

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

[Docket No. 960524148-6148-01]

RIN 0660-AA09

**Public Telecommunications Facilities Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) is issuing a Notice of Proposed Rulemaking. This Notice is intended to clarify and/or revise the rules and appendix governing administration of the Public Telecommunications Facilities Program (PTFP). The PTFP is authorized to provide matching grants to plan and construct public telecommunications facilities.<sup>1</sup>

NTIA intends to issue Final Rules after it has received, evaluated and addressed public comments on these Proposed Rules.

**DATES:** Comments must be filed no later than the close of business on July 15, 1996.

**ADDRESSES:** Persons and organizations interested in commenting on the Proposed Rules must send three copies of any comments to: Public Telecommunications Facilities Program, NTIA, Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4625, Washington, DC 20230. Attention: Dennis Connors.

**FOR FURTHER INFORMATION CONTACT:** Persons desiring further information regarding the Proposed Rules should contact Dennis Connors, Public Telecommunications Facilities Program, NTIA, DOC, 14th Street and Constitution Avenue NW., Room 4625, Washington, DC 20230, telephone (202) 482-5802.

**SUPPLEMENTARY INFORMATION:** In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed that all

agencies undertake an exhaustive review of all their regulations with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. These Proposed Rules represent the first step in NTIA's response to this directive for the PTFP.

In keeping with the Presidential directive, NTIA has taken this opportunity to thoroughly review the existing 1991 Rules.<sup>2</sup> We are proposing a number of changes discussed below which simplify or delete requirements. In order to clarify the rules, we have removed internal repetition as well as duplication of requirements set forth for grantees in other government rules and regulations.

The change most readily apparent to those familiar with the 1991 Rules is that the Proposed Rules have been completely reorganized to make it easier for applicants and grantees to understand the requirements of the program. Additional headers have been added and minor language changes made to increase clarity. However, unless discussed further below, the intent of the regulations remains the same as in the 1991 Rules.

The most significant policy change contained in the Proposed Rules includes a complete revision of the evaluation criteria which formerly was contained in two sections, § 2301.13 *Funding Criteria for Construction Applications* and § 2301.14 *Funding Criteria for Planning Applications*. The Proposed Rules combine both construction and planning evaluation criteria into a new § 2301.17. The Proposed Rules also add a description of PTFP's technical evaluation process in § 2301.16 and a description of the selection process used to award grants in § 2301.18.

Two clarifications have been made in the funding priorities, which previously were contained in the Appendix to the 1991 Rules and are now incorporated into the Proposed Rules at § 2301.4. NTIA proposes to modify the former Priority 4, Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Under the proposed § 2301.4(b)(4) NTIA has redesignated this section as Priority 4, Improvement of Public Broadcasting Services and expanded its scope. In addition to the projects formerly included under Priority 4, NTIA now will consider projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting

facilities. Under the previous funding priorities in the Appendix to the 1991 Rules, NTIA considered applications intended to serve areas already served by other public broadcasting facilities within the Special Applications category while other broadcast projects were considered within the funding Priorities. NTIA believes that all broadcast applications should be evaluated within the funding priorities. NTIA continues to believe that the PTFP's highest priorities are the provision of a first signal to a geographic area (Priority 1), urgent replacement of equipment at the sole station serving a geographic area (Priority 2), and first local origination (Priority 3). Therefore, projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities will be considered in Priority 4A, where they will be considered with other applications from stations in areas already served by another public broadcasting facility. The remainder of Priority 4A and Priority 4B remain unchanged from the Appendix to the 1991 Rules.

With the proposed revision of Priority 4, all broadcast applications have been placed within the five funding priorities. The Special Applications category therefore will consist solely of nonbroadcast projects and the language of the Special Applications category has been revised at § 2301.4(a).

Under § 390 of the Act, NTIA has the authority to consider applications which further the delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means. NTIA recognizes that the issue of conversion to advanced digital technologies is of great importance for the future viability of public broadcasting facilities in the United States. NTIA believes that public broadcasters must adequately plan for the transition to advanced digital technologies and will therefore welcome applications which will assist in planning for the digital conversion of public broadcasting facilities.

The following reviews each section of the Proposed Rules and compares it with similar sections in the 1991 Rules.

**Section 2301.1 Program Purposes**

The new § 2301.1 *Program Purposes* replaces § 2301.2 *Program Purposes* in the 1991 Rules. This section of the 1991 Rules for the most part repeated the language contained in § 393(b) of the Act. NTIA believes that the overall purposes of the PTFP are better expressed in § 390 of the Act. This

<sup>1</sup> See 47 U.S.C. 390-393, and 397-399b (1988), The Communications Act of 1934, as amended. Unless otherwise noted, all statutory citations are to title 47 of the United States Code.

<sup>2</sup> See 15 CFR Part 2301, published in the Federal Register, Vol. 56, No. 226, p. 59168. (November 22, 1991).

section of the Act, restated in the new § 2301.1, now serves as an introduction to the PTFP Regulations.

#### *Section 2301.2 Definitions*

The new § 2301.2 *Definitions* repeats for the most part § 2301.1 *Definitions* in the 1991 Rules. The definition for the term "Non-Federal financial support" has been deleted. The term is no longer used since the requirement to report on three years of Non-Federal financial support (§ 2301.5(d)(2)(viii) of the 1991 Rules) has been deleted.

Three new definitions have been added. A new definition for the term "planning" has been added to complement the definition for the term "construction," and a new definition has been added for "closing date" since the term is used throughout the Proposed Rules. Further, the definition of "Federal interest period" has been expanded to clarify that limitations on the use of Federally-funded public telecommunications facilities, such as the prohibition on the use PTFP funded equipment for the broadcast of advertisements (see § 2301.19(a)(5)) or the restrictions on sectarian use (see § 2301.19(b)) extend for the useful life of the equipment, whether or not this period extends beyond the 10 year Federal interest period. We are also adopting the definition of "minorities" which was previously set forth in our policy statement printed in the Federal Register, Vol. 44, No. 111, p. 33032.

#### *Section 2301.3 Applicant Eligibility*

The new § 2301.3 *Applicant Eligibility* was contained as a part of §§ 2301.4(a), (b) and (c) *Eligible Organizations and Projects* of the 1991 Final Rules. On December 22, 1995, NTIA issued a notice and an amendment to the PTFP regulations in the Federal Register (60 FR 66491, Dec. 22, 1995) on its policy with regard to sectarian activities. The December 22, 1995 Notice revised the previous § 2301.4 on eligibility. The revisions outlined in that Notice are included in the Proposed Rules in § 2301.3. The process of obtaining preliminary eligibility determinations (§ 2301.3(d)) has been simplified and much of the prior language specifying this procedure (§ 2301.4(f) in the 1991 Rules) has been eliminated.

#### *Section 2301.4 Scope of Projects*

The new § 2301.4 *Scope of Projects* contains the material included in the Appendix to the 1991 Rules dealing with Special Applications and Priorities. This section replaces § 2301.4(c) of the 1991 Rules, which for the most part was another paraphrase of § 393(b) of the Act. We believe that it is

more useful to applicants that this new § 2301.4 contain the scope of eligible projects developed by NTIA to achieve the objectives of § 393(b) of the Act. Significant changes in § 2301.4(a) Special Applications and § 2301.4(b)(4) Priority 4 applications were discussed earlier in this document.

§ 2301.4(b)(1)(iv) adds language to clarify how PTFP considers the presence of AM daytime only stations in determining the Priority for proposed FM facilities serving a similar coverage area. § 2301.4(c) parallels § 2301.3(d) of the Proposed Rules in permitting potential applicants to obtain preliminary eligibility determinations. § 2301.4(d) maintains the intent of § 2301.4(f)(3) of the 1991 Rules that the Agency will review all applications after the closing date and that a preliminary eligibility determination does not guarantee that the Agency will accept a future application.

#### *Section 2301.5 Special Consideration*

The new § 2301.5 *Special Consideration* is based in part on § 2301.3 *Special Consideration* in the 1991 Rules. The section has been revised to reflect language in the Act (§ 392(f)). The sentence regarding a requirement for special consideration of a minimum 50% level of control of the applicant by women and minorities has been deleted.

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

The new § 2301.6 *Amount of Federal Funding* is based upon § 2301.16 *Amount of the Federal Grant* in the 1991 Rules. Several sentences in this section have been rearranged within the section to group similar issues and increase the clarity of the regulation. We are also taking this opportunity to clarify PTFP's position on the level of matching funds required for broadcast equipment replacement, improvement and augmentation projects and to make it more consistent with treatment of non-Federal cost share under OMB Circular A-110 and 15 CFR Part 24. The new § 2301.6(b)(ii) is a restatement of NTIA policy previously published on November 22, 1991 (Fed. Reg. Vol. 56, No. 226, p. 59191) which indicates the presumption of 50% Federal participation for equipment replacement, improvement and augmentation projects. New language in § 2301.6(b)(2) clarifies NTIA's existing policy that obligating funds for equipment before the closing date is considered ownership or acquisition of equipment and is not normally permitted. However, NTIA will now consider on a case-by-base basis

inclusion of equipment as matching funds purchased prior to the closing date due to unusual circumstances when a clear and compelling showing is made. § 2301.6(d) has been revised to indicate that if a grantee obligates Federal funds before the project start date, those costs may be disallowed. This revision replaces language in the 1991 Rules (§ 2301.23(a)-(c)) which gave the Department the option of terminating the entire grant.

