

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****7 CFR Part 1703****RIN 0572-AB22****Distance Learning and Telemedicine Grant Program****AGENCY:** Rural Utilities Service, USDA.**ACTION:** Final rule.

SUMMARY: The Rural Utilities Service hereby amends its regulations on the distance learning and telemedicine grant program that provides grants for distance learning and telemedicine projects benefiting rural areas. The regulation revises RUS's method in which applications will be reviewed by RUS and scored. This final rule will make it easier for rural community facilities to apply for a grant.

DATES: This regulation is effective on June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, room 4056-S, AG Box 1590, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720-9549.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not: (1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as

amended) under OMB control number 0572-0096. Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, AG Box 1522, Washington, DC 20250.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.855, Distance Learning and Medical Link Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate 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 Mandate Reform Act of 1995.

Background

This final regulation is being published in whole rather than just noting where changes were made. Nearly all the changes concern obtaining a grant, rather than in requirements that apply after a grant is awarded.

The major change is the method in which applicants will be reviewed by RUS and scored. Additionally, several sections of the regulation were moved or restructured to make it more understandable.

RUS has incorporated into this final rule changes in the Distance Learning and Telemedicine grant program as a

result of the Federal Agriculture Improvement and Reform Act of 1996; however, this regulation does not address the new loan program inasmuch as funding is not available for a Distance Learning and Telemedicine loan program for fiscal year 1996. In addition, the appeal procedures outlined in Section 1703.118 are for the purposes of fiscal year 1996 funding.

On April 16, 1996, RUS published proposed rule 7 CFR 1703, Distance Learning and Telemedicine Grant Program in the Federal Register and requested comment from interested parties regarding the proposed rule by May 16, 1996. The comments received were considered in this final rule. A list of the commenters and comment summaries and responses follows.

1. Alamo Navajo School Board, Inc., Magdalena, NM
2. Joint Comments Submitted by: Mississippi Band of Choctaw Indians, Philadelphia, MS
Rock Point Community School, Rock Point, AZ
Black Mesa School, Chinle, AZ
Northwest Portland Indian Health Board, Portland, OR
Three Affiliated Tribes, New Town, ND
Skokomish Indian Tribe, Shelton, WA
United Tribes Technical College, Bismark, ND
3. Deubrook Area Schools District No. 5-6, White, SD
4. Gershowitz Grant & Evaluation Services, Des Moines IA
5. Rural Economic Development Initiative, Tallahassee, FL
6. Florida State Rural Development Council, Tallahassee, FL
7. Republic County Unified School District No. 427, Belleville, KS
8. Winnebago Cooperative Telephone Association, Lake Mills, IA
9. Brookings School District No. 5-1, Brookings, SD
10. Congressman Pat Roberts, Kansas
11. North Central Kansas Educational Service Center, Concordia, KS
12. Lancaster and Associates, Washington, DC
13. Randy Baines, NHPF, Washington, DC
14. Office of the Inspector General, Washington, DC

Comment Summary
(§ 1703.101(b)(Policy)). One commenter stated that the second sentence of § 1703.101(b), which discusses leveraging, seems a little out of place following after a discussion of rural areas and greatest need. It was suggested that this idea be moved to the scoring criteria discussion § 1703.117, which awards points for non-federal supplemental funds and local involvement in the project.

Response. RUS believes this is an important statement of policy and should remain in the policy section. The

methods and mechanisms for evaluating the leveraging of grant funds are discussed in detail in § 1703.117.

Comment Summary (§ 1703.101(c) Policy.). The rules provide for the use of technology that would incidentally allow other providers of developers to purchase the elemental functions or access to those functions so other users, in addition to educational and medical users, many benefit from any transmission facilities receiving funding under this subpart. The regulations should define who the other users are and the criteria for determining their eligibility for accessing the technology.

Response. The primary focus of this paragraph was to indicate that RUS policy is technology neutral. The statement relating to using technology that would allow others to utilize some of the excess capacity of the transmission facilities reflects the current practices in the telecommunications industry. For example, a fiber optic cable may have the capacity to serve hundreds of users without affecting service to any one individual or group of individuals. This allows each subscriber to share in the costs of the facilities.

Comment Summary (§ 1703.101(d) Policy.). One commenter suggested that paragraph (d) of § 1703.101 be deleted and that the regulation consistently reference the six major criteria in § 1703.117 rather than add other factors throughout the regulation. The commenter believes that including paragraph (d) causes confusion as to what RUS will use to select the application and that applicants may not know the basis for RUS' selection: whether the scoring criteria are the key or other factors mentioned throughout are the key to a successful application. It was therefore suggested that RUS be clear in adhering only to its existing six scoring criteria in § 1703.117 and not have other factors mentioned elsewhere in the regulation. Additionally, since there is an appeal process, clarification may remove any issues for contention.

Response. The requirements in § 1703.101(d) state the what, where, how, and why of the application and must be supplied for the application to be complete. Section 1703.117 lists the scoring criteria used to rank applications. All of the scoring criteria need not be addressed, however, the more points earned, the more likely an applicant will be successful in obtaining a grant.

Comment Summary (§ 1703.101(g) Policy.). The rule states that applicants must consult with the Rural Development State Director, USDA, before submitting the application to the

RUS in order to explore any funding sources that may be available at the State or local level. The regulations should explicitly describe what the State Director is suppose to do and how it should be documented.

Response. Instructions for State Directors are internal operating procedures that do not affect the application process and could confuse applicants if included in this rule. The instructions will be prepared in the form of a USDA Staff Instruction to the State Directors.

Comment Summary (§ 1703.103(a)(1) Applicant eligibility.). The Indian Nations and Indian organizations requested that the organization requirement for meeting applicant eligibility in § 1703.101 be modified to include Indian tribes and tribal organizations as defined in 25 U.S.C. 450b (b) and (c).

Response. RUS intended to extend applicant eligibility to Indian organizations. This section has been revised to clarify that Indian Nations and Tribal Organizations are eligible to apply.

Comment Summary (§ 1703.103(a)(1) Applicant eligibility.). One commenter stated that the rule, in defining a state government to be an eligible applicant, should be clarified to specify which state government-operated rural facilities are eligible to participate in the program.

Response. Section 1703.103(a)(1) states a state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant. Rural community facility is defined in § 1703.102. Therefore, any state government that does operate a rural community facility, as defined in § 1703.102, may be eligible.

Comment Summary (§ 1703.104(a) Allowable grant funding percentage, grant purposes, and in-kind matching provisions). One commenter recommended deleting the use of 42.85 percent to discuss the match funding required, stating that this wording may be confusing to applicants.

Response. As stated in the rule, 42.85 percent is 30 percent of the maximum funding percentage provided by RUS, or the minimum amount the applicant must match. RUS believes the use of 42.85 percent is appropriate and that the parenthetical reference in paragraph (a) further clarifies the minimum match funding required.

Comment Summary (§ 1703.104(f) Allowable grant funding percentage, grant purposes, and in-kind matching provisions). One commenter, stating that the rule provides that in kind

contributions shall not consist of eligible equipment which has been subject to depreciation, suggested that this wording be changed to clarify that the equipment must be new, as described in paragraph (c).

Response. This paragraph has been revised to clarify that the eligible equipment must not be used and must have market value.

Comment Summary (§ 1703.106 Maximum and minimum sizes of a grant). One commenter stated that the regulation establishes the maximum grant amount as a percentage of the total grant funds instead of a maximum set at a specific dollar limit. To assist the applicant in planning, the regulations should explain how an applicant can obtain the maximum amount for its grant request.

Response. Annual maximum grant amounts will be published in the Federal Register Notice indicating deadlines for application submissions and the amount of grant funds available, as stated in § 1703.113.

Comment Summary (§ 1703.107 The grant application). One commenter believed that in this section, § 1703.107, there appears to be many selection factors mentioned that an applicant should consider rather than simply asking the applicant to address the factors that are listed as the scoring criteria. These appear primarily in the "Executive summary" section. Placing additional factors in the form of areas the applicant must address or detail does not clarify the process. Rather than use new factors or a different method of phrasing an idea, RUS should refer to the language used in discussing the scoring criteria. The commenter suggested that the regulation would be both clearer and simpler if § 1703.107(c)(2) (i) through (iv) were removed, and perhaps even paragraph (c)(6), and instead use the "Executive summary" for addressing the criteria in § 1703.117. Additionally, for the executive summary, paragraph (c)(3) should only address the economic and demographic description and types of services offered, information not requested elsewhere, because the benefits will be addressed under criterion § 1703.117(d), the "need for services." As proposed, the applicant has to discuss very similar issues described in different phraseology, once in the executive summary and then later under § 1703.107(d). It would seem preferable to require a discussion of these issues in an executive summary by a simple and straightforward reference that he applicant must summarize each criterion in the scoring criteria § 1703.117.

