

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Part 1703**

RIN 0572-AB31

**Distance Learning and Telemedicine Loan and Grant Program**

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend its regulation concerning the Distance Learning and Telemedicine Grant Program. This proposed rule will promulgate regulations for a new loan program that will provide both loans and grants for distance learning and telemedicine projects benefiting rural areas. The regulation is necessary to implement a new loan program mandated by the Federal Agriculture Improvement and Reform Act of 1996. The regulation will establish, among other things, RUS' policy, the method of selecting projects to receive loans and grants and allocating the available funds, and the requirements for submitting an application for financial assistance.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent not later than May 16, 1997.

**ADDRESSES:** Submit written comments to Robert Peters, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW, STOP 1590, Room 4056, South Building, Washington, DC 20250-1590. RUS requests a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250-1590. Telephone number (202) 720-9554.

**SUPPLEMENTARY INFORMATION:****Classification**

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

**Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

**Regulatory Flexibility Act Certification**

In accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the following analysis of regulatory options that would minimize any significant impact on small businesses is provided. Title VII, section 704, of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (Public Law 104-127) amended Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 by authorizing the Secretary of Agriculture to make loans for distance learning and telemedicine services in rural areas. This proposed rule would amend 7 CFR part 1703 to set forth the rules for this new loan program to be administered by the RUS. The objectives of the proposed rule are to encourage and improve telemedicine and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

The new RUS Distance Learning and Telemedicine loan program would assist in providing modern telecommunication interconnectivity to educational and medical facilities in rural America. Through 4 years of Distance Learning and Telemedicine grant program activity, approximately 704 rural schools, serving hundreds of thousands of rural students, will gain access to improved educational resources through the information superhighway by sharing limited teaching resources and gaining access to libraries, training centers, vocational schools, and other institutions located in metropolitan centers. For telemedicine, approximately 500 rural medical facilities will gain access to improved medical care through linkage with other rural hospitals and major urban medical centers for clinical interactive video consultation, distance training of rural health care providers, management and transport of patient information, and access to medical expertise or library resources.

This proposed regulation would set forth the rules for the new loan program which would provide supplementary funding for distance learning and telemedicine services in rural areas. The

proposed regulation would optimize the use of a limited source of grant and loan funding by setting forth certain criteria which enables the Agency to distribute the amount of funding available among the greatest number of applicants in an economical, efficient, and orderly manner. The regulatory alternative would be to not publish a regulation; however, the desired regulatory purposes, to improve the access of people residing in rural areas to improved educational, learning, training, and health care services and to achieve the maximum use of funds available, would not be achieved.

Entities eligible for assistance under this proposed rule would be those entities that provide, or would provide, educational or health care services or the facilities needed to provide these services through the use of advanced telecommunications in rural areas. There is no good estimate, at this time, of the number of entities that would be affected by the proposed rule since the regulatory requirements would apply to only those entities which choose to apply for the financial assistance. However, RUS is estimating between 250 and 300 applications would be submitted annually under this program and of those applicants, between 30 and 50 grants and 100 and 120 loans or combination thereof would be awarded. RUS' existing Distance Learning and Telemedicine Grant Program, since its inception in 1993, has received nearly 900 applications for grant funding.

The various reporting and compliance requirements contained in this proposed rule for applicants are necessary to determine such factors as: eligibility; funding purposes; compliance with other Federal regulations; project costs and alternative funding sources; project feasibility; and need for educational and/or telemedicine services. Those reporting requirements imposed on recipients of financial assistance are necessary to ensure proper use of financing for approved purposes. Some of the required reporting documents include information generally maintained by certain types of entities (i.e., patients or students served, financial statements, contracts, audits, etc.). The information collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by the Agency to approve financial assistance and monitor the grantee or borrower performance.

The impact on small entities would be limited to the reporting and compliance regulations which were designed to minimize the burden in order to

encourage applicants. Even the compliance regulations are designed to only assure the Agency that the financial assistance was utilized for Act purposes and also are regulations for already imposed Government-wide financial assistance of any kind.

#### **Information Collection and Recordkeeping Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by June 16, 1997.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For further information contact Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, Rural Utilities Service. Telephone: (202) 720-0530. Fax: (202) 720-2734.

*Title:* Distance Learning and Telemedicine Loan and Grant Program.  
*OMB Number:* 0572-0096.

*Type of Request:* Revision of a previously approved information collection.

*Abstract:* The RUS currently implements a program that provides grants to rural community facilities, such as schools, hospitals, and medical centers, to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas and to improve rural access to reliable facsimile, document and data transmission, multi-frequency tone signaling services, 911 emergency service with automatic number identification, interactive audio and visual transmissions, voice mail services designed to record, store, and retrieve voice messages, and other advanced telecommunications services. RUS currently awards grants and is proposing to also award loan funds to projects that will improve the quality of

life of people residing in rural areas by improving their access to improved educational, training, and medical services; and, their access to opportunities that rely on these advanced communication and information technologies to provide such services. For grants, RUS funds up to 70 percent of any project selected, and requires at least a 30 percent matching contribution from the grant applicant. For applicants who voluntarily request loans, RUS proposes to fund up to 90 percent of any project selected, and requires at least a 10 percent matching contribution from the loan applicant.

In order for the public to receive the benefits of the new loan program, they need to submit an application and the supporting information for RUS to determine if they meet the eligibility requirements. The Distance Learning and Telemedicine Loan and Grant Program regulations (7 CFR 1703, subpart D), establish the method of selecting projects to receive grants and loans, the method of allocating the available funds, the method of determining the beneficiaries of the program, and the requirements for the application to be submitted to RUS, the method of notifying potential applicants of maximum and minimum amounts of grant and loan funds that will be considered for a single application.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Business or other for profit and non-profit institutions.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses per Respondent:* 29.

*Estimated Total Annual Burden on Respondents:* 18,248.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720-0812.

Send comments regarding this information collection requirement, to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4034, South Building, Washington, DC 20250-1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal**

**Register.** All comments will become a matter of public record.

#### **National Environmental Policy Act Certification**

RUS has determined that this proposed 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.

#### **Program Affected**

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

#### **Intergovernmental Review**

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) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

#### **Background**

Title 7, CFR part 1703, subpart D, was originally published in the **Federal Register** February 26, 1993, (58 FR 11507), and became effective March 29, 1993. The Agriculture Improvement and Reform Act of 1996 (FAIR Act) modified the Distance Learning and Telemedicine (DLT) grant program by creating a loan component. The regulation was modified and published as a final rule in the **Federal Register** on June 27, 1996, (61 FR 33622), to incorporate the changes to the grant program mandated by the FAIR Act, excluding those provisions for administering a loan program since funds appropriated in fiscal year 1996 could only be used for grants. This proposed rule, while based in part on the existing rule, will (1) establish criteria for loan and grant eligibility, (2) simplify the determination for the comparative rurality calculation, and (3) place

greater emphasis on the need for distance learning or telemedicine services in the scoring criteria.

#### *Criteria for Loan and Grant Eligibility*

The Administrator determines the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the government of the financial assistance, based on the recipient's ability to repay and the full utilization of the funds available.

RUS proposes to use the National School Lunch Program (NSLP) to assist in determining the mix of grants, loans, and loan-grant combinations for applicants requesting financial assistance. The extent of participation by residents of an area in the NSLP is a widely accepted measure of the relative well-being of the area. RUS believes that using NSLP ratings in the allocation of grant and loan funds furthers the FAIR Act's purpose of providing modern DLT services in the most needy parts of rural America. A high rate of eligibility for school lunch assistance indicates a low relative income in the area and less ability to repay loans. Grants will be made available to only those otherwise eligible applicants determined by the Administrator, after review of the financial information furnished by the applicant, to have the least ability to repay the full amount of the assistance.

RUS is proposing to use a subjective method to score, up to 45 points, documentation submitted to support "the need for services and benefits derived from services" [see 1703.117(b)(1)]. RUS believes that the need for services and the benefits derived from the services should be a critical factor in determining which application will be successful in obtaining financial assistance. RUS could not determine an objective method to use in scoring this particular criterion due to the nature of some of the benefits to be derived that are priceless, such as lives saved, students attending higher education institutions, etc. RUS would like to receive suggestions from commentors on any objective method that could be used or indications from commentors that the subjective method is acceptable.

The 1995 statistics for the NSLP indicate that the percentages to be used to establish eligibility for loans and grants will result in financial assistance in the form of loans for approximately 75 percent of qualifying applications. However, before an applicant may be awarded a loan, the applicant must be

able to show that the loan will be repaid within the repayment period and at the interest rate under which financial assistance is offered. In addition, this proposed rule allows for third party guarantees as evidence of an applicant's ability to repay a loan. RUS believes that the use of third party secured loan guarantees will provide adequate loan security and will increase the number of successful applications for the loan program.

#### *Rurality Calculation*

The rurality calculation used in the existing regulation was based on a scale which looked at the characteristics of an entire county instead of the sites in which financial assistance being requested was to be used. This methodology placed certain areas with "rural" characteristics, yet located in semi-urban counties, at a disadvantage. The proposed methodology will address this situation by being more "site" specific when determining rural needs and characteristics. For purposes of this determination, an area shall be considered rural if it is included within the boundaries of any incorporated or unincorporated city, village, or borough having a population not in excess of 10,000 inhabitants.