#### *Section 2301.7 Eligible and Ineligible Project Costs*

The new § 2301.7 *Eligible and Ineligible Project Costs* is based on § 2301.17 *Items and Costs Ineligible for Federal funds* from the 1991 Rules. Specific information on the eligible and ineligible costs has been deleted from this section. The new language formalizes a procedure that NTIA has been following in recent years, which is to annually publish a list of eligible and ineligible costs in the Federal Register as part of the solicitation of applications. The list will be distributed as part of the application materials. § 2301.7(c) has been revised to reflect the change noted in the prior section regarding § 2301.6(b)(2).

#### *Section 2301.8 Submission of Applications*

#### *Section 2301.9 Deferred Applications*

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

The new §§ 2301.8 *Submission of Applications*, 2301.9 *Deferred Applications* and 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* are all derived from § 2301.5 *Application Procedures* in the 1991 Rules. The former § 2301.5 has been divided into three sections for clarity, but the application procedures contained in the three new sections are similar to that of the 1991 Rules. Lengthy sections from the old § 2301.5 regarding the specific requirements to be submitted in a new or deferred application have been deleted (e.g. §§ 2301.5(d)(2)(i-xxii) and 2301.5(e)(4)(i-xi). Removing the specific requirements from the Rules will give NTIA the flexibility of future reductions in requirements on the application form to lessen the burden on applicants. For example, in FY 1997, NTIA will, under the Proposed Rules, delete the requirement to submit the three year report on Non-Federal Financial Support (Exhibit B) now required by the 1991 Rules and contained in the current application form. Specific requirements of the application are now and will

continue to be contained in the application form that will be distributed as part of application materials.

The Proposed Rules drop the specific requirement in the 1991 Rules (§ 2301.5(d)(2)) that an applicant submit "an original and one copy of the Agency application form" but now specifies at the new § 2301.8(d) that the applicant submit "the number of copies specified by the Agency." This will permit NTIA to be flexible, within OMB guidelines, on the number of applications forms required in order to complete processing of the applications in a timely manner.

Two paragraphs from the *Additional Information* section in the 1991 Rules (§ 2301.6(d)(1) and (2)) were relocated to the new *Submission of Applications* section (§ 2301.8(g) and (h)) to notify potential applicants of the use of Name Check forms and financial responsibility determinations in the application review process. In §§ 2301.8(g) and (h), the Proposed Rules clarify the uses of these reports in the application review process. The new § 2301.8(i) is Department of Commerce policy.

The new § 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* contains one significant change from § 2301.5(g) of the 1991 Rules. Under § 2301.10(a), NTIA proposes to consider the complete failure of basic equipment essential to a station's continued operation, even if the failure is not the result of a natural or manmade disaster, as an emergency situation which may warrant immediate consideration of an application.

#### *Section 2301.11 Service of Applications*

The new § 2301.11 *Service of Applications* was the former § 2301.7 *Service of Applications* in the 1991 Rules. Section § 2301.11(c) has been clarified to indicate that applicants must notify the State Single Points of Contact (SPOC) in each state relevant to the project that an application for funding has been submitted to PTFP. In the opening sentence to this section, we further clarify that the notification to the SPOC, the FCC and the state telecommunications agencies need only be a summary of the application, rather than the full application required in prior PTFP Rules. Future application materials will provide guidance as to what should be included in the summary to provide adequate notification to the requisite agencies while reducing the notification burden on all applicants.

#### *Section 2301.12 Federal Communications Commission Authorizations*

The new § 2301.12 *Federal Communications Commission Authorizations* was the former 2301.8 *Federal Communications Commission* in the 1991 Rules. The section contains a few minor editorial improvements in (a), (c), and (g) with no change in intent.

#### *Section 2301.13 Public Comments*

The new § 2301.13 *Public Comments* is based on the former § 2301.11 *Public Comments* in the 1991 Rules. Under the new § 2301.13(a), NTIA intends to publish a list of all applications received. This replaces the publishing of a list of applications accepted for filing (§ 2301.9(a) contained in the 1991 Rules.) The former listing of applications accepted for filing was often incomplete, as determinations of eligibility were sometimes made after the publication of the notice. NTIA believes that publication of a full listing of applications received can be done soon after the closing date, and better serves the public by permitting a longer period of time for receipt of public comments. § 2301.13(c) clarifies that copies of the applications are available for public inspection in the NTIA offices. The new § 2301.13(d) has been modified to clarify that only those public comments which oppose an application must be served on the applicant. § 2301.13(e) clarifies the use of the public comments.

#### *Section 2301.14 Supplemental Application Information*

The new § 2301.14 *Supplemental Application Information* is based on § 2301.6 *Additional Information* from the 1991 Rules. Paragraph (b)(4) of this section has been revised to reduce the burden on applicants. Where the 1991 rules require notification to NTIA of any changes in the applicants' "board structure, in the applicant's 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws," the Proposed Rules only require notification to NTIA of changes "that affect the applicant's eligibility." In the new organization of the Proposed Rules, several paragraphs have been moved into or out of this section. § 2301.15(f)(1) of the 1991 Rules was moved into this section and is now contained in the new § 2301.14(d). As previously noted, two paragraphs from the *Additional Information* section in the 1991 Rules (§§ 2301.6(d) (1) and (2)) were relocated to the new *Submission of Applications* section (§§ 2301.5 (h) and (i)).

#### *Section 2301.15*

##### *Withdrawal of Applications*

The new § 2301.15 *Withdrawal of Applications* is taken from § 2301.9(g) of the 1991 Rules and placed in this separate section for clarity. The section has been slightly revised with no change in intent.

#### *Section 2301.16 Technical Evaluation Process*

The new § 2301.16 *Technical Evaluation Process* combines elements from several sections in the 1991 Rules. The new § 2301.16(a) is based on § 2301.13 of the 1991 Rules. §§ 2301.16 (c), (d), and (e) parallel the procedures currently used by NTIA in the review of the PTFP applications and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the Federal Register on February 22, 1996 (FR xxx). The new § 2301.16(d) is also based on §§ 2301.12 (b) and (c) of the 1991 Rules.

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

The new § 2301.17 *Evaluation Criteria for Construction and Planning Applications* is totally new and replaces § 2301.13 *Funding Criteria for Construction Applications* and § 2301.14 *Funding Criteria for Planning Applications* in the 1991 Rules. The new § 2301.17 proposes six broad criteria upon which the applications will be evaluated. These are: Project Objectives, Applicant Qualifications, Urgency, Financial Qualifications, Special Consideration, and either Technical Qualifications (for construction projects) or Planning Qualifications (for planning projects). This new section combines the evaluation criteria for planning and construction applications in one place, reduces redundancy and clarifies the evaluation criteria. The Agency will provide each applicant with guidance in the application materials on the appropriate type of documentation to meet each of the evaluation criteria which reflects the type and priority of the application being proposed. We have not assigned a weight to each of the criterion. In prior years, we have weighted all criteria equally. We are soliciting comment on the appropriate weights to be assigned.

#### *Section 2301.18 Selection Process*

The new § 2301.18 *Selection Process* is a new section which serves to distinguish the evaluation factors used in § 2301.17 from those additional factors used in the selection of the grant. §§ 2301.18 (a) and (b) parallel the procedures currently used by NTIA in

the selection of the PTFP applications for funding and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the Federal Register on February 22, 1996 (Fed. Reg. Vol. 61, No. 36, p. 6912). The new § 2301.18(c) is the same as § 2301.8(h) of the 1991 Rules. The new §§ 2301.16 (d) and (e) are based on § 2301.15 (a) and (b) of the 1991 Rules.

#### *Section 2301.19 General Conditions Attached to the Federal Award*

The new § 2301.19 *General Conditions Attached to the Federal Award* is the first of several new sections which are derived from § 2301.22 *Conditions Attached to the Federal Award* in the 1991 Rules. The new § 2301.19 combines, in order, the following paragraphs from § 2301.22 of the 1991 Rules, (b)(1), (2), (3), (16), (4), (5), (11), and 2301.22(d). The remainder of § 2301.22 in the 1991 Rules has been included in other sections as discussed below or deleted as unnecessary. The new § 2301.19(c) is based on § 2301.23(c)(1) of the 1991 rules with the last two sentences of the new § 2301.19(c) added for clarity.

#### *Section 2301.20 Schedules and Reports*

The new § 2301.20 *Schedules and Reports* is based on §§ 2301.22(b) (8) and (12) *Conditions Attached to the Federal Grant* in the 1991 Rules. These two paragraphs have been given their own section for clarity. Several adjoining paragraphs, including §§ 2301.22(b) (9)–(11) and (13)–(17) have been deleted as unnecessary as they are redundant with other sections of the Proposed Rules or restate other law or OMB circulars.

#### *Section 2301.21 Payment of Federal Funds*

The new § 2301.21 *Payment of Federal Funds* is based on § 2301.18 *Payment of the Federal Grant* of the 1991 Rules. § 2301.18(c) was removed from this section of the 1991 Rules and was relocated to the new § 2301.20(c) as more appropriate.

#### *Section 2301.22 Protection, Acquisition and Substitution of Equipment*

The new § 2301.22 *Protection, Acquisition and Substitution of Equipment*, is based on §§ 2301.22(a) and 2301.22(b)(7) of the 1991 Rules. Several portions of these paragraphs have been deleted as redundant with other sections of the Proposed Rules. The new § 2301.22 includes several changes designed to provide the Agency

with flexibility in administering the program and to lessen the regulatory impact on grantees. These changes deal with the conditions under which a grantee is required to provide evidence of liens, insurance and leases sufficient to protect the Federal government's 10 year reversionary interest in the PTFP funded equipment. The 1991 Rules do not provide NTIA with any flexibility in requiring these items. The Proposed Rules discuss the requirements that a grantee protect the Federal government's interest in PTFP funded equipment by obtaining insurance, having sufficient lease/ownership rights to property, and securing the Federal interest by a lien. However, the Proposed Rules delete specific ways that these items must be documented to the Agency. For example, the new § 2301.22(a) reduces a prior "The grantee shall" in the 1991 Rules (§ 2301.18(a)) to the lesser "The Agency may require a grantee to" provide liens within 90 days after a grant award is received. Language reflecting this approach also appears in §§ 2301.22(g)(4), 2301.23(b)(8) and 2301.25(b). Likewise, specific requirements for an attorney's letter of certification on property lease/ownership right is also deleted from the regulations. NTIA would like to explore alternate ways to protect the Federal interest which will reduce the burden on grantees. We are therefore proposing to revise these sections of the Proposed Rules to permit this future flexibility.

The new § 2301.22(e) replaces § 2301.22(c) of the 1991 Rules. NTIA is proposing to delete several restrictions on the lease of equipment, specifically the former § 2301.22(c)(1), which required that the lease be for "not less than the (10) years," and § 2301.22(c)(2), which limited the cost of the lease to "not be more than the total of the non-Federal share of the matching funds." NTIA believes that these statements were overly restrictive and now proposes to consider any lease that is to the "benefit to the Federal government" (new § 2301.22(e)(1)).

The new §§ 2301.22 (f)–(h) are based on § 2301.23 (c) and (d) *Grant Suspension, Terminations and Transfers* in the 1991 Rules and have been revised for clarity.

#### *Section 2301.23 Completion of Projects*

The new § 2301.23 *Completion of Projects* is based on § 2301.20 *Completion of Projects* in the 1991 Rules. Several paragraphs have been renumbered and minor changes have been made in §§ 2301.23(a)(4) and (b)(1) to improve clarity. The requirement in

§ 2301.23(b)(4) to provide a copy of the insurance policy has been dropped inasmuch as the same paragraph requires that the grantee must certify its insurance coverage. Paragraph § 2301.24(c) was contained in § 2301.18 in the 1991 Rules and is more appropriate in this section. This sentence has been revised to clarify that the project completion date is usually the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete.

#### *Section 2301.24 Final Federal Payment*

The new § 2301.24 *Final Federal Payment* is a revision of § 2301.16(d) of the 1991 Rules. This paragraph was given its own section in the Proposed Rules for clarity. The language of the section has been simplified without changing the intent.

#### *Section 2301.25 Retention of Record and Annual Status Reports*

The new § 2301.25 *Retention of Records and Annual Status Reports* is based on § 2301.19 *Retention of Records* and § 2301.21 *Annual Status Reports for Construction Projects* in the 1991 Rules. The section was shortened and the language retained notifies applicants and grantees of NTIA's basic record keeping requirements. Further information on records retention will be included in materials sent to grantees at the time an award is made. The detailed procedural information that is required in the annual status report has been deleted from the proposed rule and will be provided to grantees at the time a project is closed out.

#### *Section 2301.26 Waivers*

The new § 2301.26 *Waivers* is based on § 2301.25 *Waivers* in the 1991 Rules. A sentence was added to clarify the Administrator's waiver authority.