Response. Section 1703.107 describes for the applicant all of the information needed in support of their application. This section sets forth the items which comprise the required material that must be submitted to RUS for a grant request. It does not, as does § 1703.117 (Criteria for scoring applications), describe the methods used by RUS in evaluating grant applications. RUS does not believe these two sections are redundant, nor ambiguous, and therefore has not made the recommended change.

Comment Summary (§ 1703.107(e)(2) Financial information). One commenter suggested this section could be made more specific and more precise by combining two sentences as follows: "A pro-forma income and expense statement for each participating hub and end user site for the project covered by the application. The pro-forma statements must cover a minimum of 5 years after completion of the project and provide that the income and expense statements reflect sufficient income to pay cash operating expenses including telecommunications access and/or toll charges, system maintenance, salaries, training, and any other general operating expenses; . . .".

Response. RUS has reworded this paragraph for clarity.

Comment Summary (§ 1703.107(e) (1), (2), (3), and (4) Financial information). Several respondents commented that the proposed rule includes a new requirement that applicant submit (1) a current balance sheet for each member of the consortium; (2) a pro forma income and expense statement for each participating hub and end user site covering a minimum of five years after completion of the project; (3) evidence of sources of revenue for each hub and end-user site; and (4) an explanation of the economic analysis justifying the rate structure. The commenters objected to the change in the financial reporting regulations stating it would be difficult and expensive to fulfill. Commenters understood the legitimacy of RUS' concern that grant recipients be financially stable and that projects be sustainable, but they also did not believe that the proposed financial information requirements are the best way to determine this, especially for educational applicants. The health care field has been in a state of flux as the result of the trend toward managed care. Therefore, requiring detailed financial information from these applicants is prudent. However, local education is far more stable and does not present the same concern. Moreover, the costs of assembling the required information may deter some needy applicants from

proceeding with their grant proposals. It was suggested that school districts be allowed to submit an audit statement as in the past (or State approved audit report) or at least provide an exclusion for public school districts so that they are not required to comply with financial accounting procedures which are not otherwise appropriate for those school districts. It was also suggested that educational applicants be permitted to substantiate claims of sustainability in the main narrative using evidence of their own selection.

One commenter also recommended that, if the reporting requirements are not reduced, RUS should extend the application deadline to at least October 15, 1996; this would allow schools a few weeks during a period when they are fully staffed to respond.

Response. RUS agrees that the financial reporting requirements, particularly for educational institutions, may prove burdensome as it was stated in the proposed rule. RUS has therefore made audited financial statements optional instead of compulsory. With regard to delaying awards, RUS has committed to its customers that it will award the FY 1996 grants in FY 1996 and will not delay its FY 1996 obligations.

Comment Summary (§ 1703.107(e)(1) Financial information). One commenter stated that the regulations should require applicants to provide audited or certified financial information to support requests for grant funds to provide added assurance that the information is accurate.

Response. RUS believes that requiring audited or certified financial statements during the application phase would be unnecessarily burdensome on the applicants. RUS is confident that the financial information obtained after grant selections are made is sufficient assurance of financial stability.

Comment summary (§ 1703.107(o) Supplemental information). One commenter believed that paragraph (o) of this section was unclear as to whether the applicant has to prepare the Technical Questionnaire (RUS Form 479-A) and to what extent it was considered in determining the selection. The proposed rule indicates that it is desired, will be used, and implies that it may increase an applicant's chance of selection. It was therefore suggested that the Technical Questionnaire should be made a part of the application requirement.

Response. RUS Form 479-A will only be required from recipients of grant funding. This section has been amended and the requirement to submit RUS Form 479-A has been addressed in

§ 1703.122, Further processing of selected applications.

Comment Summary (§ 1703.109 Determining what is rural). Two commenters expressed concern with the use of counties as a determining factor for rural. They noted that rural areas that contain high levels of unemployment and extreme levels of people on public assistance are sometimes located in urban counties. These rural areas would benefit greatly from the availability of telemedicine and distance learning technology. Yet, because of a rurality score of the county, which is a two or urban, these areas of need are effectively prevented from competing for these programs. The commenters suggested RUS use the same definition utilized by the USDA's infrastructure and business programs. These programs define rural to include unincorporated areas, open county, and cities and towns with populations up to 10,000 or 50,000 depending on the particular program.

Response. RUS believes that § 1703.109 fairly accomplishes a rural test and meets the intent of providing assistance in predominately rural areas. In addition, paragraph (d) of this section allows an applicant to appeal a ruling made under this section which results in a denial of an application.

Comment Summary (§ 1703.117(d)(1) Financial consideration of a project). Commenters believe that awarding increasing numbers of bonus points for matches up to 300% defeats RUS' intention to direct funding toward the least affluent communities. It was suggested that the rules regarding matching funds remain the same, or consider truncating the bonus points at a dollar for dollar match, rather than a 300% match, or that the bonus point schedule have an upper limit of 100% rather than 300%.

Response. The intent of paragraph (d)(1) is to maximize the benefits of a limited source of grant finding by encouraging applicants to seek additional sources (whether local or not) of funding to leverage their proposed projects. Paragraph (d)(2) further rewards applicants with a limited number of bonus points for local community funding. And in paragraph (c), the financial needs of a community are assessed on a per capita income basis, awarding more points for poorer communities. RUS believes that all communities, including least affluent, are represented fairly when being scored based on financial consideration of a project and that awarding higher points for non-Federal matching up to 300 percent does not disadvantage one community over another.

Comment Summary (§ 1703.117(d)(2) Criteria for scoring applications). One commenter stated that RUS should reconsider extra priority given to local funding sources because the Farm Bill revision mentions the portion of total funds provided by applicants and non-federal sources, with no mention of local financing.

Response. Paragraph (d)(2) awards bonus points applicants for a given level of local community involvement. While the maximum number of bonus points possible is relatively small, RUS believes that local community involvement in the funding process is an important indicator of community strength and may increase the overall benefits of the project to the community's residents.

Comment Summary (§ 1703.117(e) The Comparative Rurality of the Proposed Project Service Area). Several commenters stated that under the previous rule, rurality was calculated according to the number of end user sites and that the proposed rule substitutes the number of end users rather than the number of sites. The commenters believe that this approach defeats the objective of giving greater priority to the most rural areas, and also lends itself to manipulation of data. Enrollments in the most rural communities are likely to be smaller than elsewhere, therefore the proposed method of calculation penalizes them for their low enrollments. In addition, using individuals rather than sites as the basis of calculations may encourage applicants to manipulate data in self-serving ways. The commenters suggested this section be changed or returned to the prior method of calculating.

Response. RUS agrees that there may be room for some manipulation under the calculation for rurality as contained in the proposed rule. This section has been amended by reinstating the rurality calculation as it was described in the original rule and Appendix B has been removed.

Comment Summary (§ 1703.117(f)(2) Criteria for scoring applications). One commenter suggested this section be revised slightly. Paragraph (f)(2)(ii), which discusses the "desires" of rural residents is not only different from the language of the law but appears to express the same thought as (f)(2)(i) in different terms. Needs and desires seem to be the same idea within the context of this program. "Needs" that are not "desired" by the beneficiaries cannot be considered needs. In addition, "willingness to pay" discussed in (f)(2)(ii) extends beyond the language and overall ideas expressed in the

language of the revised law. Paragraph (iii) should be retained because it is consistent with the language of the revised law. Paragraph (iv) should be deleted because outcomes are really benefits and these are already discussed under (f)(2)(i). Paragraph (f)(2)(v) should be retained since it is obviously a priority factor in the revised law.

Response. RUS does not agree. Paragraph (ii) describes, from the community standpoint, the willingness of its residents to participate and use the proposed services if they were available. In paragraph (i), the applicant is providing justification for specific types of services to be provided, without regard, necessarily, to usership, but rather based on the needs of the community as a whole. With regard to paragraph (iv), RUS believes that obtaining information regarding a projects expected outcomes, or end results, is necessary in order to complete the picture of the project under evaluation.

Comment Summary (§ 1703.117 Criteria for scoring applications). One commenter stated that where only a portion of the scoring criteria is satisfied, the regulations should establish a minimum cutoff score for funding applications.

Response. At this time, RUS does not believe a minimum scoring level is needed or desirable.

Comment Summary (§ 1703.118 Other application selection and appeals provisions). One commenter suggested that applicants be able to appeal denial of their application for any reason rather than just an appeal of the numerical scoring. Further, the regulation should provide for appeals to be made to a party outside of RUS, since RUS would be reviewing its own decision. The commenter suggested that the applicant be allowed to review RUS' comments made in support of the score of the application received or the determination for denial for other reasons. In addition, the commenter suggests that time frames set forth for the appeals process is too short, particularly if funding authorization for FY 1996 does not expire at the end of FY 1996.

Response. All applications, submitted in accordance with the application and eligibility provisions of the rule, will be scored by RUS. Denial of an eligible application will be based on the applications score, hence appeal of the score is appropriate. With regard to appeals made to persons outside of RUS, appeals are made to the Secretary of Agriculture, not RUS agency personnel. And because the RUS has committed to award FY 1996 grants in

FY 1996, RUS is unable to lengthen the appeals time frames past the end of the fiscal year and individual responses to applicants which appeal in FY 1996 would not be feasible given the time frame that RUS must work with for approving grants this fiscal year.

Comment Summary (§ 1703.118(b) Other application selection and appeal provisions). One commenter suggested that paragraph (b) be revised and condensed for clarity. In particular, by adapting language found later in § 1703.118(c) and replacing (b) (1) through (3) with the following: "The Administrator will not approve a grant application if he/she determines that the applicant's proposal does not show financial feasibility in accordance with § 1703.107(e) or cannot meet the program purposes in § 1703.100."

Response. RUS believes that the length and detail of this section is necessary to adequately inform the public of the rights reserved by the Administrator for application selection and the rights reserved for the applicants to appeal the selection process.

Comment Summary (§ 1703.118(a) Other application selection and appeal provisions). One commenter noted that the regulations permit the Administrator to defer funding an eligible higher scoring application in favor of funding for a lower scoring application. When this occurs, the regulations should describe the procedure for processing these higher scoring applications.

Response. This provision allows the Administrator to approve a lesser scoring application over a higher scoring application of a greater dollar amount when there are insufficient funds to provide full funding for the higher scoring application and the higher scoring applicant does not desire a lesser grant amount, or the project is not feasible with the lesser amount. In this event, the higher scoring applicant would need to wait until additional funding becomes available and resubmit its application for consideration at that time.

Comment Summary (§ 1703.140 Expedited telecommunications loans.). One commenter noted that, in the background section, it is stated that these proposed rules do not address the new DLT loan program for FY 1996 because no funding is available. However, this section appears to contradict that statement by describing procedures for obtaining expedited telecommunications loans.

Response. Expedited telecommunications loans and the DLT loan program are not the same. The reference to expedited loans refers to

loans made by the RUS' telecommunications loan program, not loans to be made under the new DLT loan program. Section 1703.140 covers the process for expedition of RUS telecommunications loans.

Comment Summary (General). One commenter, noting that the requirements for preparation of the application and supporting documentation are extensive and will entail a considerable amount of time, technical expertise, and financial resources, suggested that a preapplication approval or preproposal process may be needed to screen applications with the greatest potential for funding before the entire application process is completed. Because of this significant initial investment, the procedures may favor more affluent areas or neglect areas where the need is the greatest but resources are not available to compile the information required by the regulations.

Response. RUS believes that a "double" filing on behalf of interested applicants would be overly burdensome, cost prohibitive for some, and inefficient.

RUS has determined that unless this rule is effective upon publication in the Federal Register, it is unlikely that much if any of the Fiscal Year 1996 authorization for the Distance Learning and Telemedicine Grant Program will be available for use by grantees before the authorization lapses.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, grant programs—health care, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

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

PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*, Pub. L. 103–354, 108 Stat 3178 (7 U.S.C. 6941 *et seq.*).

2. Subpart D of part 1703 is revised to read as follows:

Subpart D—Distance Learning and Telemedicine Grant Program

Sec.

- 1703.100 Purpose.
- 1703.101 Policy.
- 1703.102 Definitions.
- 1703.103 Applicant eligibility.

- 1703.104 Allowable grant funding percentage, grant purposes, and in-kind matching provisions.
 - 1703.105 Ineligible grant purposes.
 - 1703.106 Maximum and minimum sizes of a grant.
 - 1703.107 The grant application.
 - 1703.108 Conflict of interest.
 - 1703.109 Determining what is rural.
 - 1703.110–1703.112 [Reserved]
 - 1703.113 Application filing dates, location, processing, and public notification.
 - 1703.114–1703.116 [Reserved]
 - 1703.117 Criteria for scoring applications.
 - 1703.118 Other application selection and appeal provisions.
 - 1703.119–121 [Reserved]
 - 1703.122 Further processing of selected applications.
 - 1703.123–1703.125 [Reserved]
 - 1703.126 Disbursement of grant funds.
 - 1703.127 Reporting and oversight requirements.
 - 1703.128 Audit requirements.
 - 1703.129–1703.134 [Reserved]
 - 1703.135 Grant administration.
 - 1703.136 Changes in project objectives or scope.
 - 1703.137 Grant termination provisions.
 - 1703.138–139 [Reserved]
 - 1703.140 Expedited telecommunications loans.
- Appendix A to Subpart D of Part 1703—ERS Rural—Urban Continuum Scale.
- Appendix B to Subpart D of Part 1703—Environmental Questionnaire.

Subpart D—Distance Learning and Telemedicine Grant Program

§ 1703.100 Purpose.

The grants provided under this subpart D are to encourage, improve, and make affordable the use of advanced telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits through distance learning and telemedicine projects to people living in rural areas and to improve rural opportunities.

§ 1703.101 Policy.

(a) RUS recognizes that the transmission of communications and information is a vital component of the infrastructure of rural areas and is necessary to promote rural development. Enhancing communication and information transmission by making affordable advanced telecommunications, computer networks, and related advanced technologies more widely available in rural areas will improve rural opportunities, promote rural economic growth, and enhance the quality of life of rural residents. To further this objective, RUS will award grants under this subpart to distance learning and telemedicine projects that will improve the access of people

residing in rural areas to improved educational, training, and medical services, and to opportunities that rely on advanced communication and information technologies to provide such services.

(b) In providing assistance under this subpart, RUS will give priority to rural areas that it believes have the greatest need of enhanced communications. RUS believes that generally the need is greatest: in the most sparsely populated rural areas; and in rural areas that are experiencing economic hardship. RUS will take into consideration the community's involvement in the project and the applicant's ability to leverage grant funds based on its access to capital.

(c) RUS believes that the residents of rural areas and their local institutions which service them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, RUS will not favor or mandate the use of one particular technology over another. RUS does believe that it is generally desirable to use technology that would incidentally allow other providers or developers to purchase the elemental functions or access so other users, in addition to educational and medical users, may benefit from any transmission facilities receiving funding under this subpart. In addition, RUS believes it is generally desirable for the project to use products and technologies that are considered open systems. Further, RUS believes that it is desirable to use products and technologies that employ or adhere to nationally recognized standards that will permit equipment from various companies to be connected to the system, and permit the system to be connected to other systems or networks.

(d) Applicants, if they are to be successful in obtaining grant funds must:

- (1) Explain the problem that the applicant is intending to solve using grant funds;
- (2) Explain how the applicant will use the grant as well as other funds to solve the problem and why this is the best solution;
- (3) Explain why RUS grant funds are needed for the project to be successful;
- (4) Explain how the grant will be leveraged using funds from the applicant, and local and non-Federal sources;
- (5) Show that rural areas are the primary beneficiaries; and,
- (6) Show that the project will be sustainable without additional grant funds.

(e) RUS electric and telecommunications borrowers are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(f) RUS staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

(g) The applicant must check with the Rural Development State Director, U.S. Department of Agriculture, before submitting the application to RUS in order to explore any funding sources that may be available at the state or local level. Evidence of this consultation is a requirement of the grant application.

§ 1703.102 Definitions.

Act means Title XXIII, subtitle D, chapter 1, of the Rural Economic Development Act of 1990 (7 U.S.C. 950aaa through 950aaa-4).

Administrator means the Administrator of the Rural Utilities Service or his or her designee.

Applicant means an eligible organization which applies for a grant under this subpart.

Approved purpose means a purpose that RUS has specifically approved in the letter of agreement and scope of work covering the use of RUS grant funds provided to the grantee.

Borrower means any organization which has an outstanding loan made by RUS or RTB, or guaranteed by RUS, or which is seeking such financing.

Communication satellite ground station complex means transmitters, receivers, and communications antennas at the earth station site together with the interconnecting terrestrial transmission facilities (cables, line, or microwave facilities) and modulating and demodulating equipment necessary for processing traffic received from the terrestrial distribution system prior to transmission via satellite and the traffic received from the satellite prior to transfer to terrestrial distribution systems.

Comprehensive rural telecommunications plan means the plan submitted by an applicant in accordance with § 1703.107(a).

Computer networks means computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal

equipment and telecommunications transmission facilities.

Consortium means a combination or group of eligible entities formed to undertake the purpose of which the distance learning and telemedicine grant is provided. Each consortium shall be composed of the following:

(1) A tertiary care facility, rural referral center, medical teaching institution, or educational institution accredited by the State;

(2) Any number of institutions that provide health care services or educational services; and,

(3) Not less than three rural hospitals, clinics, community health centers, migrant health centers, local health departments, or similar facilities, or not less than three educational institutions accredited by the State.

Construct means to construct, acquire, install, improve, or extend a facility or system.

Data terminal equipment means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Distance learning means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating in nonrural areas to students and teachers who are located in rural areas; or

(2) Connect teachers and/or students, located in one rural area with teachers and/or students that are located in a different rural area.

Eligible equipment means a communication satellite ground station complex, computer networks, data terminal equipment, fiber-optic cable, interactive video equipment, microwave transmission equipment, telecommunications transmission facilities, and telecommunications terminal equipment.

Eligible organization means an incorporated entity that meets the requirements of § 1703.103.

End user means either or both of the following:

(1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, county extension services, vocational and adult training and education centers, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning

telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a telemedicine telecommunications program through a project funded under this subpart.

End user site means a facility located in a rural area that is part of a network or telecommunications system that is utilized by end users.

ERS means the Economic Research Service, an agency of the United States Department of Agriculture.

Grantee means a recipient of a grant from RUS to carry out the purposes of this subpart.

Hub means originating source of a network or telecommunications system.

Instructional programming means educational programming, including computer software, which would be used for tutorial purposes in connection with eligible equipment.

Interactive video equipment means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can verbally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement means a legal document executed by RUS and the grantee that contains specific terms, conditions, requirements, and understandings applicable to a particular grant.

Local exchange carrier means a commercial, cooperative or mutual-type association, or public body that provides telecommunications service, through a local central switching office, to the subscribers within its designated service area, and between the local subscribers and the toll network.

Project means an undertaking to provide or improve distance learning or telemedicine by using financial assistance from RUS under this subpart.

Project service area means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, formerly an agency of the United States Department of Agriculture, and predecessor agency to RUS with respect to administering certain electric and telecommunications loan programs.

Rural means any area of the country that meets the determining criteria in § 1703.109.

Rural community facilities means facilities such as schools, libraries, hospitals, medical centers, or similar facilities, located in rural areas, or primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational and/or medical benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Public Law 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telecommunications programs. See 7 CFR 1700.1.

Scope of work means a detailed plan of work that has been approved by the Administrator and that will be performed by the applicant using funds provided under the grant.

Secretary means the Secretary of Agriculture.

Technical assistance means

- (1) Assistance in learning to operate equipment or systems; and
- (2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, and/or disseminating information.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities means facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable

electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange medical information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

§ 1703.103 Applicant eligibility.

(a) To be eligible to receive a grant under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribes and tribal organizations as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which operates, or will operate, a school, college, vocational training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or other rural community facility. A state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant.

The applicant may be a private or municipal corporation organized on a for-profit or not-for-profit basis, or

(2) A consortium, as defined in § 1703.102. A consortium which includes a state government entity is only eligible if the state government entity operates a rural community facility.

(3) An incorporated organization, partnership, or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities of a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS. If a partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

§ 1703.104 Allowable grant funding percentage, grant purposes, and in-kind matching provisions.

(a) Grants may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the cost of allowable grant

purposes outlined in paragraph (b) of this section. The applicant will, therefore, provide matching funding in an amount no less than 42.85 percent of the RUS grant. (If the grant covers 70 percent of total project costs, the applicant provides the other 30 percent of the project costs. Thirty percent of the project costs is 42.85 percent of the 70 percent, i.e., the minimum amount of the match.)

(b) Grants for purposes outlined in paragraphs (b)(2) through (b)(6) of this section shall be limited to costs associated with initial capital expenses for establishing the project. The following are allowable grant purposes:

(1) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;

(2) Acquiring, by lease or purchase, software to operate eligible equipment, including any related software;

(3) Acquiring or developing instructional programming;

(4) Providing technical assistance and instruction for using eligible equipment, including any related software;

(5) Engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the RUS grant; and

(6) Facilities, equipment, or activities and non-recurring service charges that are described in a comprehensive rural telecommunications plan which has been approved by the Administrator.

(c) In kind matching—the applicant's minimum 30 percent funding contribution for allowable grant purposes, i.e., 42.85 percent matching of the RUS grant, generally is required in the form of cash. However, certain in-kind contributions may be substituted for cash as follows:

(1) Equipment, activities and facilities as set forth in § 1703.104(b);

(2) Improvements made to real property necessary to accommodate eligible equipment;

(3) Facilities constructed to accommodate eligible equipment, such as buildings in which terminal equipment and/or transmission facilities would be located;

(4) Real property purchased or acquired for the sole purpose of accommodating distance learning and telemedicine facilities; or

(5) The present value of long term leases of eligible equipment, with duration according to recognized industry standards and compatible with the type of equipment leased.

(d) In kind items furnished in paragraph (c)(1) of this section must be non-depreciated or new assets with established monetary value by industry

standards. The value of improvements of construction paragraphs (c)(2) and (c)(3) of this section must be established by a qualified independent real property appraiser based on the actual cost of those improvements. The value of land in paragraph (c)(4) of this section must be established by a qualified independent real property appraiser based on a market value appraisal.

(e) In kind contributions can be an integral component of an approved comprehensive rural telecommunications plan as set forth in § 1703.107(a).

(f) In kind contributions shall not consist of eligible equipment which has been subject to depreciation (used equipment), or for equipment, services and labor not eligible for grant funding as set forth in § 1703.105.

(g) Funding may be provided for end user sites. Funding may also be provided for hubs located in rural and non-rural areas, if they are necessary to provide distance learning and/or telemedicine services to rural residents at end user sites. However, funding will not be provided for sites proposed as hubs if it is not demonstrated that they are an integral part of the proposed network and are necessary to transmit distance learning and/or telemedicine services to end users.

§ 1703.105 Ineligible grant purposes.

(a) Grants must not be used;

(1) To fund more than 70 percent of the eligible costs of a project under this subpart;

(2) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(3) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(4) To pay salaries, wages, or employee benefits to medical or educational personnel;

(5) To pay for the salaries or administrative expenses of the applicant;

(6) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(7) To duplicate services in place on the date the completed application is received by RUS, or to reimburse the applicant or others for costs incurred prior to RUS's receipt of the completed application;

(8) To pay costs of preparing the application package for funding under this program;

(9) To refinance indebtedness incurred prior to receipt of the completed application by RUS;

(10) For projects whose sole objective is to provide links between teachers and students or medical professionals who are located at the same facility;

(11) For site development, the destruction or alteration of building, or other activities that might adversely affect the environment or limit the choice of reasonable alternatives unless and until the requirements of § 1703.107(j) have been satisfied;

(12) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(13) For any purpose that the Administrator has not specifically approved.

(b) Except as otherwise provided in § 1703.140, funds shall not be used to finance a project in part when success of the project is dependent upon the receipt of additional funding under this subpart D or is dependent upon the receipt of other funding that is not assured.

(c) Grants must not be used to cover the costs of telecommunications transmission facilities if the local exchange carrier for the project area will install such facilities through the use of the expedited telecommunications loans made under the RE Act or through other financing procedures within a reasonable time period and at a cost that does not destroy the feasibility of the project, as determined by the Administrator.

(d) Except for leases provided in § 1703.104(b) (1) and (2), grants must not be used to pay the cost of recurring or operating expenses for the project.

§ 1703.106 Maximum and minimum sizes of a grant.

Applications for grants to be considered under this subpart will be subject to limitations on the proposed amount of funding. The maximum grant amount that will be awarded for any one project in any given fiscal year will not exceed 10 percent of the appropriated funds available for all grants during the fiscal year in which the application for such project is selected. The Administrator may publish notice of the annual maximum grant amount in the Federal Register. An applicant submitting an application which exceeds the maximum will be notified to that effect by RUS and given the opportunity to revise the application. The minimum size of a grant is \$50,000.

§ 1703.107 The grant application.

The following items comprise the required material that must be submitted to RUS in support of the grant request:

(a) Comprehensive Rural Telecommunications Plan. A Comprehensive Rural Telecommunications Plan, consisting of the following is required *only* when the applicant is requesting grant funds for telecommunications transmission facilities:

(1) A detailed explanation of the proposed rural telecommunications system, how such system is to be funded, and a description of the intended uses for a grant received under this subpart.

(2) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

Note: if a local exchange carrier is providing the transmission facilities, the requirements of this paragraph may be omitted from the Comprehensive Rural Telecommunications Plan.

(3) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(4) A listing of the proposed purchases or leases of telecommunications terminal

equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using the grant funds.

(5) An explanation of the special financial or other needs of the affected rural communities and of the applicant for such grant assistance.

(6) An analysis of the relative costs and benefits of proposals for leasing or purchasing of facilities, equipment, components, hardware and software, or other items.

(7) A description of the consultations with the appropriate local exchange carrier or carriers and with a wide variety of additional telecommunications service providers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(b) Proposed scope of work of the project. The proposed scope of work of the project which includes, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities;

(4) A budget for capital expenditures reflecting the line item costs for both the grant funds and other sources of funds for the project;

(5) Information indicating the ability of the applicant to reduce the size or scope of the project in the event RUS funding, or other projected sources of funding, were reduced or delayed. The applicant must indicate the respective components of the project that would receive the highest priority of funding; and

(6) Information about the potential of the proposed network to expand its size or scope if additional funding was available.

(c) Executive summary for the project. The applicant must provide RUS a general project overview, verification of compliance with the general requirements of this subpart, and documentation of eligibility. The executive summary should not exceed

eight one-sided double spaced pages, size 8.5" x 11", with a minimum font size of 12 points. The executive summary shall contain the following 10 categories:

(1) A description of the applicant, documenting eligibility with § 1703.103.

(2) An explanation of:

(i) The problem the applicant is intending to solve;

(ii) How the applicant will use the grant funds to solve the problem;

(iii) The amount of RUS grant funds required and why such grant funds are needed; and

(iv) How the RUS grant funds will be leveraged, including both amount and source of these additional funds.

(3) A brief economic and demographic description of the proposed service area, the types of educational and/or medical services to be offered by the project, and the benefits to the rural residents.

(4) A physical description of the project service area. The applicant should include information regarding topography and available transportation and telecommunications infrastructure.

(5) A description of the project as distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system.

(6) A list of expected outcomes, benefits or services to be provided by the project. Some examples include, but are not limited to:

(i) Improved education opportunities for a specified number of students;

(ii) Travel time and money saved by telemedicine diagnosis;

(iii) Number of doctors retained in rural areas;

(iv) Number of additional students electing to attend higher education institutions;

(v) Lives saved due to prompt medical diagnosis and treatment;

(vi) New education courses offered, including college level courses; and

(vii) Expanded use of educational facilities such as night training.

(7) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used.

(8) A description of the participating hubs and end user sites and the number of rural residents which will be served by the proposed project at each end user site.

(9) A brief narrative describing the project service area to allow a determination of rural eligibility in accordance with § 1703.109. The applicant must list all counties located

in the proposed service area, and the Economic Research Service's Rural—Urban Continuum Category for each county. These categories may be obtained from RUS, any USDA Rural Development state office or from State Land Grant University Cooperative Extension Offices.

(10) The applicant must indicate whether or not it is willing to have its grant application forwarded to other agencies within USDA for consideration in the event the application is not selected for funding under this subpart.

(d) A section on compliance with scoring criteria. The applicant must provide a justification for the number of points the proposed project will obtain for each of the criteria for scoring applications set forth in § 1703.117.

(e) Financial information. The applicant must provide financial information to support the need for the grant funds for the project, show its financial capacity to carry out the proposed work, and show project feasibility. The financial information must include the following:

(1) A current balance sheet from the applicant reflecting its financial condition. When the applicant is a partnership, company, corporation or other entity, current balance sheets are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium. While not required, an audit report is preferable and must be for a period which ended no earlier than 12 months preceding the date of the application; and

(2) A pro-forma income and expense statement for each participating hub and end user site for the project covered by the application. The pro-forma statements must cover a minimum of 5 years after completion of the project and reflect that the project is feasible and sustainable in order to be considered for grant funds by showing sufficient income to pay cash operating expenses including telecommunications access and/or toll charges, system maintenance, salaries, training, and any other general operating expenses; and provide for replacement of depreciable items. Depreciation shall be based on Internal Revenue Service depreciation rules, or other recognized telecommunications industry guidelines. The applicant shall provide sufficient documentation to substantiate any depreciation projections.

(3) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(4) For applicants eligible under § 1703.103(a)(3), and explanation of the economic analysis justifying the rate structure to ensure that the benefit of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(5) Exception. An exception is granted for K to 12 school in meeting the requirements of paragraphs (e)(1) through (e)(4) of this section. In lieu of submitting the financial data required in paragraphs (e)(1) through (e)(4) of this section, RUS will accept the current financial statements in a form currently acceptable to the applicant school system's county or State authority.

(f) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an education or health care endeavor and any project similar to the proposed project. Experience in a similar project is desirable but not required.

(g) Funding commitment from other sources. The applicant must provide evidence of the commitment of funds for the project in addition to the funds requested under this subpart. Evidence should be from an authorized representative of the source organization that the funds are available and will be used for the purposed project.

(h) Proposed evaluation methodology. The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in §§ 1703.100 and 1703.101 and the proposed scope of work.

(i) Compliance with other Federal statutes and regulations. The applicant is required to submit evidence that it is in compliance with other Federal statutes and regulations, as detailed in § 1703.33 as follows:

- (1) Equal opportunity and nondiscrimination requirements;
- (2) Architectural barriers;
- (3) Flood hazard area precautions;
- (4) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs;
- (5) Drug-free workplace;
- (6) "Certification Regarding Debarment, Suspension and Other

Responsibility Matters—Primary Covered Transaction (See 7 CFR 3017.510);

(7) Intergovernmental review of Federal programs; and

(8) Restrictions on lobbying. For an application for a grant in excess of \$100,000, a certification statement, "Certification Regarding Lobbying;" is required. If the applicant is engaged in lobbying activities, the applicant must submit a completed disclosure form, "Disclosure of Lobbying Activities" (see 7 CFR part 3018).

(j) Environmental impact and historic preservation. The applicant must provide details of the project's impact on the environment and historic preservation. Grants made under this part are subject to part 1794 of this chapter which contains the policies and procedures of RUS for implementing a variety of Federal statutes, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in § 1794.1 of this chapter. The application shall contain a separate section entitled "Environmental Impact of the Project."

(1) Environmental information. An "Environmental Questionnaire," appendix B to this subpart, may be used by applicants to assist in complying with the requirements of this section. Copies of the Environmental Questionnaire are available for RUS.

(2) Grants for technical assistance projects. For a proposal to fund a technical assistance project, the only environmental information normally required is whether or not the proposed project being studied or analyzed will be located within an area protected under the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*). Generally, the use of Federal funds to promote development on coastal barriers is strictly limited by the Coastal Barrier Resources Act.

(3) Grants for all other projects. Applications for a grant to fund a project that is not subject to paragraph (j)(2) of this section must be accompanied by the information described in this paragraph. The Administrator will review supporting materials in the application and initiate an environmental review process pursuant to part 1794 of this chapter. This process will focus on any environmental concerns or problems that are associated with the project. The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental

Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508), RUS's Environmental Policies and Procedures (part 1794 of this chapter) and other relevant Federal environmental laws, regulations and Executive orders. Activity related to the project that may adversely affect the environment or limit the choice of reasonable alternatives shall not be undertaken prior to completion of RUS's environmental review process.

(4) For a proposed project that only involves internal modifications or equipment additions to buildings or other structures (for example, relocating interior walls or adding computer facilities) and/or external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than 0.4 hectare (0.99 acre) the environmental information normally required is: a description of the internal modifications or equipment additions, and the external changes or additions to existing buildings, structures or facilities being proposed, the size of the site in hectares, and the general nature of the proposed use of the facilities once the project is completed, including any hazardous materials to be used, created or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated.

(k) A completed Standard Form 424 "Application for Federal Assistance," along with a board of directors resolution authorizing the grant request.

(l) Evidence of the applicant's legal existence and authority to enter into a grant agreement with RUS and perform activities proposed under the grant application.

(m) Evidence that the applicant is not delinquent on any obligation owed to the Federal government (7 CFR parts 3015 and 3016).

(n) Evidence that the applicant has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the state or local level.

(o) 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 proposed project would further the purposes of this subpart.

(p) Additional information requested by RUS. The applicant must provide any additional information the Administrator may consider relevant to the application and necessary to adequately evaluate the application and make grant decisions. The Administrator may also request modifications or changes, including

changes in the amount of funds requested, in any proposal described in a grant application submitted under this part.

§ 1703.108 Conflict of interest.

At any time prior to the disbursement of a grant awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgment of the Administrator, the project would create a conflict of interest or the appearance of a conflict of interest. The Administrator will notify the applicant in writing of his/her intention to disqualify the project under this section and set forth the basis for his/her determination that a conflict of interest or appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant's response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. The Administrator will promptly notify the applicant of the final determination whether a conflict of interest or appearance of a conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator's decision under this section will be final.

§ 1703.109 Determining what is rural.

The RUS Administrator shall determine whether a project service area possesses sufficient characteristics to be considered a rural area for purposes of this subpart. The Administrator shall make such determination on the following basis:

(a) The project service area is located within nonmetropolitan counties included in one of the lowest four categories (6–9) of the ERS Rural—Urban Continuum Scale (rural—urban continuum) as set forth in appendix A to this subpart. Those categories are as follows:

(1) Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of less than 20,000, adjacent to a metropolitan area (category 6);

(2) Urban population of less than 20,000, not adjacent to a metropolitan area (category 7);

(3) Completely rural (no cities, towns, villages or other incorporated areas of

2,500 or greater) adjacent to a metropolitan area (category 8);

(4) Completely rural, not adjacent to a metropolitan area (category 9).

(b) In the case of project service areas not categorized as rural areas under paragraph (a) of this section, consideration will be given to the degree of rurality the area possesses taking into account such factors as:

(1) Whether the project service area is located within the boundaries of an incorporated community of 2,500 persons or more as determined by the U.S. Census Bureau;

(2) Where the county or counties in which the project service area is located rank on the rural—urban continuum;

(3) Whether natural geographic barriers or an absence of roads may impede access from the project service area to metropolitan areas;

(4) Whether the county is a spatially large county and the project service area is not within the commuting area of an urbanized area; and

(5) Whether the economy of the project service area centers on natural resource-based activities such as farming, ranching, mining, or timber production, or is highly specialized.

(c) In the case of a project that will serve end users located in more than one county, at least one of which is not categorized as rural under paragraph (a) of this section, RUS will determine the rurality of the project service area case-by-case using factors such as those identified in paragraph (b) of this section. To the extent practicable, in the case of a project that is expected to benefit residents of urban areas as well as residents of rural areas, instead of rejecting an application because it benefits areas they are not rural, RUS may allocate the grant accordingly to assure that grant funds primarily benefit only residents of rural areas.

(d) If a determination made under this section results in the denial of an application, the applicant may appeal such determination to the Administrator in writing setting forth the reasons why it disagrees. Thereafter, the Administrator will review the determination and decide in writing whether to sustain, reverse or modify the original determination. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

§§ 1703.110–1703.112 [Reserved]

§ 1703.113 Application filing dates, location, processing, and public notification.

(a) Applications for funding under this subpart shall be submitted to the

Administrator, Rural Utilities Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1500.

Applications should be marked "Attention: Assistant Administrator, Telecommunications Program".

(b) Applications will be reviewed for eligibility and considered for funding on a quarterly or annual basis. The Administrator will publish a notice in the Federal Register indicating the deadline(s) for application submissions and the amount of available grant funds.

(c) RUS will review each application for completeness in accordance with § 1703.107, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered, the applicant must submit the remaining information postmarked no later than the application filing deadline set forth in paragraph (b) of this section, or 15 working days from the receipt of RUS's letter, whichever is the later date. If the applicant fails to submit such information to complete the application in accordance with § 1703.107, the application shall be denied and returned to the applicant.

(d) After receipt of all completed applications, the Administrator will publish notice in the Federal Register of all completed applications received for funding under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC. For purposes of this paragraph, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C. 552a, and any other information that has not been designated as proprietary information by the applicant.

(e) For instances where multiple applicants are necessary to carry out a project due to project feasibility or applicant authorities, multiple applications may be submitted jointly by the applicants. The applicants must clearly mark or otherwise identify any information in the application it deems proprietary.

(f) The applicant must submit an original and three copies of a completed application. The applicant must also submit a copy of the application to the State government point of contact at the same time it submits an application to RUS. All applications must include the information described in § 1703.107.

§§ 1703.114–1703.116 [Reserved]**§ 1703.117 Criteria for scoring applications.**

(a) *Criteria.* The criteria in this section will be used by the Administrator to score applications that have been determined to be in compliance with the requirements of this subpart. There are six general criteria for scoring applications:

- (1) The financial need of the community and the project;
- (2) The financial composition of the project;
- (3) The comparative rurality of the proposed project service area;
- (4) The documented need for services;
- (5) Connectivity with outside networks; and
- (6) The cost effectiveness of the design.

(b) *Selection.* Applications will be selected for funding based on scores, availability of funds, and the provisions of § 1703.118. The Administrator will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature of the project; cost; location; and other characteristics of the application and the proposed project to determine the number of points assigned to an application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.113 will be rated as a single application.

(c) *Financial need of community and project.* A comparison of the per capita personal income in the county or counties where the project of the beneficiaries are located to the national per capita personal income levels—up to 80 points.

(1) If the per capita personal income level in the county where the grant beneficiaries will be located:

- (i) Is less than equal to 80 percent of the national per capita personal income level, 80 points, the maximum number of points;
- (ii) Is greater than 80 percent and less than or equal to 90 percent of the national per capita personal income level—60 points;
- (iii) Is greater than 90 percent and less than or equal to 100 percent of the national per capita personal income level—30 points;
- (iv) Is greater than 100 percent and less than or equal to 110 percent of the national per capita personal income level—5 points;
- (v) Exceeds 100 percent of the national per capita personal income level—0 points.

(2) If the project will serve grant beneficiaries in several counties, the Administrator will use an unweighted

mean of the counties for the comparison.

(3) RUS will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce, or other government sources and processed into a suitable format.

(d) *Financial composition of project.* A comparison of the ability of the applicant to contribute financially to the project, and to secure other non-Federal sources of funding. Criteria include:

(1) Evidence of additional financial support for the project from non-Federal sources above the applicant's required 42.85 percent matching of the RUS grant as set forth in § 1703.104; the applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project—up to 60 points.

(i) Matching for allowable grant purposes less than nor equal to 50 percent of the RUS grant—0 points;

(ii) Matching for allowable grant purposes greater than 50 percent, but less than or equal to 100 percent of the RUS grant—10 points;

(iii) Matching for allowable grant purposes greater than 100 percent, but less than or equal to 150 percent of the RUS grant—20 points;

(iv) Matching for allowable grant purposes greater than 150 percent, but less than or equal to 200 percent of the RUS grant—30 points;

(v) Matching for allowable grant purposes greater than 200 percent, but less than or equal to 250 percent of the RUS grant—40 points;

(vi) Matching for allowable grant purposes greater than 250 percent, but less than or equal to 300 percent of the RUS grant—50 points;

(vii) Matching for allowable grant purposes greater than 300 percent of the RUS grant—60 points;

(2) *Bonus Points For Community Involvement.* In addition to the points allocated under § 1703.117(d)(1), bonus points will be scored for funding supplied by local sources. Criteria include:

(i) Proportion of non-Federal sources of funding supplied by local sources above the applicant's required 42.85 percent matching of the RUS grant. For purposes of this paragraph, local funding sources shall constitute any for-profit or non-profit entity or entities which derive income from the area to be served by the proposed project, and any village, town, county, regional, or other local governmental or public entity whose jurisdiction includes at least part of the proposed project service area. A local funding source shall not include a

state or Federal governmental entity. The applicant shall provide evidence from authorized local representatives that the funds are available and will be used for the proposed project—up to 20 points.

(A) Less than or equal to 50 percent to the RUS grant supplied by local funding sources—0 points;

(B) Greater than 50 percent, but less than or equal to 100 percent of the RUS grant supplied by local funding sources—5 points;

(C) Greater than 100 percent, but less than or equal to 150 percent of the RUS grant supplied by local funding sources—10 points;

(D) Greater than 150 percent, but less than or equal to 200 percent of the RUS grant supplied by local funding sources—15 points;

(E) Greater than 200 percent of the RUS grant supplied by local funding sources—20 points, the maximum number of points;

(ii) *Reserved*

(e) *The Comparative Rurality of the Proposed Project Service Area.* (1) This criterion is used after a project service area has been determined eligible in accordance with § 1703.109. The methodology contained in the section is used to evaluate the relative rurality (i.e., population and isolation) of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, that service area is given a score according to the characteristics for the county(ies) in which the end user sites are located. Evaluation is based on the population of the county or counties, and the location of the county or counties relative to metropolitan statistical areas. This system incorporates a framework based on the classification of nonmetropolitan counties by urbanization and proximity to metropolitan areas, developed by analysts and demographers at the USDA Economic Research Service (ERS), as set forth in appendix A to this subpart.

(2) The following definitions are used in the evaluation of rurality:

(i) *Metropolitan statistical area (MSA)*—as defined by the Office of Management and Budget (OMB), and MSA includes core counties containing a city of 50,000 or greater population or containing several smaller cities totaling 50,000 or greater population and a total population of at least 100,000. Additional contiguous counties are included in the MSA if they are economically and socially integrated with the core county.

(ii) *Metropolitan County*—as defined by OMB, a metropolitan county is part

of an MSA and contains a place, or two adjoining places, totaling at least 50,000 in population, and has residents who are economically and socially integrated with a metropolitan core.

(iii) Adjacency to Metropolitan area—the proximity of a county to an MSA measured by a shared boundary with an MSA, and having at least 2 percent of employed county residents commuting to MSA's for employment.

(3) If the end user site(s) for the project are located in a nonmetropolitan county or counties (ERS Rural—Urban Continuum Scale categories 4–9 as set forth in Appendix A to this subpart), the applicant will receive points as follows:

(i) With an ERS category of 9–60 points, the maximum number of points;

(ii) With an ERS category of 8–55 points;

(iii) With an ERS category of 7–40 points;

(iv) With an ERS category of 6–35 points;

(v) With an ERS category of 5–20 points;

(vi) With an ERS category of 4–15 points; or

(vii) With an ERS category of 0 through 3 (metropolitan counties)—0 points.

(4) Applicants having proposed end users sites located in a nonmetropolitan county or counties which are adjacent to a metropolitan area, may receive an adjustment of up to 5 additional points, as determined by the Administrator. Applicants must document that the end users are isolated from urban centers by virtue of available mass transportation, highway infrastructure, or geography.

(5) Applicants having proposed user sites located in a metropolitan county or counties (ERS categories 0–3) may receive 10 points if the population density of the county or counties is no greater than 110 percent of the adjoining nonmetropolitan county with the lowest population density.

(6) If all the end user sites in a proposed network or system are located in a single county or in multiple counties which have the same characteristics, a score will be assigned directly from one of the categories set forth in § 1703.117(e)(3).

(7) If end users sites are located in multiple counties with different characteristics, a weighted average will be calculated using the following:

(i) The total number of end user sites located in rural areas will be determined and be assigned a uniform percentage to be used in a weighted average formula (e.g., with 5 sites, each site would be weighted 20%). A hub will not be counted in a weighted average unless the hub is also utilized as an end user

site. For purposes of ranking, if a hub also is utilized as an end user site, the hub will be considered as an end user site.

(ii) The counties which contain end user sites will be identified.

(iii) Each end user site will be assigned a number of points according to the classification system for the county in which it is located.

(iv) The percentage value for each site determined in step 1 will be multiplied by the number of points scored from the site's county classification.

(v) The total points for each end user site, obtained from the calculations in step 4, will be added to reach a final weighted average for the project.

(8) The following example illustrates the provision of paragraph (e)(7) of this section.

Example Calculation. Greenbriar Valley Development Authority has submitted an application for an interactive classroom network which includes a hub in a metropolitan area and 3 end user sites, located in 3 rural counties. The hub is located in a large city and is not utilized as an end user site, so the hub will not be considered part of the network or system.

The first end user site is located in the town of Midway, in Greenbriar County, less than 20,000 adjacent to a metropolitan area. Thus, it has a category of 6 on the ERS Rural—Urban Continuum Scale.

The second end user site is in Lewistown, in Lewis County, which has an aggregate urban population of less than 20,000, not adjacent to a metropolitan area. Thus, it has a category of 7 on the ERS Rural—Urban Continuum Scale.

The third end user site is in the town of Rocky Creek, in Fayette County, which has an aggregate urban population of 20,000 or more, but not adjacent to a metropolitan area. Thus, it has a category of 5 on the ERS Rural—Urban Continuum Scale.

Step (1) The total number of end user sites = 3; thus each end user site receives 33% weight in the formula.

Step (2) The counties identified are Greenbriar, Lewis and Fayette.

Step (3) Greenbriar County, ERS Rural—Urban Continuum Scale category 6 = 30 points;

Lewis County, ERS Rural—Urban Continuum Scale category 7 = 35 points;

Fayette County, ERS Rural Urban Continuum Scale category 5 = 10 points.

Step (4) Midway site—30 points \times 33% = 9.9 points
Lewistown site—35 points \times 33% = 11.6 points

Rocky Creek site—10 points \times 33% = 3.3 points

Step (5) $9.9 + 11.6 + 3.3 = 24.8$ total weighted average score.

(f) *Documented need for services* (1) This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the grant application that reflects the need for the services

proposed by the project. The applicant should indicate whether or not the proposed services could be provided if RUS grant funds were not available. Up to 60 points can be assigned to this criterion.

(2) The Administrator will consider the extent to which the need for improved educational or medical services in the proposed rural area compares to other regions. RUS will also consider any support by recognized experts in the related educational or medical field, and documentation substantiating the educationally and/or medically underserved nature of the applicant's proposed service area. The Administrator will consider the extent of the applicant's documentation showing:

(i) The justification for specific educational and/or medical services which are needed and will provide direct benefits to rural residents;

(ii) That rural residents, and other beneficiaries, desire the educational and/or medical services to be provided by the project (a strong indication of need is the willingness of local end users or institutions to pay, to the extent possible, for proposed services);

(iii) The applicant's inability to pay for the proposed project without grant funds, given the financial strength of the applicant, its partners, or subsidiaries, as described in § 1703.107(e)(1);

(iv) The project's development and support based on input from the local residents and institutions.

(v) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(3) Examples of the need for medical services could include rural physicians and medical professionals inability to access support functions, such as consulting with others on a diagnosis or access to the latest recommendations in treatment procedures and techniques, up-to-date health-care research, or continuing medical studies. Other medical needs could be to retain more patients at the local hospital or medical facility in order to prevent the closure of the rural hospital or medical facility.

(g) *Connectivity with outside networks.* (1) This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the grant application that reflects the connectivity of the proposed projects with other educational and/or medical networks. Up to 25 points can be assigned to this criterion.

(2) Consideration will be given to the extent that the proposed project will interconnect with other existing networks at the regional, statewide or national levels. RUS believes that to the extent possible, educational and medical networks should be designed to connect to the widest practicable number of other networks that expand the capabilities of the proposed project, thereby affording rural residents opportunities that may not be available at the local level.

(3) Consideration will also be given to the extent that facilities constructed with federal financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the proposed project.

(h) *Cost effective design.* (1) This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the grant application that reflects the cost efficiency of the project design. Up to 15 points can be assigned to this criterion.

(2) Consideration will be given to the extent that the proposed technology or technologies for delivering the proposed educational and/or medical services for the project service area are the most cost effective for the type of project proposed, including utilizing the transmission facilities of the local telecommunications provider. The Administrator will consider the applicant's documentation comparing various systems and technologies, and the choice of the applicant's system as being the most cost-effective system. The Administrator will also consider the applicant's documentation relating to buying or leasing options for specific equipment. The application must contain information necessary for the Administrator to use accepted analytical and financial methodologies to determine whether the applicant is proposing the most cost-effective option.

§ 1703.118 Other application selection and appeal provisions.

(a) Regardless of the number of points an application receives in accordance with § 1703.117, the Administrator may, based on his/her review of the applications in accordance with the requirements of this part:

- (1) Limit the number of applications selected for projects located in any one state during a fiscal year;
- (2) Limit the number of selected applications for a particular project; and
- (3) Select an application receiving fewer points than another higher scoring

application if there are insufficient funds during a particular funding period to select the higher scoring application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if, notwithstanding the lower grant amount, the Administrator determines the project is financially feasible in accordance with § 1703.107(h) at the lower amount.

(b) The Administrator will not approve a grant application if he/she determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.107(e) (1) and (2);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of the Administrator, would prevent successful implementation, operation, or sustainability of the proposed project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of the Administrator, undermine the ability of the project to meet the general purpose of this part or comply with policies of the Distance Learning and Telemedicine Grant Program set forth in § 1703.101.

(c) The Administrator may reduce the amount of the applicant's grant award based on insufficient program funding for the fiscal year in which the project is reviewed if the Administrator determines that, notwithstanding a lower grant award, the project will show financial feasibility in accordance with § 1703.107(e), and the program purposes set forth in § 1703.100 can be met. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (d) of this section.

(d) The Administrator will provide the applicant an explanation of any determinations made with regard to paragraphs (b)(1) through (b)(3) of this section prior to making final project funding selections for the year. The applicant will be provided 15 days from the date of the Administrator's letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to

adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination.

(e) For Fiscal Year 1996 grant applications, RUS will notify all grant applicants of the numerical scoring each complete grant application received and the cutoff points needed to receive funding for Fiscal Year 1996. If the grant application numerical scoring is below the score necessary to obtain funding, the applicant may appeal the numerical scoring to the Secretary in writing not later than 10 days after the applicant is notified of the scoring level. The applicant must state the reason it is appealing the numerical scoring and submit the reasons the application should be reconsidered. RUS will allow 14 days after the close of the appeal period to make the final grant selections for Fiscal Year 1996.

(f) RUS reserves the right to use other data it considers most appropriate if "county" data is unavailable for a particular area. In those cases, the Administrator will use data compiled on a basis of the equivalent of a county in the state, such as a parish, or on another basis that most approximates "county" level data.

§§ 1703.119–1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the selection of the application and the execution of implementing documents, the applicant must inform the Administrator if the project is no longer viable or the applicant no longer desires a grant for the project. If the applicant so informs the Administrator, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to the Administrator for consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) Recipients of grants will be required to submit RUS Form 479–A,

“Distance Learning and Telemedicine Technical Questionnaire.”

(e) After an applicant has submitted such additional information, if any, the Administrator determines is necessary for completing the grant documents, the Administrator will send the documents to the applicant to execute and return to RUS.

(1) The grant documents will include a letter of agreement and any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement will, among other things, constitute the Administrator's approval of funds for the project subject to certain terms and conditions and include at a minimum, a project description, approved purposes of the grant, the maximum amount of the grant, supplemental funds to be provided to the project and certain agreements or commitments the applicant may have proposed in its application.

(f) Until the letter of agreement has been executed and delivered by RUS and by the applicant, the Administrator reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the United States Government.

(g) If the applicant fails to submit, within 120 calendar days from the date of the Administrator's selection of an application, all of the information that the Administrator determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, the Administrator may rescind the selection of the application and written notice to that effect will be sent promptly to the applicant.

§§ 1703.123–1703.125 [Reserved]

§ 1703.126 Disbursement of grant funds.

(a) For grants of \$100,000 or greater, prior to the disbursement of funds, the grantee, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by § 3015.17 of this title.

