the current grant cycle or, when appropriate, that the condition of existing equipment justifies its prompt replacement.

(5)(i) *Technical qualifications* (construction applicants only). Documentation that the eligible equipment requested is necessary to achieve the objectives of the project; that the proposed costs reflect the most efficient use of Federal funds in achieving project objectives; that the equipment requested meets current industry performance standards (and FCC standards, if appropriate) and that an evaluation of alternative technologies has been completed that justifies the selection of the requested technology (where alternative technologies are possible).

(ii) *Planning Qualifications* (planning applicants only). Documentation of the feasibility of the proposed planning process and timetable for achieving the expected results; that costs proposed reflect the most efficient use of Federal funds; that the applicant has sufficient qualified staff or consultants to complete the planning project with professional results; and that an evaluation of alternative technologies will be incorporated into the plan, if appropriate.

(6) *Special Consideration*: For this evaluation criterion, applicants should demonstrate that its broadcast or non-broadcast application will achieve significant diversity in the ownership of, operation of, and participation in public telecommunications facilities. Applicants may demonstrate how their project will better serve the characteristics, values and attitudes of diverse listeners by promoting the development of more effective programming strategies, conducting station outreach projects, through audience development efforts, and through the participation of minorities and women on the Board of Directors, and in other policy making positions.

(c) The Agency will provide each applicant with guidance in the application materials on the type of

documentation necessary to meet each of the above evaluation criteria.

#### § 2301.18 Selection process.

(a) The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA Associate Administrator for review and approval. The Director's recommendations and the OTIA Associate Administrator's review and approval will take into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.  
 (2) The type of projects and broadcast priorities set forth at § 2301.4.  
 (3) Whether the application is for broadcast or a nonbroadcast project.  
 (4) Whether the applicant has any current NTIA grants.

(5) The geographic distribution of the proposed grant awards.

(6) The availability of funds.  
 (b) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator.

(c) The Administrator makes final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at § 2301.1 (a) and (c).

(d) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

(e) After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;  
 (2) Deferral of the application for subsequent consideration;  
 (3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within at least one of the categories enumerated at § 2301.4; or  
 (4) Return of applications that were deferred by the Agency after consideration during three grant cycles.

(f) The Agency will notify the following organizations of those applications selected for funding:

(1) The state educational telecommunications agency(ies), if any, in any state any part of which lies within the service area of the applicant's facility;

(2) The FCC; and  
 (3) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

#### Subpart D—Post-Award Requirements

##### § 2301.19 General conditions attached to the Federal award.

(a) During the project award period and the remainder of the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.3;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project *if approved in advance by the Department in writing*. These changes include but are not limited to the following:

(i) Costs (including planning costs);

(ii) Essential specifications of the equipment;

(iii) The engineering configuration of the project;

(iv) Extensions of the approved grant award period; and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.19(c);

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC; and

(6) State when advertising for bids for the purchase of equipment that the Federal government has an interest in facilities purchased with Federal funds under this program that begins with the purchase of the facilities and continues for ten (10) years after the completion of the project.

(b) During the period in which the grantee possesses or uses the Federally funded facilities, the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian for the useful life of the equipment even when this extends beyond the ten-year Federal interest period. (See NTIA's policy on sectarian activities at 60 FR 66491, Dec. 22, 1995.)

(c) If necessary to further the purpose of the Act, the Agency may reassign a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect. Each party must provide, in writing, its assent to the substitution. Any substituted party must meet the eligibility requirements.

**§ 2301.20 Schedules and reports.**

(a) Within thirty (30) calendar days of the award date the grantee shall submit to the Agency, in duplicate, a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package.

(b) During the project period of this grant, the grantee shall submit performance reports, in duplicate, on a calendar year quarterly basis for the period ending March 31, June 30, September 30, and December 31, or any portions thereof. The Quarterly Performance Reports should contain the following information:

- (1) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;
- (2) A description of any problems that have arisen or reasons why established goals have not been met;
- (3) Actions taken to remedy any failures to meet goals; and
- (4) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description, number and date of the items purchased, and cost.