#### *Need for Services*

More emphasis has been placed on the need for services and benefits derived from those services in the scoring criteria in this proposed rule versus the existing rule. In seeking support for this criterion, applicants may submit documentation explaining (1) the economic, education or health care challenges facing the community, (2) proposed plans to address those challenges, and (3) how financial assistance will help and how the project could not be accomplished without RUS funding. This scoring criterion seeks to measure the true "outcomes" of a proposed project and its derived benefits and therefore RUS believes it merits increased scoring value. The points available for this scoring criterion have been increased to represent 26 percent of the total possible points available for any project.

#### **List of Subjects in 7 CFR Part 1703**

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Loan programs—education, Loan programs—health care, Loan 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 proposed to be 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 Loan and Grant Program**

Sec.

- 1703.100 Purpose.
- 1703.101 Policy.
- 1703.102 Definitions.
- 1703.103 Applicant eligibility and allocation of funds.
- 1703.104 Allowable grant and loan funding percentage.
- 1703.105 Grant and loan purposes.
- 1703.106 In-kind matching provisions.
- 1703.107 Ineligible loan and grant purposes.
- 1703.108 Maximum and minimum sizes of a grant and a loan.
- 1703.109 The funding application.
- 1703.110 Conflict of interest.
- 1703.111 [Reserved]
- 1703.112 Determination of types of funding.
- 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 provisions.
- 1703.119 Appeal provisions.
- 1703.120–1703.121 [Reserved]
- 1703.122 Further processing of selected applications.
- 1703.123–1703.125 [Reserved]
- 1703.126 Disbursement of loan and grant funds.
- 1703.127 Reporting and oversight requirements.
- 1703.128 Audit requirements.
- 1703.129 Repayment of loans.
- 1703.130–1703.134 [Reserved]
- 1703.135 Grant and loan administration.
- 1703.136 Changes in project objectives or scope.
- 1703.137 Grant and loan termination provisions.
- 1703.138–1703.139 [Reserved]
- 1703.140 Expedited telecommunications loans.

#### **Appendix A to Subpart D of Part 1703—Environmental Questionnaire**

#### **Subpart D—Distance Learning and Telemedicine Loan and Grant Program**

##### **§ 1703.100 Purpose.**

The purpose of this subpart is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced

technologies by students, teachers, medical professionals, and rural residents.

**§ 1703.101 Policy.**

(a) RUS recognizes that the transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will award loans and grants under this subpart to distance learning and telemedicine projects that will improve the access of people residing in rural areas to improved educational, learning, training, and health care services. Unless a distinction is made in the various sections of this subpart, all aspects of this subpart will apply to all funding requests.

(b) In providing assistance under this subpart, RUS will give priority to rural areas that it believes have the greatest need of distance learning and telemedicine services. RUS believes that generally the need is greatest in economically challenged areas and those requiring high costs to serve. This program is consistent with provisions of the 1996 Telecommunications Act (Public Law 104-104, 110 Stat. 56) that designates telecommunications service discounts for schools, libraries, and rural health care providers providing benefits to rural end-users. 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 serve 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.

(d) All rural institutions are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

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

(f) Financial assistance under this subpart will consist of grants or cost of money loans, or both. The Administrator shall determine the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the Federal Government of the financial assistance, based on the ability of the

recipient to repay and with the full utilization of funds made available to carry out this subpart.

(g) The Administrator may provide a cost of money loan to entities using telemedicine and distance learning services, and, to entities providing or proposing to provide telemedicine service or distance learning service to other persons at rates calculated to ensure that the benefit of the financial assistance is passed through to the other persons.

(h) The Administrator may provide a cost of money loan under this subpart to a borrower of a telecommunications or electric loan under the Rural Electrification Act of 1936. A borrower receiving a cost of money loan under this subpart shall:

(1) Make the funds provided available, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the funding, to entities that qualify as distance learning and/or telemedicine projects satisfying the requirements of this subpart.

(2) Use the funds provided to acquire, install, improve, or extend a system referred to in this subpart.

**§ 1703.102 Definitions.**

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

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

*Applicant* means an eligible organization which applies for funding under this subpart.

*Champion community* means any community or area so designated under the proper procedures.

*Completed application* means an application that includes all those items specified in § 1703.109 in form and substance satisfactory to the Administrator.

*Comprehensive rural telecommunications plan* means the plan submitted by an applicant in accordance with § 1703.109(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 purposes for which the distance learning and telemedicine funding is provided. Each consortium shall be composed of a minimum of two eligible entities that meet the requirements of § 1703.103.

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

*Cost of money loan.* The term *cost of money loan* means a loan made under Title XXIII bearing interest at a rate equal to the then current cost of money to the Federal Government, at the time the feasibility study is completed, for loans of similar maturity not to exceed 10 years.

*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 one area, whether rural or not, to students and/or 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.

*DLT borrower* means an entity that has outstanding loans under the provisions of Title XXIII.

*Economic useful life* as applied to facilities financed under Title XXIII means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

*Eligible equipment* means computer hardware and software, audio and visual equipment, computer network components, telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services. Land, buildings, or building construction are not considered eligible equipment (see § 1703.107(a)(10)).