(b) Grant funds will be disbursed to grantees on a reimbursement basis, or with unpaid invoices for the eligible purposes set forth in this subpart, by the following process:

(a) An SF 270, “Request for Advance or Reimbursement,” will be completed by the applicant and submitted to RUS not more frequently than once a month; and

(2) After receipt of a properly completed SF 270, payment will ordinarily be made within 30 days.

(c) The grantee's share in the cost of the project will be disbursed in advance of grant funds, or if the grantee agrees, on a pro rata distribution basis with grant funds during the disbursement period. Grantee will not be permitted to provide its contribution at the end of the project.

§ 1703.127 Reporting and oversight requirements.

(a) A project performance activity report will be required of all grantees on a semi-annual basis.

(b) A final project performance report will be required. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last semi-annual report.

(c) RUS will monitor grant recipients as necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes. Grants made under this part will be administered under, and are subject to parts 3015 through 3018 of this title.

(d) Grantees shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original and one copy of each report to RUS. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

The grantee will provide an audit report in accordance with part 3015, subpart I, of this title. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards (GAGAS) using publication, “Standards for Audit of

Governmental Organization, Program, Activities and Functions.”

§§ 1703.129–1703.134 [Reserved]

§ 1703.135 Grant administration.

(a) The Administrator will review grantees, as necessary, to determine whether funds were expended for approved purposes. The grantee is responsible for ensuring that the project complies with all applicable regulations, and that the grant funds are expended only for approved purposes. The grantee is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to the Administrator, upon request, and is otherwise made available, at the grantee's premises, for review by the RUS representatives, grantee's certified public accountant, the Office of Inspector General, U.S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the grantee's financial statements or records, and program performance under the grant awarded under this subpart. Grantees will be required to permit RUS to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to parts 3015 and 3016 of this title, as appropriate. Parts 3015 and 3016 of this title subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and/or equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The grantee will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.137 Grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any grant in whole, or in part, at any time before the date of completion of grant disbursement, whenever it is

determined that the grantee has failed to comply with the conditions of the grant. The Administrator will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* The Administrator or the grantee may terminate a grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The grantee will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the grantee for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.

§§ 1703.138–1703.139 [Reserved]

§ 1703.140 Expedited telecommunication loans

(a) *General.* (1) The Administrator will afford expedited consideration and determination to an application for a loan or a request for advance of funds submitted by a local exchange carrier pursuant to section 2334(h) of the Act (7 U.S.C. 950aaa *et seq.*).

(2) Funds obtained through the expedited procedures established by this section must be used primarily to provide advanced telecommunication services in rural areas using a telecommunications project that the Administrator has approved under this subpart.

(3) Only those elements of a telecommunications project that have not been funded in whole, or in part, with a grant made under this subpart are eligible for expedited consideration or determination under this section.

(b) *Expedited loan applications.* (1) In order to qualify for expedited consideration or determination under paragraph(a)(1) of this section, the loan application must:

(i) Be from a local exchange carrier that will use the requested funds for the purpose set forth in paragraph(a)(2) of this section;

(ii) Be a completed one that complies with the requirements of part 1737, subpart C, of this chapter; and

(iii) Be received concurrently with the related grant application or within 14 days of the date notice of such application is published in the Federal Register as set forth in § 1703.113(d).

(2) Expedited consideration and determination of a qualifying application for a loan under this section means that within 45 days of receipt or 45 days of selection of the related grant application, whichever occurs later, the Administrator will:

(i) Issue a characteristics letter, as set forth in part 1737, subpart I, of this chapter, to the loan applicant; or

(ii) Inform the loan applicant that its application for a loan has been denied.

(c) *Expedited advances.* (1) In order to qualify for expedited consideration or determination under paragraph(a)(1) of this section, the request for advance of funds must:

(i) Be from a local exchange carrier that will use the funds for the purpose set forth in paragraph(a)(2) of this section;

(ii) Be for all or part of a loan which has received release approval pursuant to part 1737, subpart K, of this chapter; and

(iii) Be in compliance with the requirements of part 1744 of this chapter.

(2) Expedited consideration and determination of a qualifying request for advance of loan funds under this section means that the Administrator will advance funds to the borrower within 45 days of receiving a request which complies with the provision of this section.

Appendix A to Subpart D of Part 1703—ERS Rural—Urban Continuum Scale

ERS Rural—Urban Continuum Codes:

Metropolitan Counties:

0—Central counties of metropolitan areas of 1 million population or more.

1—Fringe counties of metropolitan areas of 1 million population or more.

2—Counties in metropolitan areas of 250 thousand to 1 million population.

3—Counties in metropolitan areas of less than 250 thousand population.

Nonmetropolitan Counties:

4—Aggregate urban population (sum of cities, towns, villages or other incorporated communities of 2,500 or more) of 20,000 or more, adjacent to metropolitan area.

5—Aggregate urban population of 20,000 or more, not adjacent to a metropolitan area.

6—Aggregate urban population of 2,500 of 19,999, adjacent to a metropolitan area.

7—Aggregate urban population of 2,500 to 19,999, not adjacent to a metropolitan area.

8—Completely rural (no cities, towns, villages or other incorporated areas of 2,500 or greater) adjacent to a metropolitan area.

9—Completely rural, not adjacent to a metropolitan area.

Notes: Metropolitan status is that announced by the Office of Management and Budget in June 1993, when the current population criteria were first applied to

results of the 1990 Census. Adjacency was determined by physical boundary adjacency and a finding that at least 2 percent of the employed labor force in the nonmetropolitan county commuted to metropolitan central counties.

Codes prepared in Rural Economy Division, Economic Research Service, USDA. A listing of counties and corresponding codes are available from ERS at the following address:

Room 337, 1301 New York Avenue, NW,
Washington, DC 20005-4788, Phone: (202)
219-0534

or through the Internet via the ERS Home Page or directly at the following Internet address:

gopher://usda.mannlib.cornell.edu:70/11data-sets/rural/89021

Appendix B to Subpart D of Part 1703—Environmental Questionnaire

Note: It is extremely important to respond to *all* questions completely to ensure expeditious processing of the Distance Learning and Telemedicine grant. The information herein is required by Federal law.

Important: *Any activity related to the project that may adversely affect the environment or limit the choice of reasonable development alternatives shall not be undertaken prior to the completion of Rural Utilities Service's environmental review process.*

Legal Name of Applicant _____
Signature _____
(Type/Sign/Date) _____

The applicant's representative certifies, to the best of his/her knowledge and belief, that the information contained herein is accurate. Any false information may result in disqualification for consideration of the grant or rescission of the grant.

I. Project Description—Detailing construction, including, but not limited to, internal or external modifications of existing structures, new building construction, and/or installation of telecommunications transmission facilities (defined in 7 CFR 1703.102), including satellite uplinks or downlinks, microwave transmission towers, and cabling.

1. Describe the portion of the project, and site locations (including legal ownership of real property), involving internal modifications, or equipment additions to buildings or other structures (e.g., relocating interior walls or adding computer facilities) for *each* site.

2. Describe the portion of the project, and site locations (including legal ownership or real property) involving external changes or additions to existing buildings, structures or facilities requiring physical disturbance of less than .99 acres. List the size of *each* individual site in acres and *attach a diagram showing the general layout* of the proposed facilities for *each* site.

3. Describe the portion of the project, and site locations (including legal ownership or real property), involving construction of transmission facilities, including cabling, microwave towers, satellite dishes; or, new construction of buildings; or, disturbance of

property of .99 acres or greater for *each* project site.

4. Describe the nature of the proposed use of the facilities, and whether any hazardous materials, air emissions, wastewater discharge or solid waste will result.

5. State whether or not any project site(s) contain or are near properties listed or eligible for listing in the National Register of Historic Places, and identify any historic properties (The grantee must supply evidence that the State Historic Preservation Officer (SHPO) has cleared development regarding any historical properties).

6. Provide information whether or not any facility(ies) or site(s) are located in a 100-year floodplain. A National Flood Insurance Map should be included reflecting the location of the project site(s).

II. For projects which involve construction of transmission facilities, including cabling,

microwave towers, satellite dishes, new construction of buildings, or physical disturbance of real property of .99 acres or greater, the following information *must* be submitted (7 CFR 1703.107(j)(3))

1. A map (preferably a U.S. Geological Survey map) of the area for each site affected by construction (include as an attachment).

2. A description of the amount of property to be cleared, excavated, fenced or otherwise disturbed by the project and a description of the current land use and zoning and any vegetation for each project site affected by construction.

3. A description of buildings or other structures (i.e., transmission facilities), including dimensions, to be constructed or modified.

4. A description of the presence of wetlands or existing agricultural operations and/or threatened or endangered species or

critical habitats on or near the project site(s) affected by construction.

5. Describe any actions taken to mitigate any environmental impacts resulting from the proposed project (use attachment if necessary).

Note: The applicant may submit a copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to meet the requirements herein.

Dated: June 21, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

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