One significant section of the 1991 Rules has been deleted in its entirety. This is § 2301.10 *Appeals*. Applicants are given the opportunity to request a preliminary determination of eligibility, and are provided written notice. The Appeals process was rarely used.

We are also taking this opportunity to restate several long standing PTFP policies which were published in the preambles of previous PTFP rules. The following policies remain in effect:

#### *Evidence of Tax-Exempt Status*

Applicants who are eligible for a Section 501(c)(3) exemption from the IRS or the equivalent exemption from the Commonwealth of Puerto Rico must

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

#### *Equipment Which Becomes Obsolete Before the end of the 10 Year Period of Federal Interest*

In the case of equipment which become obsolete or wears out before the 10-year period of Federal interest expires, we will permit the trade-in or sale of the equipment and application of the remaining portion of the 10-year period to the new equipment. (Fed. Reg. Vol. 44, No. 104, p. 30910)

#### *Selection of Priority*

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

#### *Award of Deferred Applications*

The Administrator retains the discretion to award grants to deferred applications at any time where the Administrator can determine with reasonable certainty that the particular project is exceptionally meritorious (on the basis of the Agency's preliminary determination of all other applications within the priority) and that the Agency would fund the project after completing the evaluation of all the application in the priority (on the basis of the Agency's prior experience in making grants.) Under this process, the Agency will be able to fund applications that the Agency had deferred in the prior year because of technical problems (such as the inability to obtain the necessary FCC authorizations) which have since been

eliminated. (Fed. Reg. Vol. 47, No. 50, p. 11232.)

#### *Support for Salary Expenses*

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

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

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

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

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

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

The Department has determined that these rules will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has

been or will be prepared. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements contained in these rules pursuant to the Paperwork Reduction Act under OMB Control Nos. 0660-0003, 0660-0001 and 0605-0001. The public reporting burden for the application requirements vary from 16 hours to 200 hours with an estimated average of 125 hours per application, including associated exhibits; the reporting and record keeping burden for the grant monitoring reports vary from 1 to 24 hours depending on the respective requirement; and, the reporting burden for the name-check form (CD-346) is estimated at 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing this burden, to the Office of Policy and Coordination and Management, NTIA, U.S. Department of Commerce, Washington, D.C. 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NTIA Desk Officer).

(Catalogue of Federal Domestic Assistance No. 11.550)

List of subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting requirements, Telecommunications.

Larry Irving,  
Administrator.

Part 2301 of Title 15, Code of Federal Regulations, is proposed to be revised to read as follows:

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

#### **Subpart A—General**

Sec.

2301.1 Program purposes.

2301.2 Definitions.

**Subpart B—Application Requirements**

- 2301.3 Applicant eligibility.
- 2301.4 Scope of projects.
- 2301.5 Special consideration.
- 2301.6 Amount of Federal funding.
- 2301.7 Eligible and ineligible project costs.
- 2301.8 Submission of applications.
- 2301.9 Deferred applications.
- 2301.10 Applications resulting from catastrophic damage or emergency situations.
- 2301.11 Service of applications.
- 2301.12 Federal Communications Commission authorizations.
- 2301.13 Public comments.
- 2301.14 Supplemental application information.
- 2301.15 Withdrawal of applications.

**Subpart C: Evaluation and Selection Process**

- 2301.16 Technical evaluation.
- 2301.17 Evaluation criteria for construction and planning applications.
- 2301.18 Selection process.

**Subpart D: Post-Award Requirements**

- 2301.19 General conditions attached to the Federal Award.
- 2301.20 Schedules and reports.
- 2301.21 Payment of Federal funds.
- 2301.22 Protection, acquisition and substitution of equipment.

**Subpart E: Completion of Projects**

- 2301.23 Completion of projects.
- 2301.24 Final Federal payment.
- 2301.25 Retention of records and annual status reports.

**Subpart F: Waivers**

- 2301.26 Waivers.  
Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393 (Act). (Catalog of Federal Domestic Assistance No. 11.550)

**Subpart A—General****§ 2301.1 Program Purposes.**

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

- (a) Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;
- (b) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- (c) Strengthen the capability of existing public television and radio stations to provide public

telecommunications services to the public.

**§ 2301.2 Definitions.**

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

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

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

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

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

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

*Department* means the United States Department of Commerce.

*FCC* means the Federal Communications Commission.

