

## DEPARTMENT OF COMMERCE

## National Telecommunications and Information Administration

Docket No. 090416676-9677-01

## Low-Power Television and Translator Upgrade Program: Notice of Availability of Funds

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of Availability of Funds and Program Guidelines.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) publishes this notice to provide the guidelines for the Low-Power Television and Translator Upgrade Program (Upgrade Program) and to announce the availability of approximately \$44 million for awards under this program. Upgrade Program funds will be used by eligible low-power television and translator stations to upgrade from analog broadcasting to digital broadcasting. Completed applications for the Priority Round must be received at NTIA no later than 5 p.m., Eastern Daylight Time on July 13, 2009. After August 10, 2009, applications must be received at NTIA by the first business day of each subsequent month as long as funds are available. NTIA will provide updated information on a periodic basis at its website <http://www.ntia.doc.gov/lptv> regarding program awards and funds remaining for grants.

**DATES:** Paper applications and applications submitted electronically through Grants.gov for the Priority Round must be received at NTIA no later than 5 p.m., Eastern Daylight Time, on July 13, 2009 (Priority Round Closing Date). Applicants must ensure that the carrier they use guarantees delivery of the application by the Priority Round Closing Date. Applicants should note that all material sent via the U.S. Postal Service (including "Overnight" or "Express Mail") is subject to delivery delays of up to two weeks due to mail security procedures at the Department of Commerce. If an application is received after the Priority Round Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Priority Round Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

After August 10, 2009, applications for the next grant round must be

received at NTIA by 5 p.m., Eastern Time, the first business day of each subsequent month as long as funds are available (Closing Dates). Applications received after any of the subsequent monthly Closing Dates will be held until the next grant round.

Applications submitted by facsimile will not be accepted. Applications submitted electronically via the Grants.gov website must be received and logged by Grants.gov by 5 p.m. Eastern Daylight Time on the Priority Round Closing Date or the subsequent monthly Closing Dates. Applicants planning to submit an application electronically via the Grants.gov website should take into consideration computer-related difficulties that may arise during the submission of an electronic filing. NTIA will not be responsible for any computer problems that delay the submission of last-minute electronic filings.

**ADDRESSES:** To submit completed applications or send any other correspondence, write to the Upgrade Program at the following address: NTIA/Upgrade Program, Room H-4812, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230. Application materials may be obtained electronically via the Internet at <http://www.ntia.doc.gov/lptv> or <http://www.Grants.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Upgrade Program Director, Broadcasting Division, NTIA Office of Telecommunications and Information Applications, telephone: (202) 482-5802; fax: (202) 482-2156; email: [wcooperman@ntia.doc.gov](mailto:wcooperman@ntia.doc.gov). Information about the Upgrade Program also can be obtained electronically via the Internet at <http://www.ntia.doc.gov/lptv>.

**SUPPLEMENTARY INFORMATION:****I. Funding Opportunity Description***A. Background on the Low-Power Television and Translator Upgrade Program*

The Digital Television Transition and Public Safety Act of 2005 (the Act), as amended, permits low-power television facilities to continue analog broadcasts after the June 12, 2009, deadline for conversion of full-power television stations to digital. The Act also authorizes NTIA to operate two programs to assist low-power television facilities during the nation's transition from analog to digital television broadcasting.<sup>1</sup>

<sup>1</sup> The Digital Television Transition and Public Safety Act of 2005 (the Act) is Title III of the Deficit

**Conversion Program.** NTIA's first program, the Low-Power Television and Translator Digital-to-Analog Conversion Program (Conversion Program), permits NTIA to provide grants so a low-power television station can convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel.<sup>2</sup> By statute, the deadline for submission of applications to the Conversion Program is June 12, 2009.<sup>3</sup>

**Upgrade Program.** The Low-Power Television and Translator Upgrade Program is the second NTIA program to assist low-power television stations and is authorized by Section 3009 of the Act, as amended.<sup>4</sup> The Upgrade Program will provide reimbursement for equipment to upgrade low-power stations in eligible rural communities from analog to digital. Section 3009, as amended, is provided below, in its entirety:

**SEC. 3009. LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM.**

(a) ESTABLISHMENT.—The Assistant Secretary shall make payments of not to exceed \$65,000,000, in the aggregate, during fiscal years 2009 through 2012, from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible low-power television station may receive reimbursement for equipment to upgrade low-power television stations from analog to digital in eligible rural communities, as that term is defined in section 610(b)(2) of the Rural

Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, 21 (Feb. 8, 2006). Section 3002(b) of the Act originally provided the digital conversion deadline to be February 17, 2009. Section 2(a) of the subsequently enacted DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (Feb. 11, 2009), changed that deadline to June 12, 2009.

<sup>2</sup> *Id.*, the Act, at § 3008, 120 Stat. at 25.

<sup>3</sup> Section 2(b) of the DTV Delay Act changed the application deadline for the Conversion Program from February 17, 2009, to June 12, 2009. See also Low-Power Television and Translator Digital-to-Analog Conversion Program, Initial Announcement — Notice of Availability of Funds, 72 Fed. Reg. 61,109 (Oct. 29, 2007); Low-Power Television and Translator Digital-to-Analog Conversion Program, Amendment to Notice of Availability of Funds, 73 Fed. Reg. 50,782 (Aug. 28, 2008); Low-Power Television and Translator Digital-to-Analog Conversion Program: Extension of Closing Date, Notice of Amended Solicitation of Applications, 74 Fed. Reg. 7663 (Feb. 19, 2009).

<sup>4</sup> See the Act, *supra* note 1 at § 3009, 120 Stat. at 26. Section 2(b) of the DTV Transition Assistance Act, Pub. L. No. 110-295, 122 Stat. 2872 (July 30, 2008), amended Section 3009 to clarify the period during which NTIA could make awards for the Upgrade Program.

Electrification Act of 1937 (7 U.S.C. 950bb(b)(2)). Such reimbursements shall be issued to eligible stations on or after February 18, 2009. Priority reimbursements shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

(b) **ELIGIBLE STATIONS.**—For purposes of this section, the term “eligible low-power television station” means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.<sup>5</sup>

In addition, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. Law No. 110–329, authorized NTIA to use funds from the Upgrade Program for additional administrative expenses of the Digital-to-Analog Converter Box Program.<sup>6</sup> Pursuant to this authority, NTIA transferred \$16,230,000 to the Converter Box Program. As a result, approximately \$44 million is available for Upgrade Program grants.

#### B. October 2008 Public Meetings

On October 9, 2008, NTIA issued an Advanced Notice of Proposed Rulemaking and Notice of Public Meetings regarding the Upgrade Program (Upgrade Program Notice).<sup>7</sup> The Upgrade Program Notice announced two meetings regarding the implementation of the program and solicited written comments on certain aspects of the program’s implementation. The first meeting was held on October 24, 2008, in Washington, DC, and the second meeting was held on October 28, 2008, in Las Vegas, Nevada.<sup>8</sup> After reviewing

and considering the comments received, NTIA decided not to proceed with regulations to implement the program and withdrew the Advanced Notice of Proposed Rulemaking.<sup>9</sup> Instead, this Notice of Availability of Funds reviews the comments received and provides detailed information concerning the implementation of the Upgrade Program.

NTIA discussed the following topics at the public meetings: Community Eligibility; Station Eligibility; Reimbursement; Priority Reimbursement; Eligible Equipment and Costs; and Application Selection Procedures. These issues are discussed further in the following sections of this document.

#### 1. Community Eligibility

Under the Act, both the station and the community it serves must be eligible in order for a station to receive Upgrade Program funds. Section 3009(a) of the Act states that Upgrade Program funds are to “upgrade low-power television stations from analog to digital *in eligible rural communities, as that term is defined in section 610(b)(2) of the Rural Electrification Act of 1937 (7 U.S.C. 950bb(b)(2)).*”<sup>10</sup> The referenced section defines “rural communities” as “any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.”

In the Upgrade Program Notice, NTIA identified the following issues that were discussed at the public meetings regarding NTIA’s possible interpretation of this definition:

(1) Whether NTIA should determine an eligible rural community based on the population within the station’s (a) community of license, or (b) FCC 50/50 protected contour,<sup>11</sup> or (c) Grade A

coverage, or (d) Grade B coverage, or (e) protected coverage contour per Section 74.707 of the FCC Rules.

(2) Whether NTIA should determine an eligible rural community based on some other definition or formula (e.g., the number, or percentage, of people served by the station living in rural areas outside Urban Areas or Urban Clusters of more than 20,000).<sup>12</sup>

**Community of License.** NTIA received several comments regarding the issue of community eligibility. The most common response was the suggestion to utilize the U.S. Census Bureau data for the station’s community of license. As stated by the Belo Corporation, “NTIA should choose the simplest and least expensive method: the population of a station’s community of license based on census data. This number is easy to determine, requires little work from stations, and would be easy for NTIA to verify.”<sup>13</sup> In his comments, Michael Couzens, however, stated that the community of license “has no legal or practical significance. No requirements are attendant on specifying any particular community, and the specification can be changed by minor amendment. So the use of that community for eligibility would be arbitrary.”<sup>14</sup>

NTIA believes that, while it is a possibly convenient solution, the use of population within a community of license is impractical as a means of determining whether a station truly serves a rural area. As noted by Couzens, the FCC treats changes of a community of license of a low-power television station as a minor modification and, therefore, the community of license can be changed easily. Further, NTIA notes that the population of a station’s community of license has no relationship to the population in the surrounding coverage area. It is possible that a station can be licensed to a small community within a large metropolitan area. The existence of a community of license with a small population does not mean that the station serves a rural community.<sup>15</sup>

<sup>5</sup> Section 610(b)(2) of the Rural Electrification Act of 1937, 7 U.S.C. § 950bb(b)(2), provides that “[t]he term ‘eligible rural community’ means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.”

<sup>6</sup> Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110–329, § 121, 122 Stat. 3574, 3577 (Sept. 30, 2008).

<sup>7</sup> Low-Power Television and Translator Upgrade Program, 73 Fed. Reg. 59,586 (Oct. 9, 2008) (Advanced Notice of Proposed Rulemaking).

<sup>8</sup> The PowerPoint presentation presented at the meetings, as well as a recording of an audiocast of the October 24 meeting, was posted on the Upgrade Program’s website. Written comments received in response to Upgrade Program Notice, the NTIA

PowerPoint presentation from the October meetings, and the audiocast of the October 24 meeting are available on NTIA’s website at <http://www.ntia.doc.gov/lptv/upgrade.html> and [http://www.ntia.doc.gov/lptv/lptv\\_overview.html](http://www.ntia.doc.gov/lptv/lptv_overview.html).

<sup>9</sup> See Advanced Notice of Proposed Rulemaking, *supra* note 7; Low-Power Television and Translator Upgrade Program, 74 Fed. Reg. 17,938 (April 20, 2009) (Advanced Notice of Proposed Rulemaking, Withdrawal).

<sup>10</sup> See the Act, *supra* note 1 at § 3009, 120 Stat. at 26 (emphasis added).

<sup>11</sup> 73 Fed. Reg. at 59,587. The FCC 50/50 protected contour referred to herein is defined as follows: a low-power television or translator station’s FCC license protects that station from interference from another station within a geographic area. The FCC calculates the protected coverage contour of a station based on the station’s authorized broadcast power, its broadcast frequency, and the area within which 50 percent of the potential receiver locations can receive the station 50 percent of the time. The signal strength levels for protected contours of television translators are contained in 47 C.F.R. § 74.707 and listed in note 16 *infra*.

<sup>12</sup> 73 Fed. Reg. at 59,587. Urban Areas and Urban Clusters are areas defined by the U.S. Census Bureau, *see* [http://www.census.gov/geo/www/ua/ua\\_2k.html](http://www.census.gov/geo/www/ua/ua_2k.html). *See supra* note 5.

<sup>13</sup> Belo Corporation Comments (Belo) at 2 (Nov. 14, 2008); *see also*, Association of Public Television Stations Comments (APTS) at 2 (Nov. 14, 2008), Darwin Hillberry Comments (Hillberry) at 1 (Nov. 14, 2008), Vegas PBS Comments (Vegas PBS) at 1 (Oct. 30, 2008), Oregon Association of Broadcasters Comments (OAB) at 3 (Nov. 14, 2008), KRHP Comments (KRHP) at 2 (June 9, 2008).

<sup>14</sup> Michael Couzens Comments (Couzens) at 3 (Nov. 17, 2008).

<sup>15</sup> For example, WNYX-LP is licensed to Roslyn, New York, a community located on Long Island,

**FCC Coverage Contours.** Several commenters suggested that NTIA utilize the population within an FCC-predicted coverage contour as a means of determining whether the community served meets the eligibility requirement. Commenters were divided, however, over whether NTIA should use the Grade B contour or its low-power FCC 50/50 protected contour.<sup>16</sup> No one supported the use of the FCC's Grade A contour.

The FCC provides maps of the service area for each currently operating low-power television station at its Internet site <http://www.fcc.gov/mb/video/tvq.html>. The FCC maps show the geographic areas covered by a station and display urbanized areas in yellow, but do not provide the population within the coverage contour. APTS and Walla Walla noted that the FCC's coverage contours may be inaccurate because they "assume flat terrain and thus frequently overestimate the reach of stations."<sup>17</sup> APTS, Belo, and OAB commented that having stations determine the population via contour maps may impose a cost burden on stations.<sup>18</sup>

The service areas of each station shown on FCC maps are the FCC 50/50 protected contours for low-power stations. The National Translator Association (NTA) noted that the population in the FCC protected contour is being used by NTIA for determining eligibility for the Conversion Program and that its use should be continued for the Upgrade Program.<sup>19</sup> As established by the FCC, low-power television stations, translator stations, and Class A stations are protected from interference

and is listed in the 2000 U.S. Census as having a population of 2,570. NTIA's conservative estimate of the number of people served by the station, however, is over 6 million. (NTIA calculated this population using the procedure discussed in note 24 *infra*).

<sup>16</sup> The FCC defines Grade A coverage as a level of service for *full-power* analog television stations with a signal strength of 68 dBu for channels 2–6, 71 dBu for channels 7–13, and 74 dBu for channels 14–69; and Grade B coverage as a level of service for *full-power* analog television stations with a signal strength of 47 dBu for channels 2–6, 56 dBu for channels 7–13, and 64 dBu for channels 14–69. See 47 C.F.R. § 73.683. The comparable 50/50 protected contours for *low-power* analog television stations are 62 dBu, 68 dBu, and 74 dBu, respectively. 47 C.F.R. § 74.707. These same dBu levels apply to Class A stations. See 47 C.F.R. § 73.6010.

<sup>17</sup> APTS at 2; see also Walla Walla University Comments (Walla Walla) at 1 (Nov. 14, 2008).

<sup>18</sup> APTS at 3; OAB at 3; Belo at 2.

<sup>19</sup> NTA Comments (NTA 1) at 1 (Sept. 29, 2008); see also Cohen, Dippell, and Everist Comments (Cohen, Dippell, and Everist) at 1 (Nov. 14, 2008) (agreeing that the FCC 50/50 protected coverage contours as set forth in 47 C.F.R. §§ 73.6010, 74.707 should be used if the community of license is not viable).

within the coverage contours set forth in the FCC Rules. While the station's signals may extend beyond this contour, only those people living within the contour are protected from interference from other stations.

NTIA agrees that the population within the FCC 50/50 protected contour is the most appropriate metric upon which to determine community eligibility because it is well-defined and understood. As NTA correctly noted, NTIA used the population within the FCC 50/50 protected contour as a metric in the Conversion Program and believes that it is the appropriate basis for determining population for the Upgrade Program as well.<sup>20</sup> NTIA chose not to use the Grade B contour since it relates to full-power television stations and does not apply to low-power stations.<sup>21</sup>

**Longley-Rice Calculations.** NTIA is mindful of the comments raised regarding the accuracy of the FCC coverage maps to reflect differences in coverage due to terrain variations. To determine the population within eligible communities, NTIA will, therefore, use the Longley-Rice model to determine the population within the FCC 50/50 protected contour for low-power television stations. This model is a widely-accepted method for predicting coverage over irregular terrain and will allow for a more accurate population count.<sup>22</sup>

NTIA recognizes that it would be burdensome for many stations to determine the population within a coverage contour, whichever contour standard NTIA adopts. In order to assist low-power stations in their participation in the Upgrade Program, NTIA has calculated the population of every translator, low-power, and Class A station licensed by the FCC as of December 2008.<sup>23</sup> These calculations use the Longley-Rice model to provide an estimate of the population within the FCC 50/50 protected contour that each station serves. NTIA will provide a population figure to each applicant as

part of the Upgrade Program's application process.<sup>24</sup>

NTIA will use its population calculations as one of several methods of determining community eligibility. NTIA has found that the vast majority of stations serve a population of fewer than 20,000 within the FCC 50/50 protected contour using the Longley-Rice model (50/50 L/R). These stations will, therefore, quickly qualify for the Upgrade Program. NTIA cautions, however, that a station contour displayed on the FCC map that is within a large urban area (usually shown in yellow on the FCC map) cannot be considered rural, even if it has fewer than 20,000 people within the NTIA-calculated contour.

**Alternate Rural Determination.** In a small number of cases, fewer than 10 percent of the stations, NTIA was unable to calculate a population within the station's service area. In these instances, applicants may provide a coverage contour printed from the FCC's website (<http://www.fcc.gov/mb/video/tvq.html>) showing no urban areas containing a population greater than 20,000, or provide information from the Economic Research Service (ERS), U.S. Department of Agriculture, which lists those counties in the United States that have an urban population of fewer than 20,000.<sup>25</sup> Both sites are easy to access and the information can be obtained in a few computer clicks. The NTIA application form will provide information on obtaining information from both the FCC and ERS sites. Maps for stations no longer operating in analog will be available as part of the Upgrade Program application. The three procedures provided above will enable the vast majority of stations to easily determine whether their service areas meet the requirements of the Upgrade Program. Thus, based on the statutory requirements, NTIA will consider stations that provide service to areas that do not include urban areas greater than 20,000 to be 100 percent rural and will award these stations ten points

<sup>24</sup> NTIA obtained information from the FCC's station database and used a commercially available software program, Vsoft Probe 3, to calculate population within the FCC 50/50 protected contour (62 dBu for channels 2–6, 68 dBu for channels 7–13, and 74 dBu for channels 14–69) using the Longley-Rice model. All population figures are from the 2000 Census.

<sup>25</sup> See <http://www.ers.usda.gov/Data/RuralUrbanContinuumCodes/2003/>. The ERS has classified each county in the country based on its 2003 population on a nine-point continuum. Counties with a classification of 6, 7, 8, and 9 contain an urban population of fewer than 20,000 and comprise 55 percent of all counties in the United States. See <http://www.ers.usda.gov/Briefing/Rural/RuralUrbanCon/> for information on the codes.

<sup>20</sup> See 72 Fed. Reg. at 61,112.

<sup>21</sup> See *supra* note 16.

<sup>22</sup> See 47 C.F.R. §§ 73.6010, 74.707. The Longley-Rice signal propagation model was developed at NTIA's Institute of Telecommunications Sciences and is an industry-accepted method of predicting signal coverage over irregular terrain. Longley-Rice calculations are incorporated into several commercial computer coverage prediction software programs.

<sup>23</sup> NTIA recognizes that there may be inaccuracies in the FCC database and also that there may have been changes in station facilities after the NTIA calculations were run. NTIA will update its calculation for a station when necessary to ensure the accuracy of its population estimate.

during the evaluation of the application.<sup>26</sup>

**Rurality Factors.** In its comments, the Community Broadcasters Association (CBA) noted that “[n]othing in the wording of the statute indicates stations should be ‘eligible’ only if they exclusively serve communities of fewer than 20,000 inhabitants.”<sup>27</sup> NTIA is mindful that the Act, by reference to section 610(b)(2) of the Rural Electrification Act of 1937, cited above, permits participation in the Upgrade Program by stations serving areas with a population of greater than 20,000. Stations that serve areas with populations greater than 20,000 should first check the ERS site referenced above to quickly determine whether the county(ies) served contain urban areas greater than 20,000. If there are no counties within the coverage area with an urban population greater than 20,000, the station meets the rural communities requirements.

For those stations that cover urban areas greater than 20,000, APTS suggested that NTIA look at the Rural Utilities Service (RUS) Public Television Station Digital Television Grant Program, which uses a rurality analysis as part of its grant process.<sup>28</sup> This RUS program provides funds for the transition of full-power and low-power public television stations to digital operation. Many of these stations serve areas with populations greater than 20,000. The RUS determines a rurality score based on the measure of the rural character of the station’s coverage area.<sup>29</sup>

Section 610(b)(2) of the Rural Electrification Act of 1937 applies to programs operated by the RUS and the Act applies this section to the Upgrade Program.<sup>30</sup> In considering how to apply section 610(b)(2) to areas with populations greater than 20,000, NTIA looked to RUS’s administration of its programs for guidance on a definition of eligible rural communities. Following the principles used in the RUS Public Television Station Digital Television Grant Program, but adjusted to the needs and information available to the Upgrade Program, NTIA will consider the coverage within a low-power station’s FCC 50/50 contour as the service area of the station to determine a rurality score.<sup>31</sup>

NTIA will provide applicants with the population within a station’s FCC 50/50 protected contour. The Upgrade Program’s web-based application form will contain links to the FCC and U.S. Census Bureau websites so applicants can obtain the population within urban areas greater than 20,000 within the FCC 50/50 protected contour.<sup>32</sup> The application form will then automatically calculate a Rurality Score — between six and nine points — based on the percentage of rural population within the FCC 50/50 protected contour area.<sup>33</sup> The Rurality Score an application receives will be used as part of the application selection procedure, which is discussed under Section 6.

In addition to the above-referenced three methods to determine population within a station’s coverage contour, applicants may present their own population calculations for NTIA consideration. Applicants must fully document how their coverage was estimated. The applicant’s estimated coverage contour and population is subject to acceptance by NTIA.

## 2. Station Eligibility

As noted in the prior section, the Act requires that both the applicant station and the community it serves be eligible for a project to receive funds from the Upgrade Program. Section 3009(a) of the Act states that “each licensee of an eligible low-power television station may receive reimbursement.”<sup>34</sup> The term “eligible low-power television station” is defined in Section 3009(b) of the Act to mean “a low-power television broadcast station, Class A television station, television translator station, or television booster station— (1) that is itself broadcasting exclusively in analog format; and (2) that has not converted from analog to digital operations prior to

NTIA believes that defining the coverage area as the population within the FCC 50/50 protected contour is a more accurate representation of the station’s service area. NTIA will provide the total population within the FCC 50/50 protected contour so applicants will be able to subtract the urban population to determine the rurality of the coverage area.

<sup>32</sup> Urban areas are shown in yellow on the FCC contour maps at (<http://www.fcc.gov/mb/video/tvq.html>) and population data of urban areas can be found on the U.S. Census Bureau’s American Factfinder website at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).

<sup>33</sup> The Rurality Score is based on the percentage of the population in the FCC 50/50 protected contour area that is rural (i.e., not living within urban areas greater than 20,000). The score is rounded using the 5/4 method. For example, a station that covers an area 64 percent rural would receive a Rurality Score of 6. A station that covers an area 65 percent rural would receive a Rurality Score of 7. A station that covers an area 66 percent rural also would receive a Rurality Score of 7.

<sup>34</sup> See the Act, *supra* note 1, 120 Stat. at 26.

the date of enactment of the Digital Television Transition and Public Safety Act of 2005.”<sup>35</sup> The date of enactment was February 8, 2006.

In its Upgrade Program Notice, NTIA identified the following issues regarding the interpretation of Section 3009(b) that were discussed at the Public Meetings:

(1) Whether a station must hold an FCC license to be considered “broadcasting” or be permitted to hold an FCC Construction Permit or program test authority.

(2) Whether a station meets the statutory requirement (“broadcasting exclusively in analog format”) if it has a Construction Permit, program test authority, or license for a digital companion channel or has flash-cut to digital.

(3) Whether NTIA should establish a uniform deadline of eligibility (DOE) applicable to all applicants when determining a station’s eligibility regarding the two previous items. If so, should the DOE be (a) the date of enactment of the Act (i.e., February 8, 2006), (b) the closing date for receipt of Upgrade Program applications for the applicable grant round, (c) the same date as the Expenditure Start Date discussed in the section titled Reimbursement, below, or (d) some other date.

(4) Whether a governmental subsidiary can be considered a non-profit corporation and therefore may qualify for “priority reimbursement.”

(5) Whether NTIA should adopt the same requirements regarding station eligibility for the Upgrade Program as NTIA adopted for the Digital-to-Analog Conversion Program (Conversion Program) and published in the October 29, 2007, **Federal Register** (72 Fed. Reg. 61,109–61,114). The Conversion Program was established under Section 3008 of the Act and contains language identical to Section 3009 establishing the Upgrade Program regarding the definition of an eligible station.<sup>36</sup>

NTIA received many comments regarding station eligibility requirements. The comments primarily focused on two issues: (1) that a station should have an FCC authorization, and (2) the date by which a station received that authorization from the FCC.

**FCC Authorizations.** All the comments NTIA received in response to the issue of station eligibility supported a requirement that a station have an FCC authorization to qualify for the Upgrade Program. There were, however, varying

<sup>35</sup> *Id.*

<sup>36</sup> 73 Fed. Reg. at 59,587 (internal footnotes omitted).

<sup>26</sup> See 7 U.S.C. § 950bb(b)(2).

<sup>27</sup> CBA Comments (CBA) at 2 (Nov. 14, 2008).

<sup>28</sup> APTS at 3.

<sup>29</sup> 7 C.F.R. § 1740.8.

<sup>30</sup> See the Act, *supra* note 1, at § 3009(a).

<sup>31</sup> The RUS procedure defines the service area as the population within at least one county and within all counties that are at least 75 percent covered by a station. See 7 C.F.R. § 1740.89(c).

suggestions on what type of FCC authorization would be appropriate. Some commenters indicated that a station must hold an FCC license, while others recommended that stations holding an FCC Construction Permit should be eligible.<sup>37</sup>

NTIA has determined to interpret the Act's definition of a "low-power television broadcast station, Class A television station, television translator station, or television booster station" as a station authorized by the FCC to use the television broadcast spectrum. These terms are defined by the FCC at 47 C.F.R. §§ 74.701 and 73.6001. NTIA notes that authorization for broadcast, however, does not mean that the FCC must have issued a license for the station. The FCC's Rules permit a station to begin broadcasting service or program tests once it has completed construction and filed for a license showing that it complies with the FCC's technical requirements and engineering standards.<sup>38</sup> The FCC also has authorized low-power television stations under Special Temporary Authority (STA).<sup>39</sup> NTIA has decided to adopt these FCC definitions in order to include the broadest applicant pool for the program.

**Date of Eligibility.** NTIA believes that one of the key issues regarding station eligibility is when the applicant station must hold the required FCC broadcast authorization. Many commenters suggested that NTIA use the date of enactment of the Act — February 8, 2006 — as the date by which the applicant station must hold an FCC broadcast authorization.<sup>40</sup>

In determining the eligibility of a low-power station to participate in the Upgrade Program, NTIA is mindful that

the Act establishes a two-and-one-half year period between the February 8, 2006, the date of enactment, and the October 1, 2008, the authorized start date of the Upgrade Program.<sup>41</sup> Further, the Act requires that the Upgrade Program distribute funds on a reimbursement basis; i.e., station operators must expend their own funds prior to receiving reimbursement from NTIA. Inasmuch as Congress requires that low-power operators seek reimbursement from NTIA for prior upgrade expenses, it is entirely consistent with the Act that NTIA establish the date of station eligibility as the date of enactment, February 8, 2006. NTIA thus will accept applications from those low-power stations that were authorized by the FCC prior to February 8, 2006. This includes those stations authorized to broadcast as well as those low-power stations whose construction was authorized by the FCC prior to February 8, 2006.

NTIA recognizes that applications for many low-power stations were tendered to the FCC in 2000, but were mutually exclusive with other applicants and Construction Permits and could not immediately be awarded by the FCC. The clear intent of the Act is to facilitate the conversion of television stations in the United States to digital broadcasting.<sup>42</sup> NTIA believes that it is contrary to Congressional intent to exclude those low-power stations that received FCC authorizations and that were constructed in good faith prior to the announcement of this Upgrade Program. NTIA believes that those low-power stations that were authorized by the FCC prior to the date of enactment should be afforded the same opportunity to seek NTIA funds for upgrade to digital as those that were already broadcasting on that date. All stations, however, must broadcast exclusively in analog prior to submission of an application for Upgrade Program funds, i.e., the station must be constructed and licensed by the FCC as an analog low-power station

prior to submission of an Upgrade Program application.

NTIA is mindful that the Act that established the Upgrade Program also initially established a firm deadline, February 17, 2009, for the digital transition of full-power television stations.<sup>43</sup> While the Act permitted low-power stations to operate in analog after that date, the authorization of the Upgrade Program is another clear example of action by the Federal government to move all television broadcasting to digital. In an action taken in October 2005, the FCC authorized low-power stations with analog Construction Permits to construct digital stations without having to first construct an analog station.<sup>44</sup> Given these actions by the Congress and the FCC, NTIA believes that any low-power station authorized by the FCC after the date of enactment should have been constructed directly as a digital station. By establishing February 8, 2006, the date of enactment, as the date on which to determine station eligibility, NTIA opens the Upgrade Program to all stations authorized to broadcast in analog on that date. NTIA cannot, however, accept applications from those analog stations authorized after the date of enactment.

The Act further includes in the definition of an eligible station the requirement that the station "has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005," i.e., February 8, 2006.<sup>45</sup> NTIA considers that a station has converted from analog to digital operations when it begins digital broadcasting. Applicants must be able to certify that they did not begin digital broadcasting prior to February 8, 2006.

In sum, NTIA will require that on February 8, 2006: (a) the station held either (1) a Construction Permit for an analog low-power station that was subsequently licensed by the FCC for analog broadcasts, or (2) an FCC broadcast license or STA for an analog low-power station; and (b) the station was not broadcasting in digital.

### 3. Reimbursement

The Act states that eligible stations "may receive reimbursement for

<sup>37</sup> For example, Vegas PBS recommended that funding be "available to stations with a valid analog station license or Construction Permit (CP) as of the date of legislation, provided that stations were not already broadcasting in digital before that date." Vegas PBS at 1. It also suggested that "[h]olding of a digital license, without operating DTV facilities, by an analog broadcaster should not be disqualifying." *Id.* KRHP asserted that stations should hold "[a]n FCC license. (I wouldn't think that 'Construction Permits' and/or 'test authority' would not be what the legislators intended here)." KRHP at 2. In their comments, Charlie Cannaliato and Lee Good agreed that "[a] Construction Permit (CP) would not qualify for funds as it is not operational." Cannaliato and Good Comments (Cannaliato and Good) at 2 (June 1, 2008). Couzens, however, stated that "a construction permit should be treated in the same manner as a license, consistent with FCC practice. A permit holder has authority to begin broadcasting at any time." Couzens at 2.

<sup>38</sup> See 47 C.F.R. § 74.14.

<sup>39</sup> See 47 C.F.R. § 74.25. As of February 2009, at least 22 stations were operating under STAs.

<sup>40</sup> See, e.g., KRHP at 2; Vegas PBS at 1; OAB at 2; APTS at 2; Indian Wells Comments (Indian Wells) at 1 (Nov. 14, 2008).

<sup>41</sup> During this two-and-one-half year period, 343 low-power stations began analog broadcasting where construction was authorized prior to the date of enactment, and 24 new low-power licensees began analog broadcasts where construction was authorized after the date of enactment.

<sup>42</sup> In addition to the Conversion Program and Upgrade Program authorized and funded by the Act, it mandated the cessation of full-power analog television broadcasts, set forth an auction of spectrum to be released after the digital transition, established and funded a \$1.5 billion dollar program to assist consumers with analog television sets in receiving digital broadcasts, and provided \$30 million to assist in the digital conversion of television stations in the New York City area. See the Act, *supra* note 1, at §§ 3002–3005, 3007, 120 Stat. at 21–25.

<sup>43</sup> The DTV Delay Act subsequently extended this date to June 12, 2009. See *supra* note 1.

<sup>44</sup> FCC Commences Accepting Applications for On-channel Digital Conversion of Low Power TV and TV Translator Stations and Announces Availability of Revised Application Forms 346 and 301–CA, Public Notice, DA 05–2546, 20 F.C.C. Rcd. 15353 (Oct. 4, 2005).

<sup>45</sup> See the Act, *supra* note 1, 120 Stat. at 26.

equipment to upgrade low-power television stations from analog to digital.”<sup>46</sup> While the phrase “reimbursement” is not defined in Section 3009 of the Act, NTIA understands that the common usage of the term requires that an eventual grant recipient of the Upgrade Program must first make payments for the eligible costs funded by the grant, and then the grant recipient would receive funds to cover those payments from NTIA. Two issues related to the implementation of a reimbursement procedure are relevant to the Upgrade Program. The issue of an Expenditure Start Date was raised in the Upgrade Program Notice and discussed at the public meetings. A second issue, on the timing of the reimbursement, was raised in the written comments.

**Expenditure Start Date.** The Expenditure Start Date was the primary issue that NTIA identified in the Upgrade Program Notice regarding the interpretation of the reimbursement clause of Section 3009 of the Act. NTIA proposed the Expenditure Start Date as the date after which NTIA would accept expenditures eligible for reimbursement. NTIA asked whether the Expenditure Start Date should be the date of enactment — February 8, 2006 — or another date, and, if another date, which one.<sup>47</sup>

The comments NTIA received on the Expenditure Start Date primarily supported the date of enactment, February 8, 2006. For example, APTS supported that date “in order to make the Upgrade Program as inclusive as possible within the statutory language and not to penalize stations that have made early transitions.”<sup>48</sup> Indian Wells stated that setting different dates for the Expenditure State Date and the Date of Eligibility discussed earlier would be “condoning an unnecessary paradox.”<sup>49</sup>

NTIA believes that establishing February 8, 2006, as the Expenditure Start Date is the appropriate date to fulfill the purposes of the Upgrade Program. Using February 8, 2006, would fulfill Congressional intent of upgrading low-power stations to digital. After passage of the Act, many stations have upgraded with the expectation that their costs would be reimbursed under the Upgrade Program. Using the February 8, 2006, date as the date after which NTIA will reimburse stations is consistent with Section 3009(b)(2) of the Act, which defines an eligible station as one

“that has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.”<sup>50</sup> Finally, the February 8, 2006, date would be easily understood by applicants and would ease NTIA’s administration of the program.

#### **Timing of the Reimbursement.**

Although not raised in the Upgrade Program Notice, the comments received by NTIA raised an issue regarding the timing of the reimbursement. Commenters were concerned that NTIA would require that stations expend all funds required for a project prior to obtaining NTIA’s reimbursement funds. Some commenters stated that the stations do not have the funds to purchase equipment and then wait for NTIA reimbursement.<sup>51</sup> WYDC stated it most succinctly, “no need to require the stations to spend the funds first — they don’t have the money!”<sup>52</sup> APTS and the Oregon Association of Broadcasters (OAB) suggested that NTIA could advance funds “up front.”<sup>53</sup> NTA suggested that the Upgrade Program provide an advance of 80 percent with the balance paid after completion of work.<sup>54</sup> CBA suggested that NTIA issue “Reimbursement Letters of Credit” akin to a bank letter of credit, which could provide equipment manufacturers the assurance that NTIA grant funds would cover the cost.<sup>55</sup> Cannaliato and Good proposed that NTIA issue coupons to stations, which would then use the coupons to purchase equipment from manufacturers.<sup>56</sup>

NTIA appreciates the conditions under which low-power stations operate and the difficulties many may have in raising the funds required to upgrade to digital operations. The Upgrade Program

intends to assist those stations to the maximum extent permitted by the Act. The Act clearly requires, however, the reimbursement of costs. NTIA therefore can provide neither funds in advance nor letters of credit or coupons as these are other forms of advance payment. NTIA will issue reimbursements only after stations have expended funds to upgrade to digital operations.

**Stepped Reimbursement.** OPB suggested that one method of implementing the reimbursement process would be “a stepped approach with grant money furnished in steps such that the small organization need only come up with the money for the first conversion. After that, the NTIA funds would be in effect ‘seed money’ for the rest as the conversion is accomplished.”<sup>57</sup> NTIA believes that OPB’s suggestion of a stepped approach for funding is consistent with the Act’s requirement that the Upgrade Program reimburse eligible costs after a station is upgraded to digital. Therefore, NTIA will hold monthly grant rounds during the next year so applicants have opportunities to file applications for reimbursement as soon as an upgrade is completed.

During each grant round, applicants will be able to request reimbursement of eligible equipment costs for one or more stations that have completed the upgrade to digital. The application must include copies of the paid invoices for eligible equipment for each station, as well as a copy of each station’s FCC digital license, STA, FCC Form 347 (“Application for a Low Power TV, TV Translator or TV Booster Station License”), or FCC Form 302–CA (“Application for Class A Television Broadcast Station Construction Permit or License”) for a license to cover a Construction Permit. NTIA intends to accept applications monthly after the initial Priority Round, so operators can routinely seek reimbursement and continue their station upgrades.

These procedures will assist those stations that cannot raise all the funds they require up front for digital upgrade, especially those small non-profit organizations in rural areas targeted for priority by the Act, and will also ensure the immediate distribution of the maximum amount of funds to stations prepared to complete the digital upgrade of their facilities. Further information on application selection procedures are explained in Section 6.

#### **4. Priority Reimbursement**

The Act states that priority reimbursement shall be given to

<sup>50</sup> See the Act, *supra* note 1, 120 Stat. at 26.

<sup>51</sup> For example, APTS said that stations “lack the capital to complete conversion projects up front even if they would be able to receive reimbursement.” APTS at 4. Indian Wells commented that “[w]e don’t think that translator operators like ourselves will [be] able to obtain bank monies without availability of, at the least, an NTIA financial instrument to offer as loan collateral.” Indian Wells at 2. Walla Walla stated that “[i]f we could know there would be a certain amount of grant money coming, perhaps we could take out a loan first, then pay it back with grant funds, but this idea is not necessarily good management, and makes us a little nervous.” Walla Walla at 2. See also Belo at 3; Hillberry at 1; WYDC/WJKP/WBGT Comments (WYDC) at 1 (Nov. 1, 2008); Oregon Public Broadcasting Comments (OPB) at 1 (June 18, 2008).

<sup>52</sup> WYDC at 1.

<sup>53</sup> See APTS at 4; OAB at 5. OAB said that “any award which is not up front will be fruitless as the applicants would not have the ability to order the necessary replacement equipment.” *Id.*

<sup>54</sup> NTA 1 at 2.

<sup>55</sup> CBA at 3.

<sup>56</sup> Cannaliato and Good at 3.

<sup>57</sup> OPB at 1.

<sup>46</sup> *Id.*

<sup>47</sup> 73 Fed. Reg. at 59,587–59,588.

<sup>48</sup> APTS at 3.

<sup>49</sup> Indian Wells at 5; see also KGCS Comments at 3 (Oct. 21, 2008). The only other suggestion was from KRHP, which suggested a date shortly after the applications were made available. KRHP at 3.

“eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.”<sup>58</sup> In Upgrade Program Notice, NTIA identified the following issues regarding the interpretation of this requirement in Section 3009 that were discussed at the Public Meetings:

Whether NTIA should:

(1) have an exclusive period during which only applicants who qualify for the priority can apply?

(2) establish a priority reimbursement category within a larger grant round?

(3) provide additional points, if the grants are competitive, to those applicants that meet the criteria for priority reimbursement?

(4) require that stations meet both criteria (licensee held by a non-profit corporation and that serve rural areas of fewer than 10,000 viewers) to receive the priority?

(5) use the same benchmark in determining the priority reimbursement population requirement (“rural areas of fewer than 10,000 viewers”) as used in determining population eligibility requirement (“any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants”)?

(6) adopt the same requirements regarding priority reimbursement for the Upgrade Program as it adopted for the Conversion Program and published in the October 29, 2007, **Federal Register** (72 Fed. Reg. 61,109–61,114).<sup>59</sup>

**Non-Profit Corporation.** NTIA received many comments in response to the questions NTIA raised regarding implementation of the priority reimbursement section of the Act. Most of the comments received address the interpretation of the term “non-profit corporation.” Almost all of the comments on the issue recommended the widest possible interpretation of this term to include governmental units and other non-profit organizations that may not be organized as corporations.<sup>60</sup>

While NTIA understands commenters’ recommendations that

NTIA consider organizations such as governmental subsidiaries, or organizations that act in a manner similar to non-profits, as a “non-profit corporation” for the purpose of receiving priority under Section 3009, NTIA cannot do so as a matter of law. Since the Act does not define the term “non-profit corporation,” NTIA will use the common definition of the term non-profit corporation as a corporation that has received a determination of non-profit status under state or Federal law.<sup>61</sup> As a general rule, state and local governments would not qualify for priority compensation unless the unit has a separate corporate charter and has received a determination of non-profit status. NTIA will require that applicants supply evidence of non-profit corporate status, such as an Internal Revenue Service (IRS) letter or other documentation submitted to establish the nature of the entity holding the license. Whether or not an entity has been organized as a non-profit corporation entitled to priority reimbursement under the Upgrade Program would be determined by review of the state, territorial, or tribal articles of incorporation or other documentation submitted to establish the nature of the entity holding the license.

Non-profit corporations are usually thought of as those entities organized under section 501(c) of the IRS Code. Indian Wells raised the question of whether those organizations organized under section 501(c)(4) of the IRS Code are eligible for priority.<sup>62</sup>

Under a provision of the 1995 Lobbying Disclosure Act known as the “Simpson Amendment,” section 501(c)(4) organizations that receive Federal funds may not engage in any lobbying activities, even with their own private funds. NTIA recognizes that some station licensees may be organized under section 501(c)(4) of the IRS Code, but do not engage in prohibited lobbying. Therefore, if an organization organized under 501(c)(4) certifies that it engages in no lobbying activities, NTIA will be able to accept the application for the Upgrade Program and afford the applicant priority reimbursement.

**Rural areas with fewer than 10,000 people.** The Act also requires that NTIA give priority reimbursement to “eligible low power television stations that serve

rural areas of fewer than 10,000 viewers.”<sup>63</sup> Comments received on this issue generally echoed the comments noted earlier in Section 1 regarding the determination of community eligibility.<sup>64</sup> APTS recommended that NTIA adopt “the same benchmarks in determining the priority reimbursement population requirement as in determining the base eligibility requirement.”<sup>65</sup> NTIA agrees and believes that using the same benchmark would simplify the administration of the Upgrade Program. As discussed earlier in Section 1, the use of the FCC 50/50 protected contour using the Longley-Rice model will provide the most accurate determination of the population within a station’s service area. NTIA will provide the appropriate population information to each applicant as part of the Upgrade Program’s application process. Those stations with populations under 10,000 will be afforded priority reimbursement if they are in a rural area.<sup>66</sup>

**Implementation of the Priority.** In addition to determining how to establish the priority for reimbursement, NTIA must also determine how to implement this priority. One of the questions NTIA asked in the Upgrade Program Notice was whether NTIA should require that stations meet both criteria (i.e., where the license is held by a non-profit corporation and stations that serve rural areas of fewer than 10,000 viewers) in order to receive the priority. Commenters were split on this issue. For example, KRHP and KGCS supported the need to meet both criteria, while APTS felt that an applicant need only meet one of the criteria.<sup>67</sup>

When NTIA implemented the priority provision for the Conversion Program, which is based on identical language regarding priority as the Upgrade Program, NTIA concluded that an applicant need only fulfill one category to be eligible for priority reimbursement.<sup>68</sup> NTIA has determined that it is too narrow of an interpretation

<sup>58</sup> See the Act, *supra* note 1, 120 Stat. at 26.

<sup>59</sup> 73 Fed. Reg. at 59,588. The Conversion Program was established under Section 3008 of the Act and contains language identical to Section 3009 establishing the Upgrade Program regarding priority consideration (reimbursement).

<sup>60</sup> Hillberry at 1; OAB at 3; APTS at 5; Indian Wells at 4; Couzens at 4; KGCS Comments (KGCS) at 1 (Oct. 21, 2008); Greg Best Consulting Comments (GBC) at 1 (Nov. 14, 2008). OPB, which recommended that applicants be organized under section 501(c)(3), supported including governmental bodies as non-profit organizations if there were “a maximum cap, so there is a chance that the smaller groups can get funds.” OPB at 3.

<sup>61</sup> It is a basic principle of statutory construction that in the absence of a statutory definition, “we construe a statutory term in accordance with its ordinary or natural meaning.” *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

<sup>62</sup> Indian Wells at 4. Section 501(c)(4) of the IRS Code refers to social welfare organizations.

<sup>63</sup> See the Act, *supra* note 1, 120 Stat. at 26.  
<sup>64</sup> For example, OAB again supported using the census population of the community of license for determining the priority reimbursement. OAB at 4. OPB supported city of license population. OPB at 3.

<sup>65</sup> APTS at 5.

<sup>66</sup> If the station’s coverage contour is nearly all within a large urban area (shown in yellow on the FCC’s coverage map), it will not qualify for the priority, even if it serves fewer than 10,000 people.

<sup>67</sup> KRHP at 3; KGCS at 3; *but see* APTS at 4.

<sup>68</sup> See 72 Fed. Reg. at 61,112 (providing that “an applicant requesting priority compensation must (i) be a non-profit corporation; or (ii) serve fewer than 10,000 people within the low-power station’s 50/50 service contour”) (emphasis added).



of the Act to require applicants to fulfill both categories to be eligible for priority reimbursement from the Upgrade Program. Therefore, as directed by the statute, NTIA will give priority reimbursement to any applicant that is *either* (1) a non-profit corporation as provided above, *or* (2) a station that serves fewer than 10,000 people within the low-power station's 50/50 Longley-Rice service contour.

NTIA recognizes that hundreds of stations could qualify for priority reimbursement under this policy. In order to fulfill Congressional intent that the Upgrade Program provide priority reimbursement to stations operated by non-profit corporations and to those stations serving rural communities, NTIA believes that it is appropriate to award additional priority to stations meeting *both* criteria. As explained further in Section 6 on application selection procedures, NTIA will award additional priority reimbursement to those stations that are *both* (1) a non-profit corporation as provided above, *and* (2) a station that serves fewer than 10,000 people within the low-power station's 50/50 Longley-Rice service contour.

NTIA received few comments regarding how the priority reimbursement should be administered. Several commenters recommended that NTIA establish a window of approximately 30 to 60 days to receive applications requesting priority reimbursement, after which applications would be open to all qualified applicants.<sup>69</sup> NTIA created such a window for priority applicants in the Conversion Program and believes that such a window is an effective way to implement the required priority reimbursement for the Upgrade Program.<sup>70</sup> NTIA will, therefore, hold a Priority Round open only to those stations which qualify for priority reimbursement.

As discussed further in Section 6 on the application selection procedures, NTIA will assign priority points to those stations meeting the two criteria discussed earlier. Awards will be based on the number of points a station receives and NTIA expects that those stations qualifying for priority reimbursement will be funded first. CBA asks that NTIA limit the funds

going to priority stations to 50 percent of the total program funds.<sup>71</sup> NTIA declines to limit the Upgrade Program funds to those stations that qualify for priority reimbursement in order to fulfill Congress's intent to provide as much assistance as possible to stations operated by non-profits and those stations that serve rural communities.

In sum, NTIA will award ten points to those stations that serve an area of fewer than 10,000 people and will also award ten points to those stations that are licensed to a non-profit corporation. First, NTIA will conduct a grant round restricted to those stations meeting the priority criteria discussed above (Priority Round) with a July 13, 2009 Closing Date so stations that qualify for the priority can quickly receive reimbursement and continue their phased upgrade, if appropriate. After that Priority Round Closing Date, NTIA will continue to provide priority to those stations that meet these criteria during the monthly grant rounds.

#### 5. Eligible Equipment and Costs

The Act states that reimbursement shall be given for "equipment to upgrade low-power television stations from analog to digital," but does not provide further guidance regarding which equipment or costs should be supported by the program.<sup>72</sup> In the Upgrade Program Notice, NTIA identified three issues regarding the interpretation of this provision: (1) what costs or equipment should be eligible for reimbursement under the program; (2) whether there should be a formula or a limit on the amount of funds awarded to a single station; and (3) if so, what should they be or how should they be determined?<sup>73</sup>

NTIA received many comments recommending the equipment that should be funded under the Upgrade Program, many of them with specific recommendations.<sup>74</sup> While all the commenters supported the replacement of analog transmission equipment, several noted that upgrade costs would be different (1) depending on different transmit power levels, (2) if a station

could modify its existing equipment rather than having to purchase a new transmitter, (3) if the station were to change its transmit channels, or (4) if the station is an originating station.<sup>75</sup> Several commenters also raised the question whether the Upgrade Program should support installation or planning (engineering) costs.<sup>76</sup>

All the commenters that discussed the issue recommended that NTIA place a cap on the level of funding for grants. The suggested caps generally range from \$6,000 to \$10,000 for upgrade of small translators and up to \$20,000 for more complex projects.<sup>77</sup> Most of the commenters, including CBA and NTA, the two national organizations that represent low-power stations, recognized that their proposed cap was not intended to cover all costs, but was a reasonable funding level given the demands on the program. CBA and NTA both recommended caps of \$20,000.<sup>78</sup>

After reviewing the comments and suggestions regarding the equipment the Upgrade Program should fund, NTIA determined that, due to limited funds, eligible equipment should be limited to the basic transmission equipment required for a low-power television,

<sup>75</sup> See Cannaliato and Good at 1; OPB at 2 (commenting on the costs of converting different power levels); Hillberry at 2 and NTA 1 at 2 (both commenting on relative costs of modifying vs. replacement); NTA 1 at 2 and APTS at 4 (both commenting on costs of changing channels); CBA at 5 (commenting about originating and non-origination stations).

<sup>76</sup> For example, Cannaliato and Good recommended \$500 for installation per site to cover mileage, technical help per diem, miscellaneous cables and connectors, etc. Cannaliato and Good at 3. Other commenters thought that funding installation costs would be desirable but not critical. OPB at 2; GBC at 4; KRPH at 2; Indian Wells at 3. Indian Wells also supported the funding of engineering costs in support of the FCC license. Indian Wells at 3. GBC supported \$1,500 for engineering costs after two years, if funds are available. GBC at 4.

<sup>77</sup> Cannaliato and Good at 2; Hillberry at 2; Indian Wells at 3 (recommending funding caps for simpler upgrades in the \$6,000 to \$10,000 range); CBA at 5 (recommended a \$12,000 cap); GBC at 4 (recommending a \$25,000 cap for simpler projects); APTS at 6 (recommending a \$30,000 cap). See also Cannaliato and Good at 2; NTA 1 at 2; RTZ Systems at 1; Hillberry at 2; OAB at 5; CBA at 5 (recommending a cap ranging from \$20,000 to \$25,000 for more complex projects); Indian Wells at 4 (recommending a \$10,000 cap for more complex projects); APTS at 5 (recommending a \$40,000 cap); OPB at 2; GBC at 4 (recommending a \$75,000 cap); KRPH at 1 (recommending a \$150,000 cap).

<sup>78</sup> NTA "suggested that a maximum level of \$20,000 is a good compromise between covering all costs and having a reasonable level of funding available for all applicants." NTA 1 at 2. Similarly, CBA states that it "believes that it to be more helpful to the digitization of the translator and LPTV industry as a whole to limit the types of equipment eligible for SEC. 3009 [Upgrade Program] reimbursement to transmission equipment, rather than funding anything and everything these stations could use in the digitalization conversion process." CBA at 4.

<sup>69</sup> APTS suggested that "each grant cycle should begin with a 30- to 60-day period for applications for priority reimbursement. After that, the cycle should be open to all applicants." APTS at 6; see also CBA at 3; Vegas PBS at 1.

<sup>70</sup> During the Conversion Program, NTIA accepted only applications requesting priority consideration during the first three months of the program. See 72 Fed. Reg. at 61,109.

<sup>71</sup> CBA at 3 (asserting that "[t]his proposed 50/50 division is equitable even though the number of very rural translator licensees may be greater than the number of less rural LPTV stations because the technical configuration of originating LPTV stations makes conversion to digital significantly more expensive").

<sup>72</sup> See the Act, *supra* note 1, 120 Stat. at 26.

<sup>73</sup> 73 Fed. Reg. at 59,588.

<sup>74</sup> See, e.g., Cannaliato and Good at 2; KGCS at 2; KRHP at 2; OPB at 2; NTA 1 at 2; NTA Comments (NTA 2) at 1-2 (Nov. 17, 2008); Hillberry at 1; Indian Wells at 3; GBC at 3; OAB at 5; APTS at 4; CBA at 4; KPVM Television, Inc. Comments (KPVM) at 1 (Oct. 30, 2008); RTZ Systems Comments (RTZ Systems) at 1 (Oct. 31, 2008).



Class A, translator, or booster station to broadcast a digital signal. As part of the application process, NTIA will provide applicants with two funding caps and corresponding listings of eligible equipment/costs. One listing is based on the *modification* of an existing 100 watt NTSC station to digital (25 watts ATSC) and will have an award cap of \$6,000, as recommended by several commenters. The other equipment cost listing is based on the *replacement* of a similar 100 watt NTSC with a new 25 watt digital unit, with a cap of \$20,000 as recommended by CBA, NTA, and others. NTIA has researched upgrade costs of basic transmission equipment and found that these proposed cap levels are a fair reflection of the upgