



# Federal Register

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**Tuesday,  
December 23, 2003**

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**Part VI**

**LOCAL Television  
Loan Guarantee  
Board**

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**7 CFR Parts 2200 and 2201  
LOCAL Television Loan Guarantee  
Program; Final Rule and Notice**

**LOCAL TELEVISION LOAN  
GUARANTEE BOARD****7 CFR Parts 2200 and 2201**

RIN 0572-AB82

**LOCAL Television Loan Guarantee  
Program**AGENCY: LOCAL Television Loan  
Guarantee Board.

ACTION: Final rule.

**SUMMARY:** The LOCAL Television Loan Guarantee Board (Board) is issuing regulations to implement the LOCAL Television Loan Guarantee Program (Program or LOCAL TV Program) as authorized by the Launching Our Communities' Access to Local Television Act of 2000 (the Act). Section 1002 of the Act sets forth that the primary purpose of the Act is to facilitate access, on a technologically neutral basis to signals of local television stations for households located in Nonserved Areas and Underserved Areas. The Act establishes a LOCAL Television Loan Guarantee Board (the Board) to approve Guarantees made under the Act. The Board is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their designees.

This rule establishes eligibility and Guarantee requirements, the application and approval process, as well as the administration of Guarantees made by the Board. Additionally, this rule establishes the process through which the Board will consider applications under the priority considerations required in the Act.

**DATES:** *Effective:* This rule becomes effective December 23, 2003.

**ADDRESSES:** A complete set of comments filed in response to the Proposed Rules are available for public inspection at 1400 Independence Avenue, SW., STOP 1575, Room 2919-S, Washington, DC 20250-1575. These comments can be viewed electronically at <http://www.usda.gov/rus/localtvboard/reply-comments.htm>.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline G. Rosier, Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919-S, Washington, DC 20250-1575. Telephone (202) 720-0530; Facsimile (202) 720-2734; E-mail [localtv@rus.usda.gov](mailto:localtv@rus.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule has been determined to be significant for purposes of Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from the Board upon request.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Board has determined that this rule meets the applicable standards provided in Section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

**Administrative Procedure Act**

Pursuant to authority at 5 U.S.C. 553(a)(2), this rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, including the requirement to provide prior notice and an opportunity for public comment.

**Regulatory Flexibility Act**

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

**Information Collection and  
Recordkeeping Requirements**

The reporting and recordkeeping requirements contained in the rule have been approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0572-0135.

**Catalog of Federal Domestic Assistance**

The Program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.853, LOCAL Television Loan Guarantee Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512-1800.

**Executive Order 12372**

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**National Environmental Policy Act**

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*] (NEPA), an Environmental Impact Statement is not required. If necessary, Loans sought to be guaranteed under this Program will be assessed individually to determine appropriate compliance with NEPA.

**Government Paperwork Elimination  
Act**

The Board is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**Civil Rights**

The LOCAL TV Board is an equal opportunity lender. Applicants are required to comply with regulations on nondiscrimination and equal employment opportunity.

**Executive Order 12630**

This rule does not contain policies that have takings implications.

**Executive Order 13132**

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

**Background**

On December 21, 2000, the President signed into law Public Law 106-553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106-553, entitled Launching our Communities Access to Local Television Act of 2000 ("LOCAL TV Act" or "Act") established the LOCAL Television Loan Guarantee Board ("Board"). The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. The Board is comprised of the

Secretary of Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their designees.

On August 15, 2003, the Board published proposed regulations to implement the LOCAL Television Loan Guarantee Program (Program or LOCAL TV Program).<sup>1</sup> The proposed regulations outlined proposed eligibility and guarantee requirements, the application process, as well as the administration of guarantees made by the Board. Additionally, the proposed regulations outlined the proposed process through which the Board would consider application under the priority considerations required in the Act. The Board received eight comments in response to the proposed regulations. In this document, the Board adopts rules to implement the LOCAL TV Program.

#### *Section 2201.1 Definitions*

One commenter suggested that the Board amend the proposed rule to provide that the Board will publish contour maps for each Designated Market Area (DMA), including grade A and B contours, to ensure that all applicants are using the same definitions and data sets.

The Act does not require the Board to create contour maps and the Board does not have funds available to undertake such a project. Applicants are required to indicate the number of nonserved and underserved households their projects will reach. See Section 2201.11(c)(4) of the regulations. It is expected that applicants will also disclose the manner in which this determination was made. This information, along with the other information requested as part of the application, will be analyzed in a consistent manner across all applicants by the Board.

A number of commenters suggested amending the definition of "local television broadcast signals" to include all local television broadcast stations in a DMA or, at least, all local television broadcast stations eligible for mandatory carriage under Federal Communications Commission (FCC) rules applicable to cable television systems or satellite providers. These suggestions were made because of the concerns of commenters that the proposed definition would have one of four possible negative results: (1) It would overlook some local stations in determining the existing availability of service; (2) it would cause some areas

currently receiving local broadcast signals from a cable or satellite provider in accordance with FCC rules to be considered nonserved or underserved erroneously; (3) it would limit the applicability of the loan guarantee to that portion of a loan required to finance facilities necessary to provide only some of the local signals that a cable or satellite provider would be required by FCC rules to provide; or (4) it would direct applicants to provide retransmission of a smaller number of signals than the FCC's rules would dictate, thereby possibly running afoul of both FCC rules and copyright laws. While we do not agree that all of these results were possible, because nothing in the Board's rules would have affected the power of copyright law or the authority of the FCC's rules regarding carriage of local signals by providers applying for loan guarantees under the program, the Board acknowledges that the proposed definition could be improved.

Therefore, the Board has amended the definition of Local Television Broadcast Signals to include all television broadcast signals located in a DMA, subject to limitations pertaining to duplication, similar to the rules the FCC has used in Part 76 of Title 47 of the Code of Federal Regulations. The Board has also added definitions of the terms "low power television station," "television broadcast station," "television broadcast translator station," and "television network" to ensure that these terms are well understood in the revised definition of "local television broadcast signals."

To address the concern that the local signals carried by a cable or satellite provider under the FCC's rules might, in some case, not accord with the definition of "local television broadcast signals" in this rule, the Board has added a new Section 2201.9 which clarifies that the local signals carried by cable or satellite providers in accordance with the FCC's rules will always be considered to meet the definition of "local television broadcast signals" for the purposes of this regulation.

#### *Section 2201.10 Loan Amount and Guarantee Percentage*

One comment recommended that the regulations be amended to delete the proposed \$1 million minimum size of a guaranteed loan (floor), so that the Board might consider applications for small loans on a case-by-case basis. The commenter indicated that, while the proposed \$1 million floor would not pose a problem for it, it might serve to deter certain small companies from

applying for a loan guarantee under the program.

The floor was set by the Board after taking into consideration the full costs to the Board of analyzing the eligibility and creditworthiness of applicants and their compliance with appropriate statutes and regulations. Such costs, which might appear to be borne by the Board, would be passed on to applicants through application and origination fees. Lenders would be authorized to charge reasonable fees as well. For loans of less than \$1 million, total amount of fees charged by the Board and the lenders would be larger than the benefit of reduced interest expense of the borrower from receiving a Federal loan guarantee. Therefore, the Board will not delete the \$1 million floor from the regulations.

Two commenters expressed concern about how the Board would determine the portion of the loan eligible for coverage by the guarantee under Section 2201.10. The Act makes clear that the guarantee should not cover any portion of a loan being used for purposes other than the establishment of the means by which local television broadcast signals will be delivered to a nonserved or underserved Area. However, if the Board were to prorate the costs of facilities based simply on the percentage of local television broadcast signals carried relative to all signals carried or the percentage of signals delivered to nonserved or underserved areas relative to all Areas served and adjust the portion of the loan eligible for guarantee accordingly, the effect would be to undermine the effectiveness of the LOCAL TV Program, by dropping the actual guarantee percentage significantly in many cases. Nonetheless any separable costs used to pay for features, services, or facilities not essential to the means by which local television broadcast signals will be delivered to a nonserved or underserved Area will be excluded from the portion of the loan eligible for coverage by the guarantee. A new subsection 2201.10(b)(3) has been added to clarify this policy.

#### *Section 2201.11 Application Requirements*

*Credit Opinion.* The proposed rules require applicants for loans of \$5 million or more to submit to the Board a preliminary credit rating opinion letter. The Board solicited comment on whether the minimum amount should be set within the range of \$5 million to \$25 million. One comment argued that this requirement could serve as a costly barrier for potential applicants and that this credit opinion letter was not

<sup>1</sup> See 68 FR 48814 (August 15, 2003). The proposed regulations can also be viewed at [http://www.usda.gov/rus/localtvboard/legislative\\_docs.htm](http://www.usda.gov/rus/localtvboard/legislative_docs.htm).

required by the Act. The commenter also stated that this requirement is inconsistent with the "no credit elsewhere test" and that the proposed regulations do not specify what outcome would be required from this opinion letter as a condition to obtaining a Guarantee.

The creditworthiness of an applicant is an important consideration for the Board as it implements this program. At the same time, the Board recognizes the commenter's concern that the cost of obtaining a credit opinion letter may be a potential barrier for some applicants. Therefore, the Board will raise the minimum amount of a loan for which a credit rating opinion letter is required from \$5 million to \$15 million. Section 2201.11(g)(2) of the final rules has been changed accordingly.

*Environmental Impact and Documentation for Eligibility Determination.* One commenter recommended amending the documentation and other requirements for an applicant to be eligible for a loan guarantee consistently throughout the regulations to provide that the environmental impact assessment and all necessary regulatory approvals, spectrum licenses, and delivery permissions will be required to be finalized prior to the closing of the loan to be guaranteed, but not necessarily at the time of application, as appeared to be required under certain sections of the proposed regulations.

Applications may be submitted, evaluated and conditionally approved prior to finalization of the environmental assessment and completion of the NEPA process however, guaranteed loan funds will not be advanced until the NEPA process is completed. Section 2201.11(i) of the regulations has been amended accordingly. Applications may also be submitted, evaluated and conditionally approved prior to an Applicant obtaining all required regulatory and other approvals, licenses and permissions; however, guaranteed loan funds will not be advanced until they have been obtained. The regulations have been amended to clarify this point as well.

#### *Section 2201.12 Applicant*

One commenter asked that the Board amend the regulations to clearly state what the Board actually requires in order for an applicant to be deemed eligible to receive a loan guarantee and indicate the timing for the Board's determination on the applicant's eligibility, as opposed to merely listing in the regulations the information

required to be submitted as part of the application.

The Board's regulations state both the factors for determining eligibility of an applicant and the information items necessary to be submitted as part of a complete application. A determination that an applicant is eligible does not mean that the applicant will be made an offer of guarantee. Similarly, a complete application presenting an economically viable project cannot receive an offer of guarantee if the party submitting the application is not eligible. Several commenters suggested that the Board amend either the requirement that an applicant show that their loan would not be available on reasonable terms and conditions without a program guarantee or the documentation requested in the application to show that this requirement has been satisfied. See Section 2201.12(b)(2)(v) of the proposed rule.

The "not available on reasonable terms and conditions" requirement in the proposed rule is taken directly from the statute, and therefore cannot be eliminated by regulation. See Section 1004(d)(3)(v) of the Act. The documentation requirement is similar to that used in other government loan guarantee programs.

#### *Section 2201.15 Ineligible Loan Purposes*

One commenter noted that the regulations do not lay out how the Board, in consultation with the National Telecommunications and Information Administration (NTIA), will make a determination that a project is "not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Nonserved Area or Underserved area \* \* \*." Another commenter asked that the section be moved to a new location in the regulations in order to underscore the importance of this requirement for Board deliberations on this issue."

The standard that the Board is to apply in making its determination is clearly stated in the Act, *i.e.*, the project is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a nonserved area or underserved area and is commercially viable. Moreover, the Act requires the Board to consult with the NTIA in its determination. Given the wide variety of types of projects, market conditions, and consumer services that may be offered, it would be inappropriate to specify a formula for making this determination in the regulations. Rather, the Board

will make its determination, in accordance with the Act, on a case-by-case basis based on the nature of the project under consideration. A detailed process outlined in the regulations as to how the Board will make this determination is not required by the Act. Because of the importance of this determination, however, the regulations have been amended to move this determination from Section 2201.15(c) to Section 2201.18(f).

#### *Section 2201.17 Submission of Applications*

One group of commenters recommended that the Board amend the regulations to state that each application window will be *at least* 120 days long, and not just *approximately* 120 days long, as was stated in the proposed rule.

Elsewhere in today's **Federal Register** the Board is publishing a notice announcing that applications for guarantees are being accepted through April 21, 2004; a 120 day period. While the Board believes 120 days is an appropriate period of time for an applicant to submit an application, it does not believe that a slightly shorter period for additional application windows is inappropriate. As such, should the Board decide to open additional application windows, any such window could be shorter than 120 days.

Two commenters recommended that the regulations require that a public notice be put in place so that affected participants in the DMA are aware an application has been filed. The Board expects to give the public notice of the names of those who applied during an application window after the application window has closed. This notice will be published in the **Federal Register**.

#### *Section 2201.18 Application Selection*

Two commenters asked that the Board explain in the regulations how it will meet its statutory requirement to prioritize the service of nonserved areas over the course of the program; *e.g.*, how will the Board prevent the majority of loan guarantees from being issued to serve underserved areas in the initial application window or windows so that the opportunities to serve nonserved areas will not be limited in later application windows. Another commenter raised the related issue of how the Board will select applications from the same area if more than one application meets the eligibility requirements.

All applications received during the time period established in the Board's public notice, published elsewhere in

today's **Federal Register**, will be reviewed based on the criteria in the statute and these regulations. Included in these criteria is a statutory priority to provide service to nonserved areas. The Board will extend offers of guarantee to eligible applicants in accordance with such priority standards. However, the Board will apply that priority with regard only to the applications before it. The Board will not withhold funds for potential future applications that may be submitted during a possible additional funding availability period. With respect to applications covering the same geographic area, the Board will again apply the statutory and regulatory approval criteria to its determination as to whether to make an offer of guarantee. The Board may extend an offer of guarantee to more than one applicant seeking to provide service to the same geographic area. However, analysis of the financial feasibility of any particular project proposed by an applicant will necessarily take into account any other applications received by the Board covering the same geographic area. This analysis will include determining whether both Projects can be economically sustainable.

One commenter asked that the Board amend the regulations to facilitate the transition to digital television (DTV) by giving priority to those entities whose business and technical plans include the delivery of all local DTV broadcast stations and the entire 19.4 MBPS digital signal, whether stations are delivering one high-definition signal, several DTV multicast signals, data, or a combination.

The Act specifies the considerations that the Board shall give priority to with respect to the approval of loan guarantees. The transition to DTV is not included within the priorities stated in the Act. If Congress had wanted the Board to give priority to those entities that facilitate the transition to DTV, it could have made that a priority in the Act. The regulations have not been amended to give priority to those entities that facilitate the transition to DTV. However, Section 2201.11(e)(8) of the proposed rule does require the applicant to identify the capacity necessary to digitally broadcast all local television broadcast signals to be provided by the project so that the technical capabilities of the project can be evaluated in light of the ongoing transition to DTV.

One commenter proposed that the Board amend the proposed rule so that an applicant could refer to its entire system, and not merely the assets involved with a proposed project, when

describing how high-speed Internet services will be provided in conjunction with the proposed project.

The Act states that the Board should give additional consideration to *projects* that also provide high-speed Internet service. *See* Section 1004(e)(1)(B) of the Act. The Board, therefore, does not have the flexibility to consider any means outside of the project in question by which an applicant might already provide, or would provide in the future, high-speed Internet service.

Another commenter recommended that the regulations be amended to preserve the statutory requirement that "additional"—not "higher" as the regulations now state—priority is given to projects that provide high-speed Internet service. The Board agrees with this comment and has changed the regulations to reflect this change in Section 2201.18(b)(1).

#### *Section 2201.20 Collateral*

One commenter suggested amending the proposed rule to specifically allow collateral to include certain intangible assets. The definition of collateral in the proposed rule is broad, and does not preclude the use of intangible assets. All collateral, including any intangible assets, will be subject to review and approval by the Board under Section 2201.20(e) of the regulations.

Another commenter recommended amending the regulations to provide that the Board will adjust the value of collateral downward and require an applicant to pledge additional collateral only if the Board makes a finding that such an adjustment is appropriate as a result of fraud or abuse by the applicant or any affiliate of the applicant. Such an amendment cannot be made. The Act requires that collateral having a value equal to the unpaid balance of the loan, secure the loan. The government must be able to evaluate, at all times, the value of the collateral, regardless of fraud or abuse. The Act clearly contemplates that, in the event the value of pledged collateral is not equal to the unpaid balance of the loan, additional collateral securing the loan will be provided either by the applicant or its affiliates.

Another commenter recommended that the regulations be amended to enable the Board to use its discretion to minimize burdensome fees and penalties and the use of credit premiums by providing that: (1) The Administrator will never hold liens on assets securing the loan that are in excess of the unpaid balance of the loan amount covered by the loan guarantee; and (2) credit risk premiums should be required only in the event of an

appropriations shortfall such that the cost of the loan guarantee cannot be covered and that, in such cases, that credit risk premiums will be kept to the lowest practical amount.

With regard to the liens issue, the regulations must preserve discretion for the Board to hold liens in an amount sufficient to protect the taxpayer. With respect to credit risk premiums, Section 2201.23 already permits the Board to use its discretion, with OMB concurrence as to the amount, regarding whether and to what extent credit risk premiums will be charged. Section 2201.23 also states that the Board will reduce the credit risk premium with respect to guarantees proportionately to the extent appropriations of budget authority are sufficient to cover the cost of guarantees, as determined under Section 502(5) of the Federal Credit Reform Act of 1990.

#### *Section 2201.21 Fees*

One commenter stated that the origination fee, if one is charged at all, should be capped at 50 percent of the application fee. A loan guarantee origination fee capped at 50 percent of the application fee would impair the Board's ability to recover its costs. The loan guarantee origination fee will be charged only to those applicants that have been made an offer of guarantee. The application fee, on the other hand, will be charged for all applications. The amount of the application fee is meant to cover Board expenses incurred in reviewing an application, while the loan guarantee origination fee is meant to recoup Board expenses incurred in issuing a guarantee and closing the loan.

To ensure that the loan guarantee origination fee more accurately reflects the administrative costs of issuing the guarantee and closing the loan, the Board has decided to revise the amount of the loan guarantee origination fee. This change is reflected in subsection 2201.21(b) of the final rules. This subsection provides a fee sufficient to cover the Board's administrative costs and requires borrowers to enter into an agreement with the Board regarding payment of the fee once an offer of guarantee has been extended. Such costs will likely include legal, financial analysis and other outside consulting fees as well as other administrative costs incurred by the Board. The language conditions closing the loan on full payment of the fee and makes it clear that a borrower is liable for the administrative costs of the Board regardless of whether the loan closes.

### Section 2201.25 Performance Agreement

One commenter suggested that the proposed rule be amended to provide that the penalty in subsection 2201.25(b) of the proposed rule for failure to comply with a stipulated performance schedule would not be charged if the applicant in good faith failed to meet the performance schedule.

The Act provides the Board with authority to impose a penalty not to exceed three times the interest due on a guaranteed loan if an applicant fails to meet its stipulated performance schedule.<sup>2</sup> While the Board believes that it is important to retain the flexibility granted to it in the Act to impose the penalty, the Board expects to use its authority very judiciously in order to protect the financial interests of the United States.

Another commenter recommended that in the event a borrower in good faith failed to meet the stipulated performance schedule, the Administrator should provide the borrower with a minimum of 120 days to attempt to cure the failure to perform before the assessment of the penalty.

The issue of a "cure period" is more appropriately addressed in the loan documents. It is anticipated that an appropriate "cure period" provision will be included in the loan documents.

### Section 2201.27 Assignment or Transfer of Loans

One commenter recommended that only modifications of significant material provisions of the Loan Documents should require prior written approval of the Board. The commenter also recommended that Board approval not be required for the transfer of certain participation interests in a Loan (e.g., transfer of interests within a group of participating Lenders).

The requirements and limitations in section 2201.27 of the regulations are needed for the Board to assure compliance with the authorizing statute, which requires, for example, that the Board determine whether or not Lenders are eligible to participate in the Program and take note of any transfer of the guaranteed portion of the loan separate and apart from the unguaranteed portion of a loan ("loan stripping"). Such loan stripping is prohibited under subsection 1005(d) of the Act. The Board's need for this information exists not only at the time the loan is originated, but throughout the repayment period.

<sup>2</sup> See Section 1005(f)(2) of the Act.

### Section 2201.31 Indemnification

One commenter recommended amending the regulations to clarify that only those affiliates that are providing collateral for the loan guarantee will be subject to the statutorily required indemnification requirements. A case-by-case statutorily required determination will be made concerning which affiliates will be required to indemnify the government. It is possible, however, that indemnification will be received from affiliates which are not providing collateral for a guarantee. It is anticipated that appropriate contracts, between the affiliates and the government, evidencing such indemnification obligation, will be obtained.

### Section 2201.33 Defaults

One commenter recommended amending the regulations to state that the failure of a lender to provide all of the required documents to the Board in the event of a default will not void the loan guarantee and that instead only a good faith effort by lender in this regard will be required, which is consistent with current commercial practice.

Subsection 2201.33(c) of the regulations requires the lender to provide certain information, relating to the collection process, to the Board within 90 days of the date of a payment demand. Paragraph (f) of that section provides that the Board may withhold payment under the guarantee if such information has not been provided. This provision is reasonable in light of the Board's reliance on the lender in the loan collection process.

### List of Subjects in 7 CFR Parts 2200 and 2201

Loan programs—Communications, Rural areas, Telecommunications, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, chapter XX of title 7 of the Code of Federal Regulations is amended as follows:

### PART 2200—ACCESS TO LOCAL TELEVISION SIGNALS GUARANTEED LOAN PROGRAM; GENERAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 2200 continues to read as follows:

**Authority:** 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L. 107–171.

■ 2. The title of part 2200 is revised to read as set out above.

■ 3. Section 2200.1 is amended by adding a new paragraph (d) to read as follows:

### § 2200.1 Definitions.

\* \* \* \* \*

(d) *Person* means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company or partnership, trust, unincorporated organization, government entity, agency or instrumentality or any subdivision thereof.

■ 4. Part 2200 is amended by adding §§ 2200.10 through 2200.12 to read as follows:

### § 2200.10 Restrictions on lobbying.

(a) No funds received through a Loan guaranteed under this Program in this chapter may be expended by the recipient of a Federal contract, grant, loan, loan guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

#### **§ 2200.11 Government-wide debarment and suspension (nonprocurement).**

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions

under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's Loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (*see* paragraph (b)(1)(ii) of this section for the period of their exclusion).

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility

(but benefits received in an individual's business capacity are not accepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is:

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

#### § 2200.12 Freedom of Information Act.

(a) *Definitions.* All terms used in this section, which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA*, as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an

institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying.* (1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the FOIA. This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's offices pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity

(for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is available for inspection and copying, from 9 a.m. to 5 p.m. weekdays, at 1400 Independence Avenue, SW., Washington, DC.

(3) *Electronic records.* Information available under this section shall also be available on the Board's Web site found at <http://www.usda.gov/rus/localtvboard>.

(c) *Records available to the public on request*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board at LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919-S, Washington, DC 20250-1575, or sent by facsimile to the Secretary of the Board at (202) 720-2734. The request shall be clearly marked **FREEDOM OF INFORMATION ACT REQUEST**.

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the

number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2) of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than \$250, and the requester does not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall

be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefore;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to Chairman of the Board, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919-S, Washington, DC 20250-1575, or sent by facsimile to (202) 720-2734. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The Chairman of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules and waiver of fees—* (1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search.* (A) Search fees shall be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in

paragraph (f)(3) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is \$25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must

pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed \$25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed \$250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by \$1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific

research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) Uniform fee schedule.

Service	Rate
(i) Manual search .....	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	\$.15 per page.
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes employee preparation for release, i.e. excising).	Actual salary rate of conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information—(1) Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business

information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "PROPRIETARY" or "BUSINESS CONFIDENTIAL" in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information—(1) Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under

this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

■ 5. Part 2201 is added to read as follows:

## **PART 2201—LOCAL TELEVISION LOAN GUARANTEE PROGRAM—PROGRAM REGULATIONS**

### **Subpart A—General**

Sec.

2201.1 Definitions.

2201.2–2201.8 [Reserved]

2201.9 Limitation on the applicability of the definition of Local Television Broadcast signals.

### **Subpart B—Loan Guarantees**

2201.10 Loan amount and Guarantee percentage.

2201.11 Application requirements.

2201.12 Applicant.

2201.13 Lender.

2201.14 Eligible Loan purposes.

2201.15 Ineligible Loan purposes.

2201.16 Environmental requirements.

2201.17 Submission of applications.

2201.18 Application selection.

2201.19 Loan terms.

2201.20 Collateral.

2201.21 Fees.

2201.22 Issuance of Guarantees.

2201.23 Funding for the Program.

2201.24 Insurance.

2201.25 Performance Agreement.

2201.26 Lender standard of care.

2201.27 Assignment or transfer of Loans.

2201.28 Participation in guaranteed Loans.

2201.29 Supplemental guarantees.

2201.30 Adjustments.

2201.31 Indemnification.

2201.32 Termination of obligations.

2201.33 Defaults.

2201.34 OMB Control Number.

**Authority:** 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L. 107–171.

### **Subpart A—General**

#### **§ 2201.1 Definitions.**

*Act* means Title X of Public Law 106–553, entitled the Launching Our Communities' Access to Local Television (LOCAL TV) Act of 2000, as amended.

*Administrator* means the Administrator of the Rural Utilities Service, U.S. Department of Agriculture, acting pursuant to the Act and on behalf of the Board.

*Affiliate* means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and may include any individual who is a director or senior management officer of an Affiliate, a shareholder controlling more than 25 percent of the voting securities of an Affiliate, or more than 25 percent of the ownership interest in an Affiliate not organized in stock form.

*Agent* means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single Loan, as is required by, or necessarily

incidental to, the terms and conditions of the Guarantee.

*Applicant* means any party that is seeking financing under the Act in order to provide access to Local Television Broadcast Signals for households in Nonserved Areas and Underserved Areas.

*Asset* means anything owned by the Applicant that has commercial or exchange value including, but not limited to, cash flows and rights thereto.

*Banking Institution* means a bank or bank holding company.

*Board* means the LOCAL Television Loan Guarantee Board authorized by the Act to approve Guarantees to facilitate access, on a technologically neutral basis, to Local Television Broadcast Signals for households located in Nonserved Areas and Underserved Areas.

*Borrower* means the entity liable for the payment of principal and interest on any Loan guaranteed under the Act, where such entity shall be a corporation, partnership, joint venture trustee or government entity, agency or instrumentality. An individual cannot be a Borrower.

*Collateral* means all Assets economically pledged by the Applicant, any Affiliate of the Applicant, or both that is required under the provisions of the Act or the Loan Documents to secure the repayment of the indebtedness of the Borrower under the Loan Documents.

*Default* means a failure by a Borrower, other than a Payment Default, on its obligations under the Loan Documents which has not been cured by the Borrower or duly waived by the Lender within any applicable cure period.

*Designated Market Area (DMA)* means an area designated as such by Nielsen Media Research and published in the most recent Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates.

*Generally Accepted Accounting Principles (GAAP)* means a common set of accounting standards and procedures that are either promulgated by an authoritative accounting rulemaking body or accepted as appropriate due to wide-spread application in the United States.

*Guarantee* means the written agreement, including all terms and conditions and all exhibits thereto, guaranteeing repayment of a specified percentage of the principal of a Loan pursuant to the Act.

*Guaranteed Portion* means the portion of the principal of a loan that is subject to the Guarantee.

*High-Speed Internet* means a data connection to the Internet providing an information rate exceeding 200 kilobits per second (kbps) in the consumer's connection to the network in at least one direction, either from the provider to the consumer (downstream) or from the consumer to the provider (upstream).

*Lender* means an entity that has committed to make a Loan to an Applicant, where such entity shall be:

(1) An entity currently engaged in commercial lending in the normal course of its business; or

(2) A nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, engaged primarily in commercial lending, but does not include any governmental entity or any Affiliate thereof, the Federal Agricultural Mortgage Corporation, any institution supervised by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, or any Affiliate of such entities.

*Loan* means a Loan guaranteed pursuant to the Act and includes the funds made available to the Borrower by the Lender.

*Loan Agreement* means the contract between the Lender and the Borrower, approved by the Board, setting forth the terms applicable to the Loan.

*Loan Documents* means the Loan Agreement, Guarantee and all other instruments, and all documentation between or among the Lender, the Borrower, and the Board or Administrator, evidencing the making, disbursing, securing, collecting, or otherwise administering of the Loan.

*Local Television Broadcast* means the signals of all Television Broadcast Stations located in a DMA. However, when more than one commercial Television Broadcast Station within the same DMA is affiliated with a particular Television Network, the signal of any one of these commercial Television Broadcast Stations will qualify as the Local Television Broadcast Signal of the network at that location, unless such stations are licensed to communities in different States, in which case both stations must be counted. Even if they are not affiliated with the same Television Network, when two or more commercial Television Broadcast Stations simultaneously broadcast the identical programming for more than 50 percent of the broadcast week, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. When two or more noncommercial television stations simultaneously broadcast the same programming for more than 50 percent of prime time as defined in 47

CFR 76.5(n), and more than 50 percent outside of prime time over a 3-month period, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. In areas not included in a DMA, but under the jurisdiction of the Federal Communications Commission (FCC), an appropriate set of Local Television Broadcast Signals will be determined on a case-by-case basis, subject to the approval of the Board.

*Low Power Television Station* means a station authorized by the FCC under subpart G of part 74 of title 47, Code of Federal Regulations, that may retransmit the programs and signals of a Television Broadcast Station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service.

*Net equity* means the value of the total Assets of an entity, less the total liabilities of that entity, as recorded under Generally Accepted Accounting Principles for the fiscal quarter ended immediately prior to the date on which the subject Loan is approved.

*Net Worth Ratio* means the book value of equity over total Assets.

*Nonserved Area* means any area that is outside the grade B contour (as determined using standards employed by the Federal Communications Commission (FCC)) of the Local Television Broadcast Signals serving a particular Designated Market Area and does not have access to such signals by any commercial, for profit, multichannel video provider.

*Offer of Guarantee* means the Board's decision to approve an application for, and extend a Guarantee under, the LOCAL TV Act.

*Payment Default* means any failure of a Borrower to pay any amount of principal or interest on the Loan when and as due under the Loan Agreement (including, without limitation, following any acceleration thereunder) which has not been cured within any applicable cure period.

*Payment Demand* means a request, by the Lender or Agent, following a Payment Default, in writing to the Board, for payment under the Guarantee in respect of the defaulted principal.

*Performance Agreement* means the written agreement between the Administrator and the Borrower (and Lender, if applicable), pursuant to which the Borrower provides stipulated performance schedules with respect to Local Television Broadcast Signals provided through the Project.

*Program* means the LOCAL Television Loan Guarantee Program (LOCAL TV Program) established under the Act.

*Project* means a proposal for the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means to deliver Local Television Broadcast Signals to a Nonserved Area or Underserved Area.

*Regulatory Capital Ratio* means tier 1 and total capital ratios as shown on a Banking Institution's balance sheet.

*Security* means all Collateral required by the provisions of the Act or the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents.

*Separate Tier of Local Television Broadcast Signals* means a category or package of services provided by the applicant, to include the Local Television Broadcast Signals and all over-the-air television broadcast signals carried pursuant to the must-carry requirement of the Communications Act of 1934, as amended, offered as a distinct and separate service choice to the applicant's subscribers at a specified lower rate when compared to other program service choices.

*Television Broadcast Station* means an over-the-air commercial or noncommercial Television Broadcast Station licensed by the FCC under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a Low Power Television Station or Television Broadcast Translator Station.

*Television Broadcast Translator Station* means a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a Television Broadcast Station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

*Television Network* means an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

*Term Sheet* means an executed agreement between the Applicant and the Lender or Agent that sets forth the key business terms and conditions of the proposed Loan. Execution of this agreement represents evidence of the commitment between the Applicant and Lender or Agent.

*Underserved Area* means any area that is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the Local Television Broadcast Signals serving a particular Designated Market Area and has access to such signals from not more than one

commercial, for profit, multichannel video provider.

*Unguaranteed Portion* means the portion of the principal of a Loan that is not covered by the Guarantee.

**§§ 2201.2—2201.8 [Reserved]**

**§ 2201.9 Limitation on the applicability of the definition of Local Television Broadcast Signals.**

Notwithstanding the definition of Local Television Broadcast Signals provided in § 2201.1 of this part, if an area is being served by either a satellite carrier which rebroadcasts signals of Television Broadcast Stations located in the DMA or a cable television system, and that satellite carrier or cable television system is currently in compliance with the rules administered by the Federal Communications Commission (FCC) as described in part 76 of title 47, Code of Federal Regulations, the group of signals of Television Broadcast Stations located in the DMA being retransmitted by such satellite carrier or cable television system will be considered to meet the definition of Local Television Broadcast Signals for the purposes of the regulation.

**Subpart B—Loan Guarantees**

**§ 2201.10 Loan amount and Guarantee percentage.**

(a) *Aggregate Value of Loans.* The aggregate value of all Loans for which Guarantees are issued under the Program, including the Unguaranteed Portions of such Loans, may not exceed \$1,250,000,000.

(b) *Guarantee Percentage.* (1) A Guarantee approved by the Board may not exceed an amount equal to 80 percent of the principal amount of a Loan made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area;

(2) If only a portion of a Loan is meant to achieve the purposes described in paragraph (b)(1) of this section, the Board shall determine that portion of the Loan meant to achieve such purpose and may approve a Guarantee in an amount not exceeding 80 percent of that portion of the Loan.

(3) The portion of the Loan meant to achieve the purposes described in paragraph (b)(1) of this section will not be lowered simply because the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area also enable either the provision of signals other than

Local Television Broadcast Signals or the provision of signals to areas other than Nonserved or Underserved Areas. However, any amounts of a Loan which the Board determines will be used for separable costs not essential to funding the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area, will be excluded from the portion of the Loan eligible for a Guarantee.

(c) *Minimum Loan Amount.* The Board will not approve a Guarantee for a Loan in an amount less than \$1,000,000 (inclusive of both the Guaranteed and Unguaranteed Portions of the Loan).

**§ 2201.11 Application requirements.**

A completed application consists of the following information:

(a) *An executive summary of the Project.* The Applicant must provide the Board with a general Project overview that addresses each of the following six categories:

(1) A general overview of the system to be developed and description of the Project including the types of equipment, technologies, and facilities to be used;

(2) An explanation of how the Applicant will provide Local Television Broadcast Signals to Nonserved Areas and Underserved Areas;

(3) A short description of the Applicant including a written narrative describing its demonstrated capability and experience in providing access to Local Television Broadcast Signals for households;

(4) An explanation of the total Project cost including a breakdown of the Loan required and the source of funding for the remainder of the Project, if a portion of the Project is to be paid with non-Loan funds;

(5) The name of the Lender or Agent (including a listing of other participating Lenders, if applicable) and a description of the financing structure of the proposed Loan; and

(6) A general description of the geographic area to be served.

(b) *Background information.* General information concerning the Applicant, its Affiliates, and its Lender or Agent, including a description of any financial and contractual arrangements among the parties. Specific information required of all Applicants is as follows:

(1) *Evidence of legal authority and existence of the applicant.* The Applicant must provide evidence of its legal existence and authority to execute the Loan Documents under the proposed Loan and perform the activities proposed under the Project. Such evidence must include Articles of

Incorporation and bylaws for incorporated Applicants; other types of Applicants should submit appropriate documentation for their forms of organization. If the Applicant is a special purpose entity (SPE) formed for the purpose of the Project, then the Applicant must provide a copy of the Deed of Partnership or Articles of Organization for the SPE.

(2) *Affiliates descriptions.* A listing of all Affiliates of the Applicant including a description of the nature of the Applicant's relationship to each Affiliate. Any existing or proposed contractual arrangements with each Affiliate should be described.

(3) *Legal name.* The legal name and form of organization of the proposed Lender or Agent.

(4) *Cover Form.* A signed copy of Standard Form 424.

(5) *Management Credentials.* A description of the experience and capabilities of the Applicant's management to carry out the Project.

(c) *A business plan.* A plan, satisfactory to the Board, presenting in detail the fundamentals of the business and providing sufficient financial data to indicate that the business will be economically sustainable. The business plan should include, at a minimum:

(1) *Risk Assessments.* An assessment of the risks related to construction, performance, demand, and financing structure, including a narrative statement detailing planned risks mitigation strategies;

(2) *Plans.* A comprehensive operations and maintenance plan, as well as a marketing strategy;

(3) *Economic and Financial Analysis.* A review of economic and financial factors affecting the business in general and the Project in particular. Applicants should refer to economic and financial conditions in the past three years, and also discuss expectations of such conditions in the future, including:

(i) The adequacy and stability of the business' customer base. Applicants should provide information on the number of subscribers, subscriber churn, subscriber acquisition cost or cost per gross added, subscriber penetration, geographic concentration of customers, nature of the terms of customer contracts, customer technical support, customer satisfaction and retention;

(ii) The demand for services;

(iii) The sensitivity of the business to economic cycles;

(iv) Future capital needs;

(v) The adequacy, competitiveness and affordability of service fees;

(vi) An overview of the prevailing economic and demographic trends in the target service area; and

(vii) Information on programming content and costs.

(4) *Project Market Analysis.* A breakdown of the key elements of the Project, including:

(i) All proposed services to be offered, including High-speed Internet Service, and whether a Separate Tier of Local Television Broadcast Signals will be provided;

(ii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access to Local Television Broadcast Signals under the Project;

(iii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access under the Project to any other services as described pursuant to paragraph (c)(4)(i) of this section, including an explanation if this number is greater than the total identified in paragraph (c)(4)(ii);

(iv) Estimates of the number of households identified in paragraphs (c)(4)(ii) and (c)(4)(iii) which will subscribe to each of the services identified in paragraph (c)(4)(i) of this section by DMA, including a breakdown of Nonserved and Underserved households;

(v) A breakdown of the Applicant's proposed pricing coupled with an evaluation of any competitor's services offerings and pricings; and

(vi) A service deployment plan and a deployment performance schedule, by DMA, for the services to access the Local Television Broadcast Signals.

(d) *Financial forecast and information.* The Applicant must demonstrate its financial ability to complete and maintain the Project and repay its obligations. The financial data must include the following:

(1) *Audited financial statements.* Income statements, balance sheets, and cash flow statements for at least the last three years or from the date of inception if less than three years. If the Applicant is an SPE, then the Applicant must provide at least the last three years of audited financial statements of the shareholders or partners of the SPE. If an Affiliate has been designated by the Applicant as a source of credit support, then at least three years audited financial statements for the Affiliate must be submitted as well.

(2) *Plan of finance.* An identification and explanation of all sources and uses of funds throughout the proposed loan period, including, but not limited to, any payments to Affiliates or

shareholders of the Applicant, estimated Project costs, and proposed terms.

(3) *A Pro-forma financial forecast* covering the life of the proposed loan, including balance sheets, income statements and cash flow statements, with an explanation of assumptions. These Projections must be prepared in accordance with Generally Accepted Accounting Principles and should discuss such issues as the effects of inflation, competition, ongoing repair and replacement needs, technological obsolescence, working capital requirements, and other factors that may affect the Applicant's ability to meet its debt service obligations.

(4) *Project budget.* A detailed cost breakdown of all facilities to be constructed as part of the Project. This breakdown should be on a per unit basis. It should also clearly show what will be financed with guaranteed loan funds and what will be financed with other funds, consistent with the plan of finance in paragraph (d)(2) of this section.

(5) *Commitments.* The Applicant must disclose all reasonably foreseeable financial obligations, contingent liabilities, or other commitments that could affect its financial health over the proposed financing term. At the Board's request, the Applicant must take all reasonable measures to insulate the Project and the Loan from external factors that could affect timely payment of principal and interest. The Board may ask for additional detailed information on commitments where it is deemed necessary.

(6) *Credit enhancement.* In cases where an Affiliate provides credit enhancement, the Applicant must provide documentation demonstrating the Affiliate is sufficiently capitalized and evidencing the strength, extent, limitations, and priority of the credit enhancement relative to the other obligations of the Affiliate.

(e) *A certified system plan, technical analysis, and design.* Prepared by qualified personnel on the Applicant's staff or by a licensed consulting engineer, consisting of the following:

(1) A detailed description of the proposed service area including maps of the service area;

(2) A TV Signals Coverage Diagram and detailed description of all existing and proposed facilities. The diagram must include proposed route miles of cable plant, if applicable, the estimated area served, types of facilities to be deployed (terrestrial microwave or satellite microwave, wireless, translator, fiber optic cable or coaxial cable, electronic equipment, etc.), the capacity of the facilities (number of fibers, size of

the cables, and intended number of channels, frequencies used, bandwidth capacity, etc.), and the serving area of the proposed facilities;

(3) The intended capabilities of the Project's facilities, including bandwidth, proposed television signal topology, standards, and television signal transmission protocols. In addition, the Applicant must explain the manner in which the transmission facilities will deliver the proposed Local Television Broadcast Signals, including any equipment necessary to receive the signals which will be located at the subscribers' premises, and/or, near or on the subscribers' television sets;

(4) A listing of all regulatory approvals required to operate facilities, including licenses, permits, and franchises and the status of any required approvals not obtained at the time of the application. For any approvals not yet received, the Applicant should provide details on the nature of the needed approval, the justification for expecting such an approval, the track-record of the Applicant in obtaining such approvals, and the contingency plan in the event the approval is delayed;

(5) A description of the television signal sources (including, but not limited to local, regional and national television signal broadcasters, other television signal providers, content providers, cable television operators and providers, enhanced service providers, providers of satellite services, and the anticipated role of such providers in the proposed Project);

(6) The results of discussions, if any, with local television broadcasters serving the Project area;

(7) An identification of all Local Television Broadcast Signals that will be carried by the Project;

(8) An identification of the digital signal quality and capacity in megabits per second (Mb/s) that will be required to digitally broadcast all Local Television Broadcast Signals to be provided by the Project;

(9) An identification of the net usable bandwidth, in Mb/s, that are surplus to the provision of the Local Television Broadcast Signals to be provided by the Project and that will be used to provide High Speed Internet Service; and

(10) A description of the extent to which the Project will enable the delivery of Local Television Broadcast Signals by a means reasonably compatible with existing systems or devices predominantly in use for the reception of television signals.

(f) *Lender information—*(1) *Lender.* The Application shall include the information described in § 2201.13(b),

(c) and (d) of this part concerning the Lender or Lenders.

(2) *Term Sheet.* The Application shall include a signed Term Sheet.

(3) *Lender's Analysis.* The Applicant shall submit the Lender's detailed analysis of the creditworthiness of the transaction at the time of application and any supporting due diligence documentation, including a complete underwriting analysis of the Project (assessing Applicant creditworthiness and Project feasibility) exercising the Lender's standard of care as set forth at § 2201.26(a).

(4) *Certification.* The Lender must certify that the information provided pursuant to paragraphs (f)(1), (2) and (3) of this section is true and accurate.

(5) *Additional Information.* The Board will request any other information the Board deems material to its assessment of the Lender.

(g) *Other Financial Information—(1) Collateral.* The Applicant shall provide a detailed description and valuation of all Collateral to be used to secure the Loan. This valuation shall be supported by an independent, third party appraisal for existing Assets, and/or adequate cost substantiation for Assets to be constructed for purposes of the Project, and in all cases shall be acceptable to the Board. Such a valuation should address, at a minimum, pledged Assets of the Applicant, any designated Affiliate of the Applicant, or both as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan sought would be guaranteed. The Applicant also must provide a depreciation schedule (as classified under and in accordance with GAAP) for the major Assets in order for the Board to determine the economically useful life of the primary Assets to be used in delivery of the signals concerned. Appraisals of real property must be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(2) *Credit Opinion.* With respect to applications for a Loan of \$15 million or more, the Applicant is required to obtain and submit to the Board a preliminary credit rating opinion letter on the proposed transaction at the time of application, prepared by a nationally recognized statistical rating organization (rating agency) approved by the Board. This preliminary credit rating opinion shall be based on the financing structure proposed by the Applicant for the Project absent the Federal Guarantee, without regard to recovery expectations.

The Board will utilize this preliminary credit assessment to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. In addition, applicants for loans less than \$15 million that have a credit rating shall provide that credit rating to the Board. The Board will utilize this preliminary credit assessment (for loans over \$15 million) or an existing credit rating (for loans less than \$15 million) to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. The Board may approve a Guarantee over \$15 million only if it receives a final credit rating opinion letter from the rating agency on the Loan that is in form and substance acceptable to the Board.

(3) *Evidence of Lack of Credit Elsewhere.* The Applicant shall provide the information required pursuant to § 2201.12(b)(2)(v) of this part.

(h) *Compliance with other Federal statutes, regulations and Executive Orders.* The Applicant must certify compliance with other applicable Federal statutes, regulations, and Executive Orders.

(i) *Environmental impact.* The Applicant must provide information describing the Project's impact on the environment as required pursuant to § 2201.16 of this part. The application may be submitted prior to final determination of a Project's environmental impacts; however, a Guarantee shall not be made and no Loan funds will be advanced prior to such determination and demonstrated compliance with all environmental statutes, regulations and executive orders.

(j) *Federal debt certification.* The Applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019). No Guarantee will be made if either the Applicant or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

(k) *Supplemental information.* The Applicant should provide any additional information it considers relevant to the Project and likely to be helpful in determining the extent to which the Project would further the purposes of the Act.

(l) *Additional information required by the Board.* The Applicant must provide any additional information the Board determines is necessary to adequately evaluate the application.

(m) *Application Fee.* For an application to be considered complete, the Applicant must submit a check payable to the United States Treasury in the amount of the application fee as set forth in § 2201.21(a) of this part.

(n) *Incomplete application.* An incomplete application, including any fee submitted therewith, will be returned to the Applicant without action.

#### § 2201.12 Applicant.

(a) *Eligibility.* (1) The Board will make a determination of eligibility of an Applicant to be a Borrower under the Program based upon the Applicant's ability to directly provide, as a result of financing received under the Program, Local Television Broadcast Signals to households in Nonserved Areas and/or Underserved Areas and the information provided pursuant to paragraph (b) of this section.