*Federal interest period* means the period of time during which the Federal government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project. Although OMB Circular A–110

§§ \_\_.33 and \_\_.34 and 15 CFR 24.31 and 24.32, specify that the Federal government maintains a reversionary interest in the facilities for as long as the facilities are needed for the originally authorized purpose, PTFP's authorizing statute (47 U.S.C. 392(g)) limits the reversionary period for ten years for purposes of this program. However, Federal limitations on the use of the facilities survive for the useful life of the facilities whether or not this period extends beyond the ten year Federal interest period.

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

*Nonbroadcast* means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast technologies are

Instructional Television Fixed Service (ITFS), satellite systems, and coaxial or fiber optic cable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Subpart B—Application Requirements

### § 2301.3 Applicant eligibility.

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

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

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

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

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

### § 2301.4 Scope of projects.

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

(a) *Special applications.* NTIA possesses the discretionary authority to recommend awarding grants to eligible nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed in paragraph (b) of this section. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., service to the blind or deaf and nonbroadcast projects offering educational or instructional services).

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

(i) Priority 1A. Projects that include local origination capacity. This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs, including material that is locally produced. Eligible

projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

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

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

(iv) Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive public telecommunications services (It should be noted that television and radio are considered separately for the purposes of determining coverage. In reviewing applications from FM stations that propose to serve, or that already serve, areas covered by AM-daytime only stations, PTFP will evaluate the amount of service provided via the AM-daytime only station in determining whether the FM proposal qualifies for a Priority 1 or Priority 2, as appropriate.)

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

(2) Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations.

(i) Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment at "essential stations" (*i.e.*, existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area).

(ii) To show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting

non-availability of parts). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

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

(3) Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area.

(i) Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters, or cable systems.

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

(4) Priority 4—Improvement of Public Broadcasting Services:

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

Within this category, NTIA establishes two subcategories:

(ii) Priority 4A.

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

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

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

(D) The acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This is intended to assist stations that went on the air with a complement of equipment well short of what the Agency considers as the basic complement.

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

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

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

participation in local programming accessible to additional segments of the population.

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

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

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

#### § 2301.5 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. The special consideration element is provided as one of several funding criteria contained in the regulations, specifically, at 15 CFR section 2301.17(b)(6).

#### § 2301.6 Amount of Federal funding.

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

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

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

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



(2) Since the purpose of the PTFP is to provide financial assistance for the acquisition of public telecommunications facilities, Total Project Costs do not normally include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justifications are provided to PTFP. Obligating funds—either in whole or in part—for equipment before the closing date is considered ownership or acquisition of equipment. In like manner, accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

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

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

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

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

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

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

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

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

#### **§ 2301.8 Submission of applications.**

(a) Applications can be obtained from the following address: Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., Room H-4625, Washington, DC 20230.

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

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

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

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

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

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

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

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

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

(a) An applicant may reactivate an application deferred by the Agency during the prior year if the applicant has not substantially changed the stated purpose of the application.

(b) An applicant may reactivate a deferred application only during the two consecutive years following the

application's initial filing with the Agency.

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

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

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

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

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

(a) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.26, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of complete equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment.

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

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

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

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

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

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

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

(b) The state telecommunications agency(-ies), if any, having jurisdiction

over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and

(c) The state office established to review applications under Executive Order 12372, as amended by Executive Order 12416, in all states where equipment requested in the application will be located and where the state has established such an office and wishes to review these applications.

**§ 2301.12 Federal Communications Commission authorizations.**

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

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

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

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

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

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

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

(h) No grant will be awarded until confirmation has been received from the

FCC that any necessary authorization will be issued.

**§ 2301.13 Public comments.**

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

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

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

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

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

**§ 2301.14 Supplemental application information.**

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

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

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

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

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receipt (or denial) of a proposed substantial matching gift;

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

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

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

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

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

(d) Applicants may not contact the Department to discuss the merits of an application when it is under review.

**§ 2301.15 Withdrawal of applications.**

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

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

**Subpart C: Evaluation and Selection Process**

**§ 2301.16 Technical evaluation.**

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

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

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

(d) In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult (as appropriate) with the FCC, the Corporation for Public Broadcasting, state telecommunications agencies, public broadcasting agencies, organizations, and other agencies administering programs that may be coordinated effectively with Federal assistance provided under the Act; and the state office established to review applications under Executive Order 12372, as amended by Executive Order 12416,

(e) Based upon the evaluation criteria contained in § 2301.17, the PTFP

program staff will prepare summary evaluations. These will incorporate the outside reviewers' recommendations, engineering assessments, and program staff evaluations.

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

(a) For each application that is filed in a timely manner by an eligible applicant, is materially complete, and proposes an eligible project, the Agency will consider the following factors:

(1) *Project Objectives*: The degree to which the application documents that the proposed project fulfills the objectives and specific requirements of one or more of the categories set forth in § 2301.4.

(2) *Applicant Qualifications*: Documentation that the applicant has or will have sufficient qualified staff to complete the project, operate and maintain the facility, and provide services of professional quality.

(3) *Urgency*: Documentation that justifies funding the proposed project during the current grant cycle.

(4) *Financial Qualifications*: Documentation reflecting the applicant's ability to provide non-Federal funds required for the project, including funds for the local match and funds to cover any ineligible costs required for completion of the project; to ensure long-term financial support for the continued operation of the facility during the Federal interest period; to adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(ii)), if requested for equipment replacement, improvement, or augmentation projects; and, in the case of planning, provide non-Federal support and resources (if proposed by the applicant), including matching or in-kind support for the project.

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

(ii) *Planning Qualifications* (planning applicants only): Documentation of the feasibility of the proposed planning

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

(6) *Special Consideration*: Documentation of the extent to which broadcast applications would increase minority and women's ownership of, operation of, and participation in public telecommunications entities, as stated in § 2301.5

(b) The Agency will provide each applicant with guidance in the application materials on the type of documentation necessary to meet each of the above evaluation criteria.

**§ 2301.18 Selection process.**

(a) The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the Selecting Official, the NTIA Administrator, taking into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.

(2) The scope of projects set forth at § 2301.4.

(3) Whether the application is for broadcast or a nonbroadcast project.

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

(5) The availability of funds.

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

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

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

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration;

(3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within at least one of the categories enumerated at § 2301.4; or,

(4) Return of applications that were deferred by the Agency after consideration during three grant cycles.

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

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

(2) The FCC; and,

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

**Subpart D—Post-Award Requirements**

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

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

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

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

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

(i) Costs (including planning costs),

(ii) Essential specifications of the equipment,

(iii) The engineering configuration of the project,

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

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

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

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

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

for ten (10) years after the completion of the project.

(b) During the period in which the grantee possesses or uses the Federally funded facilities, the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian for the useful life of the equipment even when this extends beyond the ten (10) year Federal interest period.

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

#### **§ 2301.20 Schedules and Reports.**

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

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

(1) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(2) A description of any problems that have arisen or reasons why established goals have not been met;

(3) Actions taken to remedy any failures to meet goals; and

(4) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description, number and date of the items purchased, and cost.

#### **§ 2301.21 Payment of Federal funds.**

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

(1) The Department will not make any payment until it receives confirmation

that the FCC has granted any necessary authorization;

(2) The Department may not make any payment under an award unless and until all special award conditions stated in the award documents that condition the release of Federal funds are met; and

(3) An agreement to share ownership of the grant equipment (e.g., a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

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

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

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

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

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

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

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

(d) The grantee shall demonstrate that the grantee has obtained appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project

will be operated. The grantee must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment to assure the sufficient continuity of operation of the facility; and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property.

(e) The Agency will allow the acquisition of facilities by lease; however, the following requirements apply:

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

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

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

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

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

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

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

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

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

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

### Subpart E—Completion of Projects

#### § 2301.23 Completion of projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any report or study conducted in whole or in part with funds provided under this program by sending the copies to the Agency.

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

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

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

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

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

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

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

installation of the apparatus and document the same;

(3) Certify and document that the facilities have been acquired, that they are in operating order, and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency;

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

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

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

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

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

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

#### § 2301.24 Final Federal payment.

If the total allowable, allocable, and reasonable costs incurred in completing the planning or construction project are less than the total project award amount, the Agency shall reduce the amount of the final Federal share on a pro rata basis. If, however, the actual costs incurred in completing the project

are more than the estimated total project costs, then in no case will the final Federal funds paid exceed the initial grant award.

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

(a) All grantees shall keep intact and accessible all records specified in Office of Management and Budget Circular A-110 (for educational institutions, hospitals, and nonprofit organizations), or 15 CFR part 24 (for State and Local Governments), and 15 CFR part 29a (Audit Requirements for State and Local Governments) or 15 CFR part 29b (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), as appropriate.

(b) Recipients of construction grants:

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

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

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

### Subpart F: Waivers

#### § 2301.26 Waivers.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act. Waivers may only be granted for regulatory requirements that are discretionary and not statutorily mandated.

[FR Doc. 96-13572 Filed 5-29-96; 8:45 am]

BILLING CODE 3510-60-P