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

*Empowerment Zone and Enterprise Community (EZ/EC)* means any community whose designation as such

pursuant to 26 U.S.C. 1391 et seq. is in effect at the time RUS agrees to provide financial assistance.

*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, vocational and adult training and education centers, libraries, 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 rural telemedicine program through a project funded under this subpart.

*End user site* means a facility that is part of a network or telecommunications system that is utilized by end users.

*Financial assistance* shall consist of grants, cost of money loans, or both, made under Title XXIII.

*Grant documents* means the letter of agreement, including any amendments and supplements thereto, between RUS and the grant recipient.

*Grantee* means a recipient of a grant from RUS to carry out the purposes of Title XXIII.

*Hub* means control center of a network or telecommunications system.

*Instructional programming* means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

*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 orally 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.

*Loan documents* mean the loan agreement, note, and security agreement, including any amendments and supplements thereto, between RUS and the DLT or Telecommunications/Electric borrower.

*Local exchange carrier* means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

*Matching funds* means the applicant's funding contribution for allowable purposes.

*National School Lunch Program (NSLP)* means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

*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.

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

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture formerly known as REA. See 7 CFR 1700.1.

*Scope of work* means a detailed plan of work that has been approved by the Administrator to be performed by the applicant using funding provided under this subpart.

*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 carrier* means any provider of telecommunications services.

*Telecommunications/Electric borrower* means an entity that has outstanding electric or telephone RUS and/or Rural Telephone Bank loans or loan guarantees under the provisions of the Act.

*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 health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

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

#### **§ 1703.103 Applicant eligibility and allocation of funds.**

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

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate, a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or any rural community facility. A state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant; 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; or

(3) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), 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 in 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.

(c) A borrower of an electric or telecommunications loan under the Rural Electrification Act of 1936 is eligible for a cost of money loan only.

(d) All applicants for financial assistance, with the exception of applicants requesting a loan and having the minimum required score, will be ranked by the type of application (health care or educational) and total points scored. Grant funds available for medical and educational applicants will be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received. Applications will be ranked only in one category based on the predominant use of the project.

#### **§ 1703.104 Allowable grant and loan funding percentage.**

(a) Financial assistance, except as noted in paragraph (b) of this section, may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the cost of allowable purposes outlined in § 1703.105 provided that no financial assistance may exceed the maximum grant or loan amount for the year in which the grant or loan is made.

(b) Cost of Money Loans requested by an applicant may be used by eligible organizations for distance learning and telemedicine projects to finance up to 90 percent of the cost of allowable loan purposes outlined in § 1703.105, provided that no loan may exceed the maximum loan amount for the year in which the loan is made. Financial assistance applications that do not request a loan and qualify for a loan or combination loan and grant will be funded up to 70 percent of the cost of allowable purposes.

#### **§ 1703.105 Grant and loan purposes.**

(a) Grants and loans shall be limited to costs associated with the initial capital assets associated with the project. Grant and loan funds as set out in the last sentence of this section shall not exceed twenty percent (20 percent) of the requested financial assistance. The following are allowable grant and loan purposes:

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

(b) Acquiring instructional programming; and

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the financial assistance.

#### **§ 1703.106 In-kind matching provisions.**

(a) In-kind matching, the applicant's minimum funding contribution (specified in § 1703.104) for allowable purposes, is generally required in the form of cash. However, in-kind contributions for the purposes listed in § 1703.105 may be substituted for cash.

(b) In-kind items listed in § 1703.105 must be non-depreciated or new assets with established monetary value. Manufacturers or service providers discounts are not considered in-kind matching.

(c) Funding may be provided for end user sites. Funding may also be provided for hubs located in rural or non-rural areas, if they are necessary to provide distance learning and/or telemedicine services to rural residents at end user sites.

#### **§ 1703.107 Ineligible loan and grant purposes.**

(a) Without limitation, funding under this subpart will not be provided:

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

(2) 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;

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

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

(5) To purchase equipment that will be owned by the local exchange carrier

or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

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

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

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

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

(12) For any purpose that the Administrator has not specifically approved; or

(13) Except for leases provided in § 1703.105, to pay the cost of recurring or operating expenses for the project.

(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) Loans can be used to cover the costs of telecommunications transmission facilities if no telecommunications carrier will install such facilities under the Act or through other financing procedures within a reasonable time period and at a cost to the applicant that does not jeopardize the feasibility of the project, as determined by the Administrator.

#### **§ 1703.108 Maximum and minimum sizes of a grant and a loan.**

Applications for grants and loans to be considered under this subpart will be subject to limitations on the proposed amount of funding. The Administrator may establish the maximum amount of financial assistance to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the **Federal Register** not more than 45 days after funds are made available for the fiscal year to carry out this subpart. The minimum size of a grant and/or loan is \$50,000.

#### **§ 1703.109 The funding application.**

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

(a) 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; and
- (4) A budget for capital expenditures reflecting the line item costs for both the grant and/or loan funds and other sources of funds for the project.

(b) 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 shall contain the following 9 categories:

- (1) A description of why the project is needed.
- (2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance and types of educational and/or medical services to be offered by the project, and the benefits to the rural residents.
- (3) A description of the applicant, documenting eligibility with § 1703.103.
- (4) An explanation of the total cost of the project including a breakdown of the RUS funding required and the source of funding for the remainder of the project.
- (5) A statement that the project is either a 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 general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used.
- (7) 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.

(8) The applicant must certify that facilities using financial assistance do not duplicate adequate established telemedicine services or distance learning services. RUS will make the final determination whether or not financial assistance requested by an applicant will duplicate such adequate established services.

(9) A listing of the location of each end user site [city, town, village, borough or rural area plus the state] discussing how the appropriate National School Lunch Program eligibility percentage was determined in accordance with § 1703.112. These

percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct.

(c) Financial Information. The applicant must provide financial information to support the need for the funding requested for the project. It must show its financial capacity to carry out the proposed work, and show project feasibility. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, 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, reflecting net worth, 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.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years after completion of the project. This documentation should include sources of sufficient income or revenues to pay 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.

(2) For applicants requesting a loan and applicants who qualify for a loan or a combination loan/grant in accordance with § 1703.112, the documentation must demonstrate the ability to repay the loan. RUS will consider a secured loan guarantee by a third party as evidence of the ability of the applicant to repay a loan.

(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), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(5) For RUS telecommunications and electric borrowers applying for a cost of money loan, the only financial information required in support of that application is the respective most recent Annual Report to RUS (i.e. RUS Form 479, Form 7, or Form 12).

(d) 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 educational or health care endeavor and any project similar to the proposed project. Experience in a similar project is desirable but not required.

(e) Funding commitment from other sources. The applicant must provide evidence, in form and substance satisfactory to the Administrator, that all funds in addition to funds provided under this subpart are committed and will be used for the proposed project.

(f) Telecommunications System Plan. A Telecommunications System Plan, consisting of the following, is required. The items in paragraphs (f)(4) and (5) of this section are needed only when the applicant is requesting loan funds for telecommunications transmission facilities:

(1) 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.

(2) 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 RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (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.

(4) Results of discussion with local exchange carriers serving the project area addressing concerns in § 1703.107(c).

(5) 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.

(g) 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.

(h) 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 if clearing house(s) exists for the state(s) in which project is located; and

(8) Restrictions on lobbying. For an application for funding 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).

(i)(1) Environmental impact and historic preservation. The applicant must provide details of the project's impact on the environment and historic preservation. Grants and loans made under this part are subject to 7 CFR part 1794 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 7 CFR 1794.1. The application shall contain a separate section entitled "Environmental Impact of the Project."

(2) Environmental information. An "Environmental Questionnaire," appendix A 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 from RUS.

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

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

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

(m) 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.

(n) Evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act 7 U.S.C. 1921 et seq.). The applicant should indicate if such a plan does not exist.

(o) A depreciation schedule covering all assets of the project. Those assets for

which financial assistance is being requested should be clearly indicated.

(p) 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.

(q) 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 funding decisions. The Administrator may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

#### § 1703.110 Conflict of interest.

At any time prior to the disbursement of a grant or loan 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.

#### § 1703.111 [Reserved]

#### § 1703.112 Determination of types of funding.

(a) To maximize the use of available funding and to obtain the maximum repayment to the Federal Government, RUS will determine if an applicant will



be awarded a grant, loan or a combination of both loans and grants based upon the following:

(1) The percentage of students eligible to participate in the National School Lunch Program in the areas where the end user sites comprising the project are located; and

(2) The applicant's ability to pay for the project.

(b) The methodology contained in this section will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the National School Lunch Program for each end user site which must be certified as being correct by the appropriate State or local organization administering the program. The type of financial assistance will be determined as follows:

(1) If the end user site(s) for the project have, or are located in school districts which have, from 0–32 percent student eligibility in the National School Lunch Program, the project qualifies for a loan.

(2) If the end user site(s) for the project have, or are located in school districts which have, from 33–60 percent student eligibility in the National School Lunch Program, the project qualifies for a loan and may be eligible for some grant funds.

(3) If the end user site(s) for the project have, or are located in school districts which have, from 61–100 percent student eligibility in the National School Lunch Program, the project qualifies for a grant. The applicant may indicate its desire to be considered for a loan or a combination loan and grant if denied a grant provided the financial data required in § 1703.109(c) indicates the ability to repay a loan. Grant applicants should indicate if they desire to be considered for a loan.

(c) The following guidelines will be used to determine the applicable National School Lunch Program eligibility percent for a particular end user site:

(1) Public schools or non profit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(2) Schools and institutions of higher learning ineligible to participate in the National School Lunch Program and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(d) If all the end user sites in a proposed network or system fall within

the same percentile category, the project will be eligible for the type of financial assistance set forth in paragraph (b) of this section.

(e) If end user sites fall within different percentile categories the eligibility percentages associated with each end user site will be averaged to determine the percentile category and type of financial assistance the applicant is eligible for. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(f) For those applicants which qualify for a combination loan/grant, the Administrator will determine the amount of grant funding the applicant will receive, if any, based upon analysis of the financial condition of the applicant as reflected by the information submitted under § 1703.109(c). The minimum amount of grant funding will be \$5,000.

(g) RUS will submit a letter to those applicants being offered financial assistance in the form of a loan, or a combination of a loan and grant, outlining terms and conditions of such assistance. The applicant will have 15 days from the date of the letter to accept the terms and conditions in the letter. If the applicant fails to respond within this time the Administrator may withdraw the offer of financial assistance and the applicant will have no right to appeal the withdrawal.

#### **§ 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, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked "Attention: Assistant Administrator, Telecommunications Program".

(b) Applications for loans can be submitted at any time. RUS will review each application for completeness in accordance with § 1703.109, 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 for loan funds during the fiscal year (FY) that the application is submitted, the applicant must submit any information needed to complete the application by June 30. If this review concludes that a loan is feasible and the application receives the required minimum number of points as determined using the scoring criteria in § 1703.117, the Administrator will immediately process the application.

The minimum number of points required for a loan application to be immediately processed will be published in the **Federal Register** each fiscal year.

(c) Applications requesting grant funds must be submitted to RUS to arrive not later than May 31, 1997, if the applications are to be considered during FY 1997. Beyond FY 1997, all applications requesting grant funds must be submitted to RUS to arrive not later than April 30 if the applications are to be considered during the fiscal year the application is submitted. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.109, 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 for grant funds, the applicant must submit the information to complete the application by May 31 in FY 97 and April 30 beyond FY 97. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next fiscal year.

(d) The Administrator will publish, at the end of each fiscal year, a notice in the **Federal Register** of all completed applications receiving funding under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 1400 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) All applicants must submit an original and two copies of a completed application. A grant applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the state, at the same time it submits an application to RUS. All applications must include the information described in § 1703.109.

#### **§§ 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.

Applicants shall address the following criteria:

- (1) The need for services and benefits derived from services;
- (2) The comparative rurality of the proposed project service area;
- (3) The ability to leverage resources;
- (4) Innovativeness of design;
- (5) Connectivity with outside networks;
- (6) The cost effectiveness of the design;
- (7) Project participation in EZ/EC (Empowerment Zone and Enterprise Communities); and
- (8) Project participation in Champion communities.

(b) *Scoring criteria*—(1) *The need for services and benefits derived from services.* (i) This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the funding application that reflects the need for services and benefits derived from the services proposed by the project. Up to 45 points can be assigned to this criterion.

(ii) The Administrator will consider the extent of the applicant's documentation explaining the economic, education or health care challenges facing the community; the applicants proposed plan to address these challenges; how the financial assistance can help; and why the applicant cannot complete the project without a loan or grant. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational and/or health care underserved nature of the applicant's proposed service area, and any justification for specific educational and/or medical services which are needed and will provide direct benefits to rural residents. Some examples of benefits to be provided by the project include, but are not limited to:

- (A) Improved education opportunities for a specified number of students;
- (B) Travel time and money saved by telemedicine diagnosis;
- (C) Number of doctors retained in rural areas;
- (D) Number of additional students electing to attend higher education institutions;
- (E) Lives saved due to prompt medical diagnosis and treatment;
- (F) New education courses offered, including college level courses;
- (G) Expanded use of educational facilities such as night training;
- (H) Number of patients receiving telemedicine diagnosis;
- (I) Provision of training, information resources, library assets, adult

education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(iii) 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).

(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.

(2) *The comparative rurality of the proposed project service area.* (i) The methodology contained in this section is used to evaluate the relative rurality (i.e. population) 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, those locations are given a score according to the population of the area where the end user sites are located. Up to 35 points can be assigned to this criterion.

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

(A) Exceptionally Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) Urban Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 10,000 inhabitants.

(iii) The applicant will receive points as follows:

(A) There are a total of 35 possible points for this criterion. The maximum number of points each end user site can receive is determined by dividing the total possible points for this criterion, 35, by the total number of end user sites. If a hub is utilized as an end user site, the hub will be considered as an end user site.

(B) If the end user site is located in an Exceptionally Rural Area, it will receive the maximum number of points each end user site. If the end user site is located in a Mid-Rural Area, it will

receive 50 percent of the maximum number of points each end user site. If the end user site is located in an Urban Area, it will receive 0 percent of the maximum number of points each end user of the applicant can receive.

(C) The total points for each end user site will be added to reach a final point total for the project.

(D) An application must receive a minimum of 18 points under this criterion to be eligible for any financial assistance.

(3) *The ability to leverage resources.*

(i) This section is used to evaluate the ability of the applicant to contribute financially to the project and to secure other non-Federal sources of funding. Documentation submitted in the support of the funding application should reflect any additional financial support for the project from non-Federal sources above the applicant's required percent matching of the RUS financial assistance 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 35 points.

(ii) The applicant will receive points as follows:

(A) Matching for allowable financial assistance purposes greater than 30 percent, but less than or equal to 50 percent of the RUS financial assistance—10 points.

(B) Matching for allowable financial assistance purposes greater than 50 percent, but less than or equal to 100 percent of the RUS financial assistance—20 points.

(C) Matching for allowable financial assistance purposes greater than 100 percent, but less than or equal to 150 percent of the RUS financial assistance—25 points.

(D) Matching for allowable financial assistance purposes greater than 150 percent, but less than or equal to 200 percent of the RUS financial assistance—30 points.

(E) Matching for allowable financial assistance purposes greater than 200 percent of the RUS financial assistance—35 points.

(4) *Innovativeness of project.* This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the funding application that reflects the innovative nature of the project. The applicant should explain the extent to which, if any, the project is an innovative approach to either delivering or using telecommunications to address the needs of the community, and how the project differs in approach from the

typical educational or health care application of technology. Up to 20 points can be assigned to this criterion.

(5) *Connectivity with outside networks.* (i) This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the extent to which the proposed project can be connected to other educational and/or health care networks. Up to 20 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed project will interconnect with other existing networks at the regional, statewide, national or international levels. RUS believes that to the extent possible, educational and health care 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. The ability to connect to the internet alone can not be used as the sole basis to fulfill this criteria.

(iii) 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.

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

(ii) Consideration will be given to the extent that the proposed technology or technologies for delivering the proposed educational and/or health care services for the project service area are the most cost effective for the project proposed. 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. The Administrator will consider the applicant's documentation comparing various systems and technologies, whether the applicant's system is the most cost-effective system, and whether buying or leasing specific equipment is more cost effective. Points will be deducted from the scores of the applications that fail to utilize existing telecommunications facilities that could provide the transmission path for the needed services.

(7) *Project participation in EZ/ECs.* This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the designation of Empowerment Zones and Enterprise Communities (EZ/EC) included as beneficiaries of the proposed project. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC.

(8) *Project participation in Champion communities.* This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the designation of Champion communities included as beneficiaries of the proposed project. Five (5) points will be assigned if at least one end user site is located in a Champion community.

#### **§ 1703.118 Other application selection provisions.**

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

(b) Regardless of the number of points an application receives in accordance with § 1703.117 or the feasibility of the proposed project, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(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;

(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 § 1703.109(d)(1) at the lower amount;

(4) Award a grant to an applicant whose application carries out the priorities listed in the scoring criteria in such a way to make the application unique; or

(5) Award a grant to an applicant which would normally qualify for other financial assistance, if the project achieves one or more of the following:

(i) Utilizes cutting edge technology to provide a solution to a unique problem;

(ii) Provides services otherwise not possible in an extremely isolated geographic area; or

(iii) Provides inordinate quantifiable benefit to rural communities relative to the amount of financial assistance requested.

(c) The Administrator will not approve an application if the Administrator determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.109(d)(1);

(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 subpart or comply with policies of the Distance Learning and Telemedicine Loan and Grant Program set forth in § 1703.101.

(d) 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, and/or offer the applicant loan funds in addition to the grant funds, if the Administrator determines that, notwithstanding a lower grant award, the project will show financial feasibility in accordance with § 1703.109(d)(1), and continues to meet all other provisions of this subpart. 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 (e) of this section.

(e) The Administrator will provide the applicant an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(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. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.119.

#### **§ 1703.119 Appeal provisions.**

All qualifying applications under this subpart will be scored based on criteria in section § 1703.117. A determination will be made by the Administrator based on the highest ranking applications and the amount of funds available for grants and loans. All applicants will be notified in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, the applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made in writing within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant. An appeal based solely upon the type of financial assistance the applicant qualifies for will not be considered.

#### **§§ 1703.120-1703.121 [Reserved]**

#### **§ 1703.122 Further processing of selected applications.**

(a) During the period between the submission 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 financial assistance 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 financial assistance will be required to submit RUS Form 479-A, "Distance Learning and Telemedicine Technical Questionnaire."

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

(1) The financial assistance documents will include a letter of agreement for grants; loan documents, including third party guarantees, for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement and the loan documents will contain, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the funding, supplemental funds, required of the project and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents will contain covenants and conditions the Administrator deems necessary or desirable to provide assurance that the loan will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to the Administrator.

(4) DLT borrowers must, before receiving any advances of loan funds,

provide security that is adequate, in the opinion of the Administrator, to assure repayment, within the time agreed, of all loans to the borrower under Title XXIII. This assurance will generally be provided by a first lien upon all of the borrower's assets or such portion thereof as shall be satisfactory to the Administrator. The Administrator may consider the projected revenues from the facilities subject to the lien.

(5) Security may also be provided by third-party guarantees, letters of credit, pledges of revenue or other forms of security satisfactory to the Administrator.

(6) The mortgage, deed of trust, security agreement and other loan documents required by the Administrator in connection with loans under Title XXIII shall contain such pledges, covenants, and other provisions as may, in the opinion of the Administrator, be necessary or desirable to secure repayment of the loan.

(7) If the facilities financed do not constitute a complete operating system, the DLT borrower shall provide evidence demonstrating, to the Administrator's satisfaction, that the borrower has sufficient contractual or other arrangements to assure that the facilities financed will provide adequate and efficient service.

(f) Until the letter of agreement or loan documents have 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 of such rescission will be sent promptly to the applicant.

#### **§§ 1703.123-1703.125 [Reserved]**

#### **§ 1703.126 Disbursement of loan and grant funds.**

(a) For financial assistance of \$100,000 or greater, prior to the disbursement of funds, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR 3015.17.

(b) Financial assistance will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes set

forth in this subpart, by the following process:

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

(2) After receipt of a properly completed SF 270, RUS will review for accuracy and if the form is satisfactory will schedule payment. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1997, funds will be advanced in accordance to 7 CFR 1744.69.

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

(d) Concurrent grant and loan funds will be disbursed on a pro rata distribution basis.

#### **§ 1703.127 Reporting and oversight requirements.**

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are disbursed by the applicant.

(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 annual report.

(c) RUS will monitor recipients as the Administrator determines necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes.

(d) Recipients 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. Recipients are to submit an original and one copy of all reports submitted 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) 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

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

#### **§ 1703.128 Audit requirements.**

The grant and DLT borrower loan recipients will provide an audit report in accordance with 7 CFR part 3015, subpart I. For grant recipients the audit requirements only apply to the year(s) in which grant funds are expended. For DLT borrowers the audit requirements apply until the loan is repaid. Audits must be prepared in accordance with generally accepted government auditing standards (GAGAS) using publication, "Standards for Audit of Governmental Organization, Programs, Activities and Functions." RUS Telecommunications/Electric borrowers receiving cost of money loans will be subject to the same audit requirements for these loans as are provided for in 7 CFR part 1773.

#### **1703.129 Repayment of loans.**

The term of cost of money loans will be based on the life of the facilities to be financed, not to exceed 10 years. If the recipient requests, a one year deferment of principal will be included. In special hardship cases, which the recipient must justify, the Administrator may approve a two year deferment of principal. Interest on the loan will be due and payable during the principal deferral period. RUS will establish uniform debt service payments based on the total amortization period.

#### **§§ 1703.130–1703.134 [Reserved]**

#### **§ 1703.135 Grant and loan administration.**

(a) The Administrator will review recipients as necessary to determine whether funds were expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the financial assistance is expended only for approved purposes. The recipient 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 recipient's premises, for review by the RUS representatives, the recipient'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 recipient's financial statements or records, and

program performance for the funding awarded under this subpart. The recipient 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 7 CFR parts 3015 through 3018, as appropriate. 7 CFR parts 3015 and 3016 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 recipient 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 funds.

#### **§ 1703.137 Grant and loan termination provisions.**

(a) *Termination for cause.* The Administrator may terminate any financial assistance in whole, or in part, at any time before the date of completion of funding disbursement, whenever it is determined that the recipient has failed to comply with the conditions of the financial assistance. The Administrator will promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* The Administrator or the recipient may terminate financial assistance 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 recipient 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 applicant for the Federal share of the noncancelable obligations, properly incurred by the recipient prior to termination.

**§§ 1703.138–1703.139 [Reserved]****§ 1703.140 Expedited telecommunications loans.**

*General.* The Administrator will expedite consideration and determination of an application for a loan or a request for advance of funds submitted by an RUS telecommunications borrower that supports the project seeking financial assistance under this subpart. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

**Appendix A 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 application. 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 modifications of existing structures, 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 of real property), involving construction of transmission facilities, including cabling, microwave towers, satellite dishes; or, disturbance of property of .99 acres or greater for *each* project site.

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

4. 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 applicant must supply evidence that the State Historic Preservation Officer (SHPO) has cleared development regarding any historical properties).

5. 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, or

physical disturbance of real property of .99 acres or greater, the following information must be submitted (7 CFR 1703.109(i)(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: April 7, 1997.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 97-9422 Filed 4-15-97; 8:45 am]

BILLING CODE 3410-15-P