(2) A determination that an Applicant is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Documentation for Eligibility Determination.* (1) An Applicant must provide a Term Sheet evidencing a commitment of that Lender or Agent, and the Lenders it represents, to make a Loan to the Applicant upon an Offer of Guarantee by the Board, subject to the requirements of the Act and the regulations set forth in this part.

(2) An Applicant must provide documentation demonstrating that:

(i) The Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) Appropriate and adequate Collateral secures the Loan sought to be guaranteed;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions for the Loan and the Project under the Loan have been applied for or obtained (a Guarantee shall not be made and no Loan funds will be advanced until all such approvals, licenses and permissions have been obtained);

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under this

Program. To satisfy this requirement, an Applicant must provide, with its application, documentation from at least one lending institution other than the Lender to which the Applicant has applied for financial assistance dated within six months of submission of the application, indicating that the Applicant was unable to obtain substantially the same Loan it is applying for on reasonable terms and conditions; and

(vi) Repayment of the Loan can reasonably be expected.

#### **§ 2201.13 Lender.**

(a) *Eligibility.* (1) The Board will make a determination of eligibility of a Lender to make a Loan to be guaranteed under the Program based upon the criteria set forth in paragraphs (b) and (c) of this section.

(2) A determination that a Lender is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Qualifications.* In addition to evaluating an application pursuant to § 2201.18, in making a determination to approve a Guarantee to a Lender, the Board will assess:

(1) The Lender's Regulatory Capital Ratios, in the case of Banking Institutions, or Net Worth Ratios, in the case of other institutions;

(2) Whether the Lender possesses the ability to administer the Loan, including its experience with loans to telecommunications companies;

(3) The scope, volume and duration of the Lender's activity in administering loans, including federally guaranteed loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's charge-off rate, expressed as a percentage of outstanding loans for its current fiscal year;

(6) If the Lender intends to sell participation interests in the Loan, the plan of syndication; and

(7) Any other matter the Board deems material to its assessment of the Lender.

(c) A Loan will not be guaranteed unless:

(1) If the Lender is not a nonprofit corporation and is subject to loan-to-one-borrower and Affiliate transaction restrictions under applicable law, the Loan is made in accordance with such restrictions;

(2) If the Lender is not a nonprofit corporation and is not subject to the restrictions described in paragraph (c)(1) of this section, the Loan is made to a Borrower that is not an Affiliate of the Lender and the amount of the Loan, and

all outstanding loans by the Lender to the Borrower and any of its Affiliates, does not exceed 10 percent of the Net Equity of the Lender; and

(3) If the Lender is a nonprofit corporation, the Board determines that:

(i) Such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board; and

(ii) The making of the Loan would not cause a decline in the rating of such Lender's long-term debt below the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board.

(d) *Agent.* (1) An application for a Guarantee of a single Loan that includes participation of more than one Lender must identify one of the Lenders participating in such Loan to act as Agent for all Lenders. This Agent is responsible for administering the Loan and shall have those duties and responsibilities required of an Agent, as set forth in the Guarantee.

(2) If more than one Lender is seeking a Guarantee of a single Loan, each one of the Lenders on the application must meet the qualifications set forth in paragraphs (b) and (c) of this section. However, only the Agent must meet the qualifications set forth in paragraph (b)(2) and (3) of this section.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board and the Administrator shall be entitled to rely upon such actions and/or failures to act of the Agent as binding all Lenders.

#### **§ 2201.14 Eligible Loan purposes.**

To be guaranteed under the Program, a Loan must be made for the purpose of financing the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals will be delivered to a Nonserved Area or Underserved Area.

#### **§ 2201.15 Ineligible Loan purposes.**

(a) The proceeds of the Loan shall not be used for operating, advertising, or promotion expenses, or for the

acquisition of licenses for the use of spectrum in any competitive bidding.

(b) The Applicant shall not transfer proceeds of the Loan to any Affiliate(s).

(c) The Board will not fund a Project that is designed primarily to serve one or more of the top 40 Designated Market Areas.

(d) The Board will not fund a Project that would alter or remove National Weather Service warnings from Local Television Broadcast Signals.

(e) No Guarantee may be granted or used to provide funds to a Project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the enactment of the Act, is covered by a cable franchise agreement that expressly obligates a cable operator to serve such area.

#### **§ 2201.16 Environmental requirements.**

(a) *General.* (1) Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and other applicable authorities. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any Project, permanent or temporary, that will involve construction and/or installations;

(B) Any Project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any Project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Applicant.* (i) Environmental data or documentation concerning the use of the proceeds of any Loan guaranteed under this Program must be provided by the Applicant to the Board to assist the Board in meeting its legal responsibilities.

(ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the Loan at issue;

(C) Any environmental review prepared by Federal, State, or local

agencies relevant to the Loan at issue; and

(D) Any other information that can be used by the Board to ensure compliance with environmental laws.

(iii) All information supplied by the Applicant is subject to verification by the Board.

(b) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of Project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision, etc., to the affected public. See 40 CFR 1506.6(b). Environmental information concerning specific Projects can be obtained from the Board by contacting: Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919-S, Stop 1575; Washington, DC 20250-1575.

(c) *National Environmental Policy Act*— (1) *Purpose*. The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions*. For purposes of this section, the following definitions apply:

*Categorical exclusion* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

*Environmental assessment* means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

*EIS* means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

*FONSI* means a finding of no significant impact on the quality of human environment after the completion of an environmental assessment.

*NEPA* means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

*Working capital loan* means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to the Secretary of the Board*. (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the

attention of the Secretary of the Board. The Secretary of the Board will prepare or, at his or her discretion, coordinated replies to such correspondence.

(ii) With respect to actions of the Board, the Board will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions*. (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word “normally” is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Applicant, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment*. (i) The Board will request that the Lender and Applicant prepare an environmental assessment that provides information concerning all potentially significant environmental impacts of the Applicant's proposed Project. The Board, consulting at its discretion with CEQ, will review the information provided by the Lender and Applicant. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment*. The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed Project should be described. The no action alternative also should be discussed;

(B) *Documentation*. Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions*. A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed Project.

(ii) An environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the Project for which the proceeds of the Loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) If, on the basis of the environmental assessment, the Board

determines that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Board shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919-S, Stop 1575; Washington, DC 20250-1575. Prior to a final Guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after the environmental assessment has been completed, the Board determines that an EIS is necessary, it and other related documentation will be prepared by the Board in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Board may seek additional information from the Applicant in preparing the EIS. Once the document is prepared, the Board will transmit the document to the Environmental Protection Agency.

(ii) *EIS.* (A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(1) The format and contents of the draft and final EIS shall be as discussed in 40 CFR part 1502.

(2) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(3) The Board, consulting at its discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(4) NEPA requires that the decision making "utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts." 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(3) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking "major Federal actions." A Guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal will be prepared. This record of decision will be prepared at the time the decision is made.

#### **§ 2201.17 Submission of applications.**

(a) Applications should be submitted as follows:

(1) Applications for Guarantees shall be submitted to the LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., Stop 1575, Room 2919-S, Washington, DC 20250-1575. Applications should be marked Attention: Secretary, LOCAL Television Loan Guarantee Board.

(2) Applications must be submitted postmarked not later than the application filing deadline established by the Board if the applications are to be considered during the period for which the application was submitted.

(3) All Applicants must submit an original and two copies of a completed application.

(b) *Application deadline.* One or more application windows will be announced. The duration of each application window for submission of applications will be approximately 120 days. Notice of an application window will be published in the **Federal Register**.

#### **§ 2201.18 Application selection.**

(a) *Application Priority.* When evaluating applications to determine which Project or combinations of Projects will best facilitate access to Local Television Broadcast Signals, the Board shall give priority in the approval of Guarantees to the following categories:

(1) First, to applications for Projects that will serve households in Nonserved Areas.

(2) Second, to applications for Projects that will serve households in Underserved Areas.

(3) Within each category, the Board shall balance applications for Projects that will serve the largest number of households with applications for Projects that will serve remote, isolated

communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms. The Board shall consider the Project's estimated cost per household and shall give priority to those applications for Projects that provide the highest quality service at the lowest cost per household.

(b) *Additional Considerations.* (1) The Board shall give additional consideration to applications for Projects that, in addition to providing Local Television Broadcast Signals, also provide High-speed Internet service.

(2) The Board shall consider other factors, which shall include applications for Projects that:

(i) Offer a separate tier of Local Television Broadcast Signals at a lower cost to consumers, except where prohibited by applicable Federal, State, or local laws or regulations; and

(ii) Enable the delivery of Local Television Broadcast Signals consistent with the purpose of the Act by means reasonably compatible with existing systems or devices predominantly in use.

(c) *Other Considerations.* All other evaluation factors and priority considerations being equal, the Board will give a preference in approving Guarantees to those applications for Projects that provide greater amounts and higher quality Collateral.

(d) *Protection of United States Financial Interests.* The Board may not approve the Guarantee of a Loan unless:

(1) The Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to review of the Loan by the Board for purposes of the Act; and

(2) The Board makes a determination in writing that:

(i) To the best of its knowledge upon due inquiry, the Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) The value of Collateral provided by an Applicant is at least equal to the unpaid balance of the Loan amount; and if the value of Collateral provided by an Applicant is less than the Loan amount, additional required Collateral is provided by the Applicant or an Affiliate designated by the Applicant and acceptable to the Board;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery

permissions have been received for the Loan and the Project under the Loan;

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under the Act; and

(vi) Repayment of the Loan can be reasonably expected.

(e) *Non approvals.* A Guarantee will not be approved if it is determined that:

(1) The Applicant's proposal does not indicate financial feasibility, or the Collateral is determined to not adequately secure the Loan;

(2) The Applicant's proposal indicates technical flaws, which, in the opinion of the Board, would prevent successful implementation, or operation of the Project;

(3) Any other aspect of the Applicant's proposal fails to adequately address any requirements of the Act or the regulations in this part or contains inadequacies which would, in the opinion of the Board, undermine the ability of the Project to meet the general purpose of the Act or comply with requirements in this part; or

(4) Proceeds for the Loan will be used for any of the ineligible purposes set forth in § 2201.15.

(f) *Impact on Competition.* A Loan shall not be guaranteed unless the proposed Project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Nonserved Area or Underserved Area and is commercially viable.

#### § 2201.19 Loan terms.

(a) All Loans guaranteed under the Program shall be due and payable in full no later than the earlier of 25 years from date of the closing of the Loan or the economically useful life of the primary Assets to be used in delivery of the signals concerned, as determined by the Board.

(b) Loans guaranteed under the Program must:

(1) Bear a rate of interest determined by the Board to protect the financial interests of the United States and to be reasonable. This determination will be based on the Board's comparison of the:

(i) Difference, or interest rate spread, between the interest rate on the Loan sought to be guaranteed and the current average yield on outstanding marketable obligations of the United States of comparable maturity; and

(ii) The interest rate spread between the rates on recently issued and similarly rated and structured obligations and the current yields on

outstanding marketable obligations of the United States of comparable maturity.

(2) Have terms that, in the judgment of the Board, are consistent in material respects with the terms of similar obligations in the private capital market.

(c) So long as any principal and interest is due and payable on a Loan guaranteed under the Act, a Borrower shall:

(1) Maintain Assets, equipment, facilities, and operations on a continuing basis;

(2) Not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under the Act;

(3) Remain sufficiently capitalized; and

(4) Submit to and cooperate fully with any audit or Collateral review required by the Board.

#### § 2201.20 Collateral.

(a) *Existence of adequate Collateral.* An Applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate Collateral secures a Loan guaranteed under the Program. Prior to approving a Guarantee, the Board shall require that the value of the Collateral pledged be at least equal to the unpaid balance of the Loan Amount.

(b) *Form of Collateral.* Collateral required by paragraph (a) of this section shall consist solely of Assets of the Applicant, any Affiliate of the Applicant, or both, as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan is guaranteed. Such Assets may include, but are not limited to, the following:

(1) Tangible Assets, including current Assets (such as cash, accounts receivable, and inventory), reserve funds, land, buildings, machinery, fixtures, and equipment;

(2) Assignments of all relevant contractual agreements, including contractual rights to certain cash flows, marketing arrangements, third-party guarantees, insurance policies, contractors' bonds, and other agreements or rights that may be of value;

(3) All permits, governmental approvals, franchises and licenses, necessary to carry out and operate the required equipment or service; and

(4) Other Assets, which, in the judgment of the Board, possess Collateral value suitable for securing the Loan, including a pledge of all or part of the Applicant's ownership interest in

the Project or company, and any after-acquired property.

(c) *Applicant's compliance findings.* An Applicant's compliance with paragraphs (a) and (b) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the Loan.

(d) *Collateral for entire loan.* The same Collateral shall secure the entire Loan, including both the Guaranteed Portion and the Unguaranteed Portion.

(e) *Review of valuation.* The value of Collateral securing a Loan is subject to review and approval by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate. The Board's evaluation of the proposed Collateral for the Loan will be based on several factors, including but not limited to:

(1) The expected value of the pledged Collateral in the event of defaults with specific consideration given to the residual value of Project Assets to third-parties and the liquidity of such Assets;

(2) The cash flow characteristics of the Project;

(3) The contractual characteristics of the Project to the extent Project-related agreements underpin the Project's estimated cash flows;

(4) The competitiveness of the Project's economics and the associated certainty of cash flows in the future; and

(5) The creditworthiness of any designated Affiliates(s) that provides services to the Applicant or provides any credit support.

(f) *Ongoing Collateral Assessment.* The Board shall require that the value of the Collateral shall be at all times at least equal to the unpaid balance of the Loan Amount. To ensure that the ongoing value of the Collateral is properly maintained, the Board may require the borrower to have an ongoing third-party inspection and valuation of the Collateral that is acceptable to the Board. If the Collateral value at the measurement date is less than the unpaid balance of the Loan Amount, the Borrower or its designated Affiliates(s) will be required to pledge additional acceptable Collateral to cover any deficit.

(g) *Lien on Collateral.* (1) Upon the Board's approval of a Guarantee, the Administrator shall have liens on Collateral securing the Loan, which shall be superior to all other liens on such Collateral. The value of the Collateral (based on a determination satisfactory to the Board) shall be at least equal to the unpaid balance of the Loan amount, giving significant consideration to the expected value of the Collateral in the event of defaults

with specific consideration given to the residual value of the Project Assets to third-parties and the liquidity of such Assets.

(2) Both the Administrator and the Lender or Agent shall have a perfected security interest in the Collateral fully sufficient to protect the financial interests of the United States and the Lenders. However, the security interest perfected by the Administrator shall ensure that the Administrator has first priority in such Collateral.

#### § 2201.21 Fees.

(a) *Application Fee.* The Board shall charge each Applicant for a Guarantee under the Program a non-refundable fee, payable to the United States Treasury, to cover the costs of making necessary determinations and findings with respect to an application for a Guarantee under the Program. The amount of the fee is \$10,000 for Loans of \$1 million up to \$50 million, \$15,000 for Loans of \$50 million up to \$100 million, \$30,000 for Loans of \$100 million up to \$500 million, and \$40,000 for Loans of \$500 million or greater.

(b) *Guarantee Origination Fee.* The Board shall charge and collect from a Borrower a Guarantee Origination Fee. The amount of such fee will be sufficient to cover the administrative costs of the Board associated with the Loan. Upon extending an offer of Guarantee, the Board and the Borrower shall enter into an agreement providing for the payment of the Guarantee Origination Fee; the agreement shall include terms relating to the schedule of payments and deposit of such payments into an escrow account. The Guarantee Origination Fee must be paid in full no later than and as a condition of the closing of any Loan. A Borrower will be responsible for paying the administrative costs of the Board regardless of whether the Loan actually closes.

(c) *Lender Fees.* A Lender or Agent may assess and collect from the Borrower such fees and costs associated with the application and origination of the Loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such fees and costs into consideration when determining whether to offer a Guarantee.

#### § 2201.22 Issuance of Guarantees.

(a) The Board's decision to approve an application and extend an Offer of Guarantee under the Program is conditioned upon:

(1) The Lender or Agent and Applicant obtaining any required regulatory or judicial approvals;

(2) The Lender or Agent and Applicant being legally authorized to enter into the Loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board all properly executed by the Lender or Agent, Applicant, and any other required party other than the Board;

(4) No material adverse change in the Applicant's ability to repay the Loan between the date of the Board's approval and the date the Guarantee is to be issued;

(5) Entering into the Guarantee violates no Loan covenants or existing contractual obligations of the Borrower; and

(6) Such other conditions as determined by the Board.

(b) The Board may withdraw its approval of an application and rescind its Offer of Guarantee if the Board determines that the Lender or Agent or the Applicant cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the Offer of Guarantee.

(c) Only after receipt of all the documentation required by this section will the Administrator sign and deliver the Guarantee.

#### § 2201.23 Funding for the Program.

(a) *Costs incurred by the Government.* The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed Loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

(b) *Credit Risk Premium—(1) Establishment and approval.* The Board may establish and approve the acceptance of credit risk premiums with respect to a Guarantee under this Act in order to offset the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the Guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a Guarantee, and the Board approves such a Guarantee, credit risk premiums shall be accepted from a non-Federal source on behalf of a Borrower.

(2) *Credit risk premium amount—(i) General.* The Board shall determine the amount of any credit risk premium to be

accepted with respect to a Guarantee on the basis of:

(A) The financial and economic circumstances of the Borrower, including the amount of Collateral offered;

(B) The proposed schedule of Loan disbursements;

(C) The business plans of the Borrower;

(D) Any financial commitment from a broadcast signal provider; and

(E) The concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(ii) *Proportionality.* To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 502(5) of the Federal Credit Reform Act of 1990, of Guarantees, the credit risk premium with respect to each Guarantee shall be reduced proportionately.

(iii) *Payment of premiums.* Credit risk premiums under this paragraph shall be paid to an escrow account established in the Treasury, which shall accrue interest. Such interest shall be retained by the escrow account, subject to paragraph (b)(2)(iv) of this section.

(iv) *Deductions from escrow account.* If a liquidation of the Collateral occurs pursuant to § 2201.33(h), any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid shall be deducted from funds in the escrow account and credited to the Administrator for payment of such shortfall. At such time as all Loans guaranteed under this Program have been repaid or otherwise satisfied in accordance with the Act and the regulations in this part, remaining funds in the escrow account, if any, shall be refunded, on a pro rata basis, to Borrowers whose Loans guaranteed under the Program were not in Payment Default or Default, or where any Payment Default or Default was cured in accordance with the terms of the Loan Documents.

#### § 2201.24 Insurance.

The Borrower of a Loan guaranteed under the Program shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

#### § 2201.25 Performance Agreement.

(a) The Borrower of a Loan guaranteed under the Program shall enter into a Performance Agreement with the Administrator with respect to the Local Television Broadcast Signals to be provided through the Project.

(b) The Administrator may assess against and collect from a Borrower a

penalty not to exceed 3 times the interest accrued on the Loan during the period of noncompliance if the Borrower fails to meet its stipulated Performance Agreement entered into under paragraph (a) of this section.

**§ 2201.26 Lender standard of care.**

(a) The Lender or Agent shall exercise due care and diligence in analyzing and administering the Loan as would be exercised by a responsible and prudent Banking Institution when analyzing and administering a secured loan of such Banking Institution's own funds without a Guarantee. Such standards shall also apply to any and all underwriting analysis, approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(b) The Lender or Agent shall have such other obligations and duties to the Board and the Administrator as are set forth in the Act or Loan Documents.

**§ 2201.27 Assignment or transfer of Loans.**

(a) *Modifications.* The Loan Documents may not be modified, in whole or in part, without the prior written approval of the Board.

(b) *Requirements.* (1) Subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender or Agent may assign or transfer the Loan including the Loan Documents to another Lender that meets the eligibility requirements of § 2201.13 of this part.

(2) Any assignment or transfer of a Loan, or any pledge or other use of a Loan as security, including but not limited to any derivatives transaction, will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold an interest in a Loan guaranteed under the Program equal to at least the lesser of \$25 million or fifteen percent of the aggregate amount of the Loan. Of this amount, the Agent must hold an interest in the Unguaranteed Portion of the Loan equal to at least the minimum amount of the Loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the entire Loan that is not guaranteed. A non-Agent Lender must hold an interest in the Unguaranteed Portion of the Loan representing no less than five percent of such Lender's total interest in the Loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed

Portion has been made under the Guarantee.

(e) The Guarantee shall have no force or effect if any part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan. At least five percent of any assignment or transfer interest in a Loan must be unguaranteed to ensure that no part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan.

**§ 2201.28 Participation in guaranteed Loans.**

(a) Subject to paragraphs (b), (c) and (d) of this section, a Lender may distribute the risk of a portion of a Loan guaranteed under the Program by sale of participations therein if:

(1) Neither the Loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part as a result of the sale of such participations;

(2) The Lender remains solely responsible for the administration of the Loan as an Agent; and

(3) The Board's ability to assert any and all defenses available to it under the law and under the Loan Documents is not adversely affected.

(b) The following categories of entities may purchase participation interests in Loans guaranteed under the Program:

(1) Lenders that meet the eligibility requirements of § 2201.13 of this part;

(2) Qualified institutional buyers as defined in 17 CFR 230.144A (a), known as Rule 144A (a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Any other entity approved by the Board on a case-by-case basis.

(c) An Agent may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part. A Lender, other than the Agent, may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part.

(d) At least five percent of any participation interest in a Loan must be unguaranteed.

**§ 2201.29 Supplemental guarantees.**

The Board will allow the structure of a guaranteed Loan to include one or more supplemental guarantees only from a State or local governmental or tribal entity that cover the Unguaranteed Portion of the Loan, provided that:

(a) There shall be no supplemental guarantee with respect to the Unguaranteed Portion required to be

held by the Agent or sole Lender pursuant to § 2201.27(d) of this part;

(b) The Loan Documents relating to any supplemental guarantee shall be acceptable in form and substance to the Board; and

(c) In approving the issuance of a Guarantee, the Board may impose any conditions with respect to supplemental guarantee(s) relating to the Loan that it considers appropriate.

**§ 2201.30 Adjustments.**

(a) The Board must approve the adjustment of any term or condition of the Loan Documents under this Program, including the rate of interest, time of payment of principal or interest, or Collateral requirements. Adjustments may be approved by the Board only if:

(1) The adjustment is consistent with the financial interests of the United States;

(2) Consent has been obtained from the parties to the Loan Agreement;

(3) The adjustment is consistent with the underwriting criteria developed for the Program;

(4) The adjustment does not adversely affect the interest of the Federal Government in the Assets or Collateral of the Borrower;

(5) The adjustment does not adversely affect the ability of the Borrower to repay the Loan; and

(6) The National Telecommunications and Information Administration of the Department of Commerce has been consulted by the Board regarding the adjustment.

(b) A Lender's decision to forego remedial action in the event of a breach of financial covenants required under the Loan Agreement will not constitute an adjustment under this section.

**§ 2201.31 Indemnification.**

(a) The United States may be indemnified by any Affiliate of a Borrower designated in the Loan Documents for any losses that the United States incurs as a result of:

(1) A judgment against the Borrower or any of its Affiliates;

(2) Any breach by the Borrower or any of its Affiliates of their obligations under the Loan Documents;

(3) Any violation of the provisions of the Act, or the regulations in this part, by the Borrower or any of its Affiliates;

(4) Any penalties incurred by the Borrower or any of its Affiliates for any reason, including violation of a performance schedule stipulated in a Performance Agreement; and

(5) Any other circumstances that the Board considers appropriate.

(b) The Board may require more than one Affiliate of a Borrower to make the

indemnifications referred to in paragraph (a) of this section.

(c) The indemnifications referred to in paragraph (a) of this section shall be included in the Loan Documents.

#### **§ 2201.32 Termination of obligations.**

The Board shall have such rights to terminate the Guarantee as are set forth in the Act and Loan Documents.

#### **§ 2201.33 Defaults.**

(a) In determining, following any Payment Default or Default, whether to accelerate the maturity of any amounts outstanding under the Loan Documents or otherwise to declare such amounts to be immediately due and payable, or pursue other remedial actions available under the Loan Documents, the Agent or Lender, as the case may be, shall act at all times in accordance with the standard of care and diligence required under § 2201.26(a) of this part.

(b) Following any Payment Default, the Agent or Lender shall promptly notify the Board and be entitled to make a Payment Demand. Any Payment Demand shall:

(1) Identify the amount and due date of the defaulted payment of principal and the outstanding amounts of principal and interest under the Loan;

(2) Describe briefly the circumstances leading to the Payment Default, including, without limitation, the nature of any precipitating Default, whether an acceleration has occurred, and whether a bankruptcy proceeding has been instituted or threatened; and

(3) Be accompanied by a copy of each of the Loan Documents and all notices and other correspondence with the Borrower or other Lender relating to the Payment Default and any precipitating Default.

(c) Following any Payment Demand being made, the Agent or Lender shall furnish to the Board promptly upon request from the Board and, in any event, not later than ninety (90) days from the date of such request, each of the following:

(1) A written, detailed and reasonable plan for the partial or complete foreclosure on and liquidation of the Collateral, including, without

limitation, detailed estimates by the Agent or Lender of the time and reasonable costs of collection anticipated to be necessary in order to carry out such plan; and

(2) A written, detailed and reasonable work-out plan, if such a plan is feasible, for the continued operation of the Borrower calculated, in the Agent's or Lender's judgment, to assure the best prospect for repayment of principal and interest under the Loan without partial or complete foreclosure and liquidation of the Collateral, including, without limitation, detailed estimates of the time and expense required for such work-out and an assessment of the risks to the Agent or Lender and the Board associated therewith relative to such risks associated with complete foreclosure and liquidation; and, if any partial foreclosure and liquidation is a part of such proposed work-out plan, a detailed estimate of the time and reasonable costs of collection anticipated by the Agent or Lender to be required to effect such partial liquidation.

(d) By making a Payment Demand, the Agent or Lender shall be conclusively deemed to have certified, with full knowledge of the provisions of 18 U.S.C. 1001 and 31 U.S.C. 3729 including, without limitation, the provisions thereof for penalties and damages, to the Board that it has fully and timely complied with all material provisions and obligations under the Guarantee and the Loan Documents, that the amount demanded is past due and owed by the Borrower under the Loan Agreement, and that the demand is properly made and required to be satisfied by the Board under the terms of the Guarantee.

(e) Following receipt of any Payment Demand, the Board or, on its behalf, any duly authorized representative or designee, may conduct an audit and investigation of compliance with all material provisions and obligations under the Guarantee. The Agent and/or Lender shall cooperate fully and diligently with any such audit and investigation.

(f) Within a reasonable period of time from receipt by the Board of a Payment

Demand, the Board shall approve payment of the amount to be paid in respect of the unpaid principal amount under the Loan to which the Payment Demand relates. The Board may withhold such payment if any audit or investigation is pending or if information remains to be furnished by the Agent or Lender. Further, payment shall not be made to the extent it is determined by the Board, whether as the result of an audit, investigation or otherwise, that the Board's payment obligation has terminated. Payment shall be made by wire transfer in immediately available funds to the bank and account designated by the Agent or Lender for such purpose.

(g) The Board may take, or direct to be taken any action in liquidating the Collateral that the Board determines to be necessary or proper, consistent with Federal law and regulations.

(h) Pursuant to the Guarantee, upon Payment Demand by the Agent or Lender, and whether the Board has approved any payment under the Guarantee or any payment has been made under the Guarantee, the Board, through the Administrator, shall have the right to liquidate, or cause to be liquidated, the Collateral. The Board, at its sole discretion, shall have the right to require that the Agent or Lender, solely or with the Administrator, conduct to completion any liquidation of any of the Collateral. Such liquidation shall be conducted by the Agent or Lender in accordance with the standards of care specified in § 2201.26(a) of this part.

#### **§ 2201.34 OMB Control Number.**

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572-0135.

Dated: December 15, 2003.

**Jacqueline G. Rosier,**

*Secretary, LOCAL Television Loan Guarantee Board.*

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