**§ 2301.21 Payment of Federal funds.**

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

- (1) The Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;
- (2) The Department may not make any payment under an award unless and until all special award conditions stated in the award documents that condition the release of Federal funds are met; and
- (3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

**§ 2301.22 Protection, acquisition, and substitution of equipment.**

(a) To assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the Federal interest period, the Agency may require a grantee to:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located; and

(2) File a certified copy of the recorded lien with the Administrator ninety (90) days after the grant award is received.

(b) The grantee shall maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project. The grantee shall purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any area that has been identified by the Federal Emergency Management Agency as having special flood hazards.

(c) The grantee shall not dispose of or encumber its title or other interests in the equipment acquired under this grant during the Federal interest period.

(d) The grantee shall demonstrate that the grantee has obtained appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated. The grantee must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment to assure the sufficient continuity of operation of the facility; and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property.

(e) The Agency will allow the acquisition of facilities by lease;

however, the following requirements apply:

(1) The lease must be of benefit to the Federal government;

(2) The actual amount of the lease must not be more than the outright purchase price would be; and

(3) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal government has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(f) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Department may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(g) *Transfer of Federal interest to different equipment.* The Department may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies, provided the following conditions are met:

(1) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(2) Equipment previously funded by PTFP that is within the Federal interest period may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(3) The same item can be used only once to substitute for the Federal interest. However, the Federal interest in several items of equipment from different grants may be transferred to a single item if the request for all such transfers is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest may be required by PTFP and must be recorded in accordance with § 2301.23(b)(8). A copy of the lien document must be filed with the PTFP within sixty (60) days of the date of approval of the transfer of Federal interest.

(h) *Termination by buy-out.* A grantee may terminate the Federal revisionary interest in a PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

**Subpart E—Completion of Projects**

**§ 2301.23 Completion of projects.**

(a) Upon completion of a *planning* project, the grantee must promptly provide to the Agency two copies of any

report or study conducted in whole or in part with funds provided under this program.

(1) This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement.

(2) The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and to determine whether the written instructions and guidance provided by the Agency, if any, were followed.

(3) If the Agency determines that the report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action.

(4) An unacceptable final report may result in the disallowance of claimed costs and the establishment of an account receivable by the Department.

(b) Upon completion of a *construction* project, the grantee must:

(1) Certify that the grantee has acquired, installed, and begun operating the project equipment in accordance with the project as approved by the Agency, and has complied with all terms and conditions of the grant as specified in the Grant Award document;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify and document that the facilities have been acquired, that they are in operating order, and that the grantee is using the facilities to provide public telecommunications services in

accordance with the project as approved by the Agency;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (e.g., installation costs); and

(8) Execute and record a final priority lien, if required by PTFP, reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will usually be the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.23(b)(1). If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

#### § 2301.24 Final Federal payment.

If the total allowable, allocable, and reasonable costs incurred in completing the planning or construction project are less than the total project award amount, the Agency shall reduce the amount of the final Federal share on a pro rata basis. If, however, the actual costs incurred in completing the project are more than the estimated total project costs, in no case will the final Federal funds paid exceed the grant award.

#### § 2301.25 Retention of records and annual status reports.

(a) All grantees shall keep intact and accessible all records specified in Office of Management and Budget Circular A-110 (for educational institutions, hospitals, and nonprofit organizations), or 15 CFR part 24 (for State and Local Governments).

(b) Recipients of construction grants:

(1) Are required to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the Federal interest period. Information about what is to be included in the Annual Status Report is supplied to grant recipients at the time grants are closed out.

(2) Shall retain an inventory of the equipment for the duration of the ten-year Federal interest period and shall mark project apparatus in a permanent manner to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and an inventory number assigned by the grantee.

(3) May also be required to take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

#### Subpart F—Waivers

##### § 2301.26 Waivers.

It is the general intent of NTIA not to waive any of its regulations. However, under extraordinary circumstances and when it is in the best interests of the Federal government, NTIA, upon its own initiative or when requested, may waive the regulations adopted pursuant to section 392(e) of the Act. Waivers may only be granted for regulatory requirements that are discretionary.

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