



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1703, 1734 and 1735

RIN 0572-AC37

Distance Learning and Telemedicine Loan and Grant Programs

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; request for comments.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is issuing a final rule to streamline, revise, and update the Distance Learning and Telemedicine (DLT) Grant Program, to minimize the burden of applying for and awarding grants. The Agency's goal is to reduce the regulatory burden on grant applicants and to ensure that grant funds are awarded for projects with the most demonstrable need. The Agency will follow this final rule affording the public an opportunity to comment with a subsequent final rule.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments on this Rule by any of the following methods:

- Federal Rulemaking Portal at <http://www.regulations.gov> . Follow instructions for submitting comments.
- Postal Mail/Commercial Delivery: Please send your comment addressed to Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, D.C. 20250-1522.

Additional information about the Rural Development and its programs is available on the Internet at <http://www.rd.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Deputy Assistant Administrator, Policy and Outreach Division, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1599, 1400 Independence Ave., SW, Washington, DC 20250-1550, Telephone number: (202) 690-4673.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 12372

This final rule is not subject to the requirements of Executive Order 12372, “Intergovernmental Review,” as implemented under USDA’s regulations at 7 CFR part 3015.

Executive Order 13771

This action is expected to be an Executive Order 13771 deregulatory action. This rule is expected to provide meaningful burden reduction by removing interim steps that delay the application process and reducing the amount of resources needed to process and award grant applications.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1970. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.855, Distance Learning and Telemedicine Loans and Grants. The Catalog is available on the Internet at <http://www.cfda.gov> and the General Services Administration's (GSA's) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the

Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO’s online bookstore at <http://bookstore.gpo.gov>.

Unfunded Mandates

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

E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Rural Development has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development’s Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov*.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact

the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Information Collection and Recordkeeping Requirements

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0096 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

Rural Development is a mission area within the USDA comprised of the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants,

and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America.

RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and conservation, and cultural and historic preservation.

DLT grants and loans are designed to encourage and improve telemedicine and distance learning services in rural areas through the use of computer networks and related advanced technologies by students, teachers, medical professionals, and rural residents. RUS believes that need is often greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. RUS gives priority to rural areas that the Agency believes have the greatest need for distance learning and telemedicine services based on the criteria outlined in the program regulation 7 CFR part 1734. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. The DLT Program continues to implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) (7 U.S.C. 950aaa et seq.) to encourage and improve telemedicine services and distance learning services in rural areas.

Under this rulemaking, RUS is streamlining and revising the DLT Grant Program to minimize the burden of the application and selection processes in this competitive grant program and to ensure that grants are awarded for projects with the most demonstrable need. In order to reduce time required to announce the program on an annual basis, the agency will no longer publish a

Notice of Funds Availability and will ensure that all pertinent information related to the application period is posted in the annual funding opportunity posted on Grants.gov, as required by 2 CFR 200.203, and include the information on the program website and in the program application guide, which will be linked to the funding opportunity posting. This rulemaking applies to the DLT Grant Program section of the regulation.

Changes to the Regulation:

Changes to the DLT grant program regulation are statutory requirements and non-statutory issues. The statutory requirement changes are as follows:

- A) In 7 CFR part 1703, subpart E (newly designated 7 CFR part 1734, subpart B), revises the “Appeals” section. In review of the guiding statute, program appeals are defined as applying only to RUS Telecommunications and Electric Borrowers.

- B) In 7 CFR part 1703, subpart D (newly designated 7 CFR part 1734, subpart A), The Agency is revising this regulation to make RUS Telecom and Electrics borrowers eligible to apply for grants. In review of the guiding statute RUS Telecom and Electric Borrowers are not restricted to DLT loans only.

- C) The Agency is now making broadband facilities an eligible grant purpose. In the past, to leverage appropriations to their fullest, the Agency restricted transmission facilities from being an eligible purpose and focused the program on end user equipment. In today’s environment, broadband facilities have become an integral part of providing distant learning and telemedicine services and therefor the Agency has decided to include them

as an eligible grant purpose.

D) In 7 CFR part 1703, 7 CFR part 1734 and 7 CFR part 1735 make administrative updates to reflect changes affected by this rule.

Other than the statutory changes, the Agency is affording the public the opportunity to comment on the following non-statutory changes which are as follows:

A) Relocate the DLT Loan and Grant Program from 7 CFR part 1703, subparts D, E, F and G to 7 CFR part 1734, subparts A, B, C, and D.

B) In 7 CFR part 1703, subpart D (newly designated 7 CFR part 1734, subpart A), remove the definitions of the National School Lunch Program (NSLP), Empowerment Zone / Enterprise Community (EZ/EC), and Champion Community.

C) In 7 CFR part 1703, subpart E (newly designated 7 CFR part 1734, subpart B), remove points for scoring the criteria from the code of Federal Regulations (CFR) which is used for determining the competitive need and eligibility among submitted applications. Instead, publish the points for scoring the criteria in the application guide and on the program website, and update as needed. This change is being made to allow the DLT program to keep up with changes in the industry and the landscape in rural America.

D) In Subparts E, F and G (newly designated 7 CFR part 1734, subparts B, C, and D), remove references to the publication of notices in the *Federal Register*. In order to reduce time required to announce the program on an annual basis, the agency will no longer publish these notices and will ensure that all pertinent information related to the application period is posted in the annual funding opportunity posted on Grants.gov, as required by 2 CFR 200.203, and include the information on the program website and in the program application guide, which will be linked to the funding opportunity posting.

List of Subjects

7 CFR Part 1703

Community development, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1734

Community development, Grant programs-education, Grant programs-health, Loan programs-education, Loan programs-health, Rural areas.

7 CFR Part 1735

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications, Telephone.

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

PART 1703—RURAL DEVELOPMENT

1. Revise the authority citation for part 1703 to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subparts D, E, F and G [Removed and reserved]

2. Amend part 1703 by removing and reserving subparts D, E, F and G, consisting of §§ 1703.100 through 1703.147.

3. Revise § 1703.300 to read as follows:

§1703.300 Purpose.

This subpart H sets forth RUS' policies and procedures for making loan deferments of principal and interest payments on direct loans or insured loans made for electric or telephone purposes, but not for loans made for rural economic development purposes, in accordance with subsection (b) of section 12 of the RE Act. Loan deferments are provided for the purpose of promoting rural development opportunities.

4. Add part 1734 to read as follows:

PART 1734—DISTANCE LEARNING AND TELEMEDICINE LOAN AND GRANT PROGRAMS

Subpart A—Distance Learning and Telemedicine Loan and Grant Programs—General

- 1734.1 Purpose.
- 1734.2 Policy.
- 1734.3 Definitions.
- 1734.4 Applicant eligibility and allocation of funds.
- 1734.5 Processing of selected applications.
- 1734.6 Disbursement of loans and grants.
- 1734.7 Reporting and oversight requirements.
- 1734.8 Audit requirements.
- 1734.9 Grant and loan administration.
- 1734.10 Changes in project objectives or scope.
- 1734.11 Grant and loan termination.
- 1734.12 Expedited telecommunications loans.
- 1734.13-1734.19 [Reserved]

Subpart B—Distance Learning and Telemedicine Grant Program

- 1734.20 [Reserved]
- 1734.21 Approved purposes for grants.

- 1734.22 Matching contributions.
- 1734.23 Nonapproved purposes for grants.
- 1734.24 Maximum and minimum grant amounts.
- 1734.25 Completed application.
- 1734.26 Criteria for scoring grant applications.
- 1734.27 Application selection provisions.
- 1734.28 Submission of applications.
- 1734.29 Appeals.

Subpart C—Distance Learning and Telemedicine Combination Loan and Grant Program

- 1734.30 Use of combination loan and grant.
- 1734.31 Approved purposes for a combination loan and grant.
- 1734.32 Nonapproved purposes for a combination loan and grant.
- 1734.33 Maximum and minimum amounts.
- 1734.34 Completed application.
- 1734.35 Application selection provisions.
- 1734.36 Submission of applications.
- 1734.37 Appeals.
- 1734.38-1734.39 [Reserved]

Subpart D—Distance Learning and Telemedicine Loan Program

- 1734.40 Use of loan funds.
- 1734.41 Approved purposes for loans.

- 1734.42 Non-approved purposes for loans.
- 1734.43 Maximum and minimum amounts.
- 1734.44 Completed application.
- 1734.45 Application selection provisions.
- 1734.46 Submission of applications.
- 1734.47 Appeals.

Authority: 7 U.S.C. 901 et seq. and 950aaa et seq.

Subpart A—Distance Learning and Telemedicine Loan and Grant Program—General

§1734.1 Purpose.

The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant Program 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. This subpart describes the general policies for administering the DLT program. Subpart B of this part contains the policies and procedures related to grants; subpart C contains the policies and procedures related to a combination loan and grant; and subpart D contains the policies and procedures related to loans.

§1734.2 Policy.

- (a) The transmission of information is vital to the economic development, education, and

health of rural Americans. To further this objective, the Rural Utilities Service (RUS) will provide financial assistance to distance learning and telemedicine projects that will improve the access for people residing in rural areas to educational, learning, training, and health care services.

(b) In providing financial assistance, RUS will give priority to rural areas that it believes have the greatest need for distance learning and telemedicine services. RUS believes that generally the need is greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. RUS will take into consideration the community's involvement in the proposed project and the applicant's ability to leverage grant funds.

(c) In administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) Rural institutions are encouraged to cooperate with each other, with applicants, and with end-users to promote the program being implemented under this subpart.

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

(f) The Administrator may provide loans under this subpart to an entity that has received a telecommunications or electric loan under the Rural Electrification Act of 1936. A borrower receiving a loan shall:

- (1) Make the funds provided available to entities that qualify as distance learning or telemedicine projects satisfying the requirements of this subpart, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance.
- (2) Use the loan to acquire, install, improve, or extend a distance learning or telemedicine system referred to in this subpart.

(g) The Administrator will allocate funds that are appropriated each fiscal year for subparts B, C, and D, of this part respectively. Not more than 30 days before the end of the fiscal year, the Administrator may transfer any funds not committed to grants in the combination loan and grant program to the grant program.

(h) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

(i) The Administrator will publish, at the end of each fiscal year, a notice on the RUS Telecommunications Program website of all applications receiving financial assistance under this subpart. Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), applications will be available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, 20250.

§1734.3 Definitions.

As used in this part:

1996 Act means the Federal Agriculture Improvement Act of 1996.

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

Administrator means the Administrator of the Rural Utilities Service, or designee or successor.

Applicant means an eligible organization that applies for financial assistance under this subpart.

Approved purposes means project purposes for which grant, loan, or combination loan and grant financial assistance may be expended.

Broadband facilities means facilities that transmit, receive, or carry voice, video, or data between the terminal equipment at each end of the 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.

Combination loan and grant means a grant in combination with a loan made under the DLT program.

Completed application means an application that includes all those items specified in §§1734.125, 1734.134, and in form and substance satisfactory to the Administrator.

Consortium means a combination or group of entities undertaking the purposes for which the distance learning and telemedicine financial assistance is provided. At least one of the entities in a consortium must meet the requirements of §1734.4.

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

Distance learning means a telecommunications link to an end user through the use of eligible equipment to provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in rural areas.

DLT borrower means an entity that has an outstanding loan under the provisions of the DLT program.

DLT program means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS.

Economic useful life as applied to equipment and facilities financed under the DLT program is calculated based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

Eligible equipment means computer hardware and software, audio and video equipment, computer networking components, telecommunications terminal equipment, terminal equipment, inside wiring, interactive video equipment.

Eligible facilities means land, buildings, or building construction needed to carry out an eligible distance learning or telemedicine project for loan financial assistance only.

End user is one or more of the following:

- (1) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and educational centers, libraries and teacher training centers, and students, teachers and instructors using such

- rural educational facilities, that participate in distance learning telecommunications program through a project funded under this subpart;
- (2) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participants in a rural distance learning telecommunications program through a project funded under this part; and
 - (3) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

End user site means a facility that is part of a network or telecommunications system that is utilized by end users. An end user site can also be the residence of someone living in a rural area that is receiving telemedicine or distant learning services.

Financial assistance means a grant, combination loan and grant, or loan.

GFR means RUS telecommunications program General Field Representative.

Grant documents means the grant agreement, including any amendments and supplements thereto, between RUS and the grantee.

Grantee means a recipient of a grant from RUS to carry out the purposes of the DLT program.

Guarantee means a guarantee for a loan provided by a RUS borrower or other qualified third party.

Hub means a facility that is part of a network or telecommunications system that provides educational or medical services to end user sites.

Instructional programming means course material for teaching over the Distance Learning or Telemedicine network, including computer software.

Interactive equipment means equipment used to produce and prepare for transmission of audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes, but is not limited to, monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Loan means a loan made under the DLT program bearing interest at a rate equal to the then current cost-of-money to the government.

Loan documents mean the loan agreement, note, and security instrument, including any amendments and supplements thereto, between RUS and the DLT borrower.

Local exchange carrier (LEC) is a regulatory term in telecommunications for the local telephone company. In the United States, wireline telephone companies are divided into two large categories: long distance (interexchange carrier, or IXCs) and local (local exchange carrier, or LECs). This structure is a result of 1984 divestiture of then regulated monopoly carrier American Telephone & Telegraph. Local telephone companies at the time of the divestiture are also known as Incumbent Local Exchange Carriers (ILEC).

Matching contribution means the applicant's contribution for approved purposes.

Project means approved purposes for which financial assistance has been provided.

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.

Recipient means a grantee, borrower, or both of a DLT program grant, loan or combination loan and grant.

Rural community facility means a facility such as a school, library, learning center, training facility, hospital, or medical facility that provides benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

Secretary means the Secretary of Agriculture.

Technical assistance means:

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

Telecommunications carrier means any provider of telecommunications services.

Telecommunications or electric borrower means an entity that has outstanding RUS electric or telecommunications loan or loan guarantee under the provisions of the Act.

Telecommunications systems plan means the plan submitted by an applicant in accordance with §1734.25 for grants, §1734.34 for a combination loan and grant, or §1734.44 for loans.

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.

§1734.4 Applicant eligibility and allocation of funds.

To be eligible to receive a grant, loan and grant combination, or loan under this subpart:

(a) The applicant must be legally organized as an incorporated organization, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c), a state or local unit of government, a consortium, as defined in §1734.3, or other legal entity, including a private corporation organized on a for-profit or not-for profit basis. Each applicant must provide written evidence of its legal capacity to contract with RUS to obtain the grant, loan and grant combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with RUS in its own behalf.

(b) The applicant proposes to utilize the financing to:

(1) Operate a rural End-User Site for the purpose of providing Distance Learning or Telemedicine services; or

(2) Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

§1734.5 Processing of selected applications.

(a) During the period between the submission of an application and the execution of documents, the applicant must inform RUS if the project is no longer viable or the applicant no

longer is requesting financial assistance for the project. When the applicant so informs RUS, the selection will be rescinded or the application withdrawn and written notice to that effect sent to the applicant.

(b) If an application has been selected and the scope of the project changes substantially, the applicant may be required to reapply in the next program window if the agency and the selected applicant cannot agree on the new scope of the award.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days from the time the public is made aware of the award, the Administrator will rescind the selection and written notice to that effect will be sent to the applicant. The Administrator, in his sole discretion, may extend the 90 day period if it appears resolution is imminent.

(d) RUS may request additional information that would not change the application or scoring, in order to complete the appropriate documents covering financial assistance.

(e) *Financial assistance documents.* (1) The documents will include a grant agreement for grants; loan documents, including third party guarantees, notes and security instruments for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The grant agreement and the loan documents will include, 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 financial assistance, supplemental funds required for the project, and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide additional assurance that loans 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 RUS and must, before receiving any advance of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all facilities and equipment financed by the loan. RUS may require additional security as it deems necessary.

(4) Adequate security may also be provided by third-party guarantees, letters of credit, pledges of revenue, or other forms of security satisfactory to RUS.

(5) The security instrument and other loan documents required by RUS in connection with a loan under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be required to secure repayment of the loan.

(6) If the project does not constitute a complete operating system, the DLT recipient shall provide evidence, in form and substance satisfactory to RUS, demonstrating that the recipient has sufficient contractual, financing, or other arrangements to assure that the project will provide adequate and efficient service.

(f) Prior to the execution of a grant and loan document, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the DLT program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date RUS notifies the applicant that they have been selected for an award, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application.

§1734.6 Disbursement of loans and grants.

(a) For financial assistance of \$100,000 or greater, prior to the disbursement of a grant and a loan, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 2 CFR part 200, which is adopted by USDA through 2 CFR part 400.

(b) Grants and loans will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes contained 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) RUS will review the SF 270 for accuracy when received and will schedule payment if the form is satisfactory. Payment will ordinarily be made within 30 days; and

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

(d) A combination loan and grant will be disbursed on a pro rata basis based on the respective amounts of financial assistance provided.

§1734.7 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 expended by the applicant.

(b) 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 all project performance reports, including, but not 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.

A final project performance report must be provided by the recipient. 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 it determines necessary, to ensure that projects are completed in accordance with the approved scope of work and that the financial assistance is expended for approved purposes.

§1734.8 Audit requirements.

A recipient of financial assistance shall provide RUS with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, a Telecommunications or Electric borrower, or any other entity not covered by the following paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, "Policy on Audits of RUS Borrowers."

(b) If the recipient is a state or local government, or non-profit organization, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

(c) Grantees shall comply with 2 CFR Part 200, as adopted by USDA through 2 CFR part 400, and rules on the disposition of grant assets in Part 200 shall be applied regardless of the type of legal organization of the grantee.

§1734.9 Grant and loan administration.

RUS will conduct reviews as necessary to determine whether the financial assistance was expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the grants and loans are 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 RUS, 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 official conducting an audit of the recipient's financial statements or records, and program performance for the grants and loans made under this subpart. The recipient shall permit RUS to inspect and copy any records and documents that pertain to the project.

§1734.10 Changes in project objectives or scope.

The recipient shall obtain prior written approval by RUS for any material change to the scope or objectives of the project, including any changes to the scope of work or the budget submitted to RUS. Any material change shall be contained in a revised scope of work plan to be prepared by the recipient, submitted to, and approved by RUS in writing. If RUS does not approve the change and the awardee is unable to fulfill the original purposes of the award, the awardee will work with RUS to return or rescind the financial assistance.

§1734.11 Grant and loan termination.

(a) The financial assistance may be terminated when RUS and the recipient agree upon the conditions of the termination, the effective date of the termination, and, in the case of a partial termination of the financial assistance, any unadvanced portion of the financial assistance to be terminated and any advanced portion of the financial assistance to be returned.

(b) The recipient may terminate the financial assistance by written notification to RUS, providing the reasons for such termination, the effective date, and, in the case of a partial

termination, the portion of the financial assistance to be terminated. In the case of a partial termination, if RUS believes that the remaining portion of the financial assistance will not accomplish the approved purposes, then RUS may terminate the financial assistance in its entirety, pursuant to the provisions of paragraph (a) of this section.

§1734.12 Expedited telecommunications loans

RUS will expedite consideration and determination of an application submitted by an RUS telecommunications borrower for a loan under the Act or an advance of such loan funds to be used in conjunction with financial assistance under subparts B, C, or D of this part. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

§§1734.13-1734.19 [Reserved]

Subpart B—Distance Learning and Telemedicine Grant Program

§1734.20 [Reserved]

§1734.21 Approved purposes for grants.

For distance learning and telemedicine projects, grants shall finance only the costs for approved purposes. Grants shall be expended only for the costs associated with the capital assets associated with the project. The following are approved grant purposes:

(a) Acquiring and installing, by lease or purchase, eligible equipment as defined in §1734.3;

(b) Purchases of extended warranties, site licenses, and maintenance contracts, for a period not to exceed 3 years from installation date, so long as such purchases are in support of eligible equipment included in the project and made concurrently;

(c) Acquiring or developing instructional programming; but shall not include salaries, benefits, and overhead of medical, educational, or any personnel employed by the applicant. The funded development and acquisition of instructional programming must be done through an independent 3rd party, and may not be performed using the applicant's employees.

(d) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; or providing engineering and environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the grant. These purposes shall not exceed 10 percent of the grant; and

(e) Purchasing and installing broadband facilities. This purpose is limited to a maximum of 20 percent of the request grant amount and must be used for providing distance learning or telemedicine services.

§1734.22 Matching contributions.

(a) The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grants listed in §1734.21.

Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in §1734.21 may be substituted for cash.

(b) In-kind items listed in §1734.21 must be non-depreciated or new assets with established monetary values. Use of specific manufacturers' equipment or services, or discounts thereon, are not considered eligible in-kind matching if the manufacturer, or its authorized reseller, is a vendor on the project, the grant writer for the grant application, or has undertaken any responsibility on the grant application, including payment.

(c) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible in-kind matching contribution.

(d) Costs incurred for non-approved purposes for grant outlined in §1734.23 shall not be used as an in-kind matching contribution.

(e) Any financial assistance from Federal sources will not be considered as matching contributions under this subpart unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

§1734.23 Nonapproved purposes for grants.

(a) A grant made under this subpart will not be provided or used:

(1) To pay for medical or educational equipment not having telemedicine or distance learning as its essential function;

(2) To pay for Electronic Medical Records (EMR) systems;

(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 unless that service provider is the applicant.

(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 financial assistance under this program;

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

(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;

(13) Except for leases provided for in §1734.21, to pay the cost of recurring or operating expenses for the project; or

(14) For any other purposes not specifically contained in §1734.21.

(b) Except as otherwise provided in §1734.12, grants shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other financial assistance that is not assured.

§1734.24 Maximum and minimum grant amounts.

Applications for grants under this subpart will be subject to limitations on the proposed amount of grant funds. The Administrator will establish the maximum and minimum amounts of a grant to be made available to an individual recipient for each fiscal year under this subpart by publishing notice of the maximum and minimum amounts in the RUS DLT Program Application Guide and/or the RUS DLT Program website and in the funding opportunity posted on www.Grants.gov on an annual basis.

§1734.25 Completed application.

The following items are required to be submitted to RUS in support of an application for grant funds:

- (a) An application for Federal Assistance. A completed Standard Form 424.

- (b) An executive summary of the project. The applicant must provide RUS with a general project overview that addresses 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, the types of educational or medical services to be offered by the project, and the benefits to rural residents;

- (3) A description of the applicant, documenting eligibility in accordance with §1734.4;
- (4) An explanation of the total project cost including a breakdown of the grant required and the source of matching contribution and other financial assistance for the remainder of the project;
- (5) A statement specifying whether the project is either a distance learning or telemedicine facility as defined in §1734.3. 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 that will be served by the project at each end user site
- (8) A certification by the applicant that facilities constructed with grants do not duplicate adequate established telemedicine or distance learning services; and
- (9) A listing of the location of each end user site (city, town, village, borough, or rural areas) plus the State.

(c) Scoring criteria documentation. Each grant applicant must address and provide documentation on how it meets each of the scoring criteria contained in §1734.26, and as supplemented in the listing on grants.gov, the DLT Application Guide and the agency's website.

(d) A scope of work. The scope of work must include, 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 all capital expenditures reflecting the line item costs for approved purposes for both the grant funds and other sources of funds for the project. Separately, the budget must specify any line item costs that are non-approved purposes for grants as contained in §1734.23.

(e) Financial information and sustainability. The applicant must provide a narrative description demonstrating: feasibility of the project, including having sufficient resources and expertise necessary to undertake and complete the project; and, how the project will be sustained following completion of the project.

(f) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in

operating an educational or health care endeavor and any project similar to the project.

Experience in a similar project is desirable but not required.

(g) Funding commitment from other sources. The applicant must provide evidence, in form and substance satisfactory to RUS, that funding agreements have been obtained to ensure completion of the project. These agreements shall be sufficient to ensure:

(1) Payment of all proposed expenditures for the project;

(2) All required matching contributions in §1734.22; and

(3) Any other funds necessary to complete the project.

(h) A telecommunications system plan. A telecommunications system plan consisting of the following:

(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 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. If funds are being requested for broadband facilities, a description of the use of these facilities and how they will be used to deliver distance learning or telemedicine services.

(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.

(i) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 et. seq.), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

(j) Environmental review requirements.

(1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(k) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(l) Federal debt certification. The applicant must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(m) Consultation with USDA State Director, Rural Development. The applicant must provide evidence that it 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) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of the 1996 Act.

§1734.26 Criteria for scoring grant applications.

The criteria by which applications will be scored will be published in the RUS DLT Program application guide and/or the RUS DLT Program web site and in the funding opportunity posted on www.Grants.gov website on an annual basis. The criteria will be used to determine and evaluate: rurality; economic need; service need and benefit; and special considerations as determined by the Administrator

§1734.27 Application selection provisions.

(a) Applications will be evaluated competitively by the Agency and will be ranked in accordance with §1734.26. Applications will then be awarded generally in rank order until all grant funds are expended, subject to paragraphs (b), (c), and (d) of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; costs; location; and other characteristics of the application and the project to determine the number of points assigned to a grant application for all selection criteria.

(b) Regardless of the number of points an application receives in accordance with §1734.26, 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 type of 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. In this case, however, the Administrator will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount in accordance with §1734.25(e). An applicant or multiple applicants affected

under this paragraph will have the opportunity to be considered for loan financing in accordance with subparts C and D of this part.

(c) RUS will not approve a grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of §1734.25(e);

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

(3) Other applications would provide more benefit to rural America based on a review of the financial and technical information submitted in accordance with §1734.25(e).

(4) Any other aspect of the applicant's proposal fails to adequately address any requirement of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT Program contained in §1734.2.

(d) RUS may reduce the amount of the applicant's grant based on insufficient program funding for the fiscal year in which the project is reviewed. 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.

§1734.28 Submission of applications.

(a) Applications will be accepted as announced in the RUS DLT Program application guide and/or the RUS DLT Program web site and in the funding opportunity posted on www.Grants.gov on an annual basis.

(b) When submitting paper applications:

(1) Applications for grants shall be submitted to the RUS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250-1590. Applications should be marked “Attention: Assistant Administrator, Telecommunications Program”.

(2) Applications must be submitted to RUS postmarked no later than the application filing deadline established by the Administrator if the applications are to be considered during the period for which the application was submitted. The deadline for submission of applications each fiscal year will be announced in the RUS DLT Program application guide and/or the RUS DLT Program web site and in the funding opportunity posted on www.Grants.gov on an annual basis.

(3) All applicants must submit an original and a digital copy of a completed application.

§1734.29 Appeals.

RUS Telecommunications and Electric Borrowers may appeal the decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original 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.

Subpart C—Distance Learning and Telemedicine Combination Loan and Grant Program

§1734.30 Use of combination loan and grant.

(a) A combination loan and grant may be used by eligible organizations as defined in §1734.4 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in §1734.31 provided that no financial assistance may exceed the maximum amount for the year in which the combination loan and grant is made published in the funding opportunity posted on www.grants.gov on an annual basis.

(b) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as determined in §1734.26(b)

§1734.31 Approved purposes for a combination loan and grant.

The approved purposes for a combination loan and grant are:

- (a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in §1734.3;
- (b) Acquiring instructional programming;
- (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 a combination loan and grant (this purpose shall not exceed 10 percent of the total requested financial assistance);
- (d) Paying for medical or educational equipment and facilities that are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction determined by RUS to be necessary and incidental to the project. The applicant must demonstrate that financial assistance funding from other sources is not available at a cost that does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested; and

(h) Acquiring telecommunications or broadband facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator.

§1734.32 Nonapproved purposes for a combination loan and grant.

(a) Without limitation, a combination loan and grant made under this subpart shall not be expended:

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

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

(3) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(4) 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;

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

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

(7) Except for leases (see §1734.31), to pay the cost of recurring or operating expenses for the project; or,

(8) For any other purposes not specifically outlined in §1734.31.

(b) Except as otherwise provided in §1734.12, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other funding that is not assured.

§1734.33 Maximum and minimum amounts.

Applications for a combination loan and grant under this subpart will be subject to limitations on the proposed amount of loans and grants. The Administrator will establish the maximum and minimum amount of loans and grants and the portion of grant funds as a percentage of total assistance for each project to be made available to an individual recipient for each fiscal year under this subpart, by posting a funding opportunity in the RUS DLT Program Application Guide and/or the RUS DLT Program website and in the funding opportunity posted on www.Grants.gov on an annual basis.

§1734.34 Completed application.

The following items are required to be submitted to RUS in support of an application for a combination loan and grant:

(a) An application for federal assistance: A completed Standard Form 424.

(b) An executive summary of the project: The applicant must provide RUS with a general project overview that addresses each of 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, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with §1734.4;

(4) An explanation of the total project cost including a breakdown of the combination loan and grant required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in §1734.3. 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 that will be served by the project at each end user site;

(8) A certification by the applicant that facilities constructed with a combination loan and grant do not duplicate adequately established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) A scope of work. The scope of work must include, 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 combination loan and grant and any other sources of funds for the project.

(d) Financial information. The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan with a maturity period greater than one year. 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 that 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 and repay the loan portion of the combination loan and grant. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan portion of the combination loan and grant.

(2) A list of property which will be used as collateral to secure repayment of the loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a security interest in the collateral that secures the loan. RUS considers as adequate security for a loan, a guarantee by a RUS

Telecommunications or Electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) 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.

(5) For applicants eligible under §1734.4(1), 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.

(e) 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 similar to the project. Experience in a similar project is desirable but not required.

(f) A telecommunications system plan. A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (5) of this section are required only when the applicant is requesting a combination loan and grant 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 or broadband 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 a combination loan and grant.

(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 discussions with local exchange carriers serving the project area addressing the concerns contained in §1734.31(h).

(5) The capabilities of the telecommunications or broadband 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) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

- (2) Architectural barriers;
 - (3) Flood hazard area precautions;
 - (4) Assistance and Real Property Acquisition Policies Act of 1970;
 - (5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 et. seq.), 2 CFR part 421;
 - (6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;
 - (7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.
 - (h) Environmental review requirements.
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- (1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."
 - (2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(i) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into a grant and incur debt with RUS.

(j) Federal debt certification. The applicant must provide evidence that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(k) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) Additional information required by RUS. The applicant must provide any additional information RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS 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.

§1734.35 Application selection provisions.

(a) A combination loan and grant will be approved based on availability of funds, the financial feasibility of the project in accordance with §1734.34(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a combination loan and grant, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a combination loan and grant from funds available for the fiscal year. If such priority is achieved, RUS will process the combination loan and grant application on a first-in, first-out basis, provided that the total amount of applications on-hand for combination loans and grants does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for combination loans and grants, if such applications were approved, exceeds 90 percent of amount of combination loan and grant funding available, RUS will process the remaining applications using the evaluation criteria referenced in §1734.26.

(c) RUS will not approve a combination loan and grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility, or will not be adequately secured in accordance with the requirements contained in §1734.34(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the 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 RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in §1734.2.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of RUS' 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 §1734.37.

§1734.36 Submission of applications.

(a) RUS will accept applications for a combination loan and grant submitted by RUS Telecommunications General Field Representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for a combination loan and grant under this subpart may be filed at any time and will be evaluated as received.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and an electronic copy of a completed application. The 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 the State Director. The State Director will:

(1) Review each application for completeness in accordance with §1734.34, and notify the applicant, within 15 working days of receiving the application, of the results of this review,

acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with §1734.35, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with §1734.35 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A combination loan and grant recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of §1734.34 and §1734.35 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and electronic version of the application with a financial assistance recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities

Service, Washington, D.C. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a review of the application and the financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the State Director will be notified and the State Director will notify the applicant. A combination loan and grant will be processed, approved, and serviced in accordance with §§1734.5 through 1734.12.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination.

(c) Applications submitted by RUS Telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and an electronic version a completed application. The 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. RUS will:

(1) Review each application for completeness in accordance with §1734.34, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant assistance, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with §1734.35, and other requirements of this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the applicant will be notified. A combination loan and grant will be processed, approved, and serviced in accordance with §§1734.5 through 1734.12.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be able to appeal in accordance with §1734.37.

§1734.37 Appeals.

RUS Electric and Telecommunications Borrowers may appeal a decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified

of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, D.C. 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original 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.

§§1734.38-1734.39 [Reserved]

Subpart D—Distance Learning and Telemedicine Loan Program

§1734.40 Use of loan funds.

A loan may be used by eligible organizations as defined in §1734.4 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in §1734.41 provided that no financial assistance may exceed the maximum amount for the year in which the loan is made. Entities seeking a loan must be able to provide security and execute a note with a maturity period greater than one year. The following entities are eligible for loans under this subpart:

(a) Organizations as defined in §1734.4. If a RUS Telecommunications Borrower is seeking a loan, the borrower does not need to submit all of the financial security information required by

§1734.44(d). The borrower's latest financial report (Form 479) filed with RUS and any additional information relevant to the project, as determined by RUS, will suffice;

(b) Any non-profit or for-profit entity, public or private entity, urban or rural institution, or rural educational broadcaster, which proposes to provide and receive distance learning and telemedicine services to carry out the purposes of this subpart; or

(c) Any entity that contracts with an eligible organization in paragraphs (a) or (b) of this section for constructing distance learning or telemedicine facilities for the purposes contained in §1734.41, except for those purposes in §1734.41(h).

(d) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as contained in §1734.26(b)

§1734.41 Approved purposes for loans.

The following are approved purposes for loans:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in §1734.3;

(b) Acquiring instructional programming;

(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 loan (financial assistance for this purpose shall not exceed 10 percent of the requested financial assistance);

(d) Paying for medical or educational equipment and facilities which are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Loans for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction, where such costs are demonstrated necessary to construct distance learning and telemedicine facilities. The applicant must demonstrate that funding from other sources is not available at a cost which does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(h) Acquiring of telecommunications or broadband facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator;

(i) Any project costs, except for salaries and administrative expenses, not included in paragraphs (a) through (h) of this section, incurred during the first two years of operation after the financial assistance has been approved. The applicant must show that financing such costs are necessary for the establishment or continued operation of the project and that financing is not available for such costs elsewhere, including from the applicant's financial resources. The Administrator will determine whether such costs will be financed based on information submitted by the applicant. Loans shall not be made exclusively to finance such costs, and financing for such costs will not exceed 20 percent of the loan provided to a project under this section; and

(j) All of the costs needed to provide distance learning broadcasting to rural areas. Loans may be used to cover the costs of facilities and end-user equipment dedicated to providing educational broadcasting to rural areas for distance learning purposes. If the facilities are not 100 percent dedicated to broadcasting, a portion of the financing may be used to fund such facilities based on a percentage of use factor that approximates the distance learning broadcasting portion of use.

§1734.42 Non-approved purposes for loans.

(a) Loans made under this subpart will not be provided to pay the costs of recurring or operating expenses incurred after two years from approval of the project except for leases (see §1734.41).

(b) Loans made under this subpart will not be provided for any of the following costs:

(1) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(2) 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;

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

(4) To pay for salaries, wages, or administrative expenses; or

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

(c) Except as otherwise provided in §1734.12, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart D or is dependent upon the receipt of other funding that is not assured.

§1734.43 Maximum and minimum amounts.

Applications for loans under this subpart will be subject to limitations on the proposed amount of loans. The Administrator will establish the maximum amount of a loan available to an applicant under this subpart.

§1734.44 Completed application.

The following items are required to be submitted in support of an application for a loan:

(a) An application for federal assistance: A completed standard form 424.

(b) An executive summary of the project. The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need (see paragraph (b)(1) of this section), why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with §1734.4;

(4) An explanation of the total project cost including a breakdown of the loan required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in §1734.3. 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 project at each end user site;

(8) A certification by the applicant that facilities funded by a loan do not duplicate adequate established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) A scope of work. The scope of work must include, 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 the loan and any other sources of funds for the project.

(d) Financial information. The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan for a maturity period greater than one year. 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 and repay the requested loan. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan.

(2) A list of property which will be used as collateral to secure repayment of the proposed loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a first lien in the collateral that secures

the loan. RUS will consider as adequate security a loan guarantee by a telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a loan is being requested should be clearly indicated.

(4) 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.

(5) For applicants eligible under §1734.4(a)(1), 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.

(e) 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 project. Experience in a similar project is desirable but not required.

(f) A telecommunications system plan. A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (5) of this section are required only when the applicant is requesting a loan 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 a loan.

(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 discussions with local exchange carriers serving the project area addressing the concerns contained in §1734.41(h).

(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) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 et. seq.), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

(h) Environmental review requirements.

(1) The applicant must provide details of the project's impact on the environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(i) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into debt with RUS and perform the activities proposed under the loan application.

(j) Federal debt certification. The applicants must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(k) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) Additional information required by RUS. The applicant must provide any additional information RUS determines is necessary to adequately evaluate the application. Modifications or changes, including changes in the loan amount requested, may be requested in any project described in an application submitted under this subpart.

§1734.45 Application selection provisions.

(a) Loans will be approved based on availability of funds, the financial feasibility of the project in accordance with §1734.44(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a loan, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a loan from funds available for the fiscal year. If such priority is achieved, RUS will process the loan application on a first-in, first-out basis, provided that the total amount of applications on-hand for loans does not exceed 90 percent of the total loan funding available for the fiscal year. At such time as the total amount of applications eligible for loans, if such applications were approved, exceeds 90 percent of amount of loan funding available, RUS will process the remaining applications using the evaluation criteria referenced in §1734.26.

(c) A loan will not be approved if it is determined that:

(1) The applicant's proposal does not indicate financial feasibility, or is not adequately secured in accordance with the requirements of §1734.44(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the 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 RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in §1734.2.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of the RUS 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 loan will not be approved, 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 §1734.47.

§1734.46 Submission of applications.

(a) RUS will accept applications for loans submitted by RUS Telecommunications GFRs, by Rural Development State Directors, or by applicants themselves. Applications for loans under this subpart may be filed at any time and will be evaluated as received on a non-competitive basis.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and an electronic version of a completed application. The 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 the State Director. The State Director will:

(1) Review each application for completeness in accordance with §1734.44, and notify the applicant, within 15 working days of receiving the application, of the results of this review,

acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with §1734.45, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with §1734.45 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A loan recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of §§1734.44 and 1734.45 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and an electronic version of the application with a loan recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service,

Washington, D.C. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a cursory review of the application and the recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the State Director will be notified and the State Director will notify the applicant. Applications for loans will be processed, and approved loans serviced, in accordance with §§1734.5 through 1734.12.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination.

(c) Applications submitted by RUS Telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and an electronic version of a completed application. The 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 the RUS. RUS will:

(1) Review each application for completeness in accordance with §1734.44, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the applicant will be notified. Applications will be processed, and approved loans serviced, in accordance with §§1734.5 through 1734.12.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with §1734.47.

§1734.47 Appeals.

RUS Electric and Telecommunications Borrowers may appeal a decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator,

RUS, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, D.C. 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original 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.

**PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—
TELECOMMUNICATIONS PROGRAM**

5. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

6. Amend § 1735.30 by revising paragraph (d)(1)(v) to read as follows:

§ 1735.30 Hardship loans.

* * * * *

(d) * * *

(1) * * *

(v) *Distance Learning and Medical Link Facilities.* Borrowers will receive 2 points for loan funds included in the application for the purpose of providing distance learning or medical link transmission facilities. If loan funds are included for both distance learning and medical link transmission facilities, borrowers will receive 3 points. (See 7 CFR part 1734 for definitions of distance learning and medical link.)

* * * * *

Date: _October 10, 2017

Christopher A. McLean

Acting Administrator

Rural Utilities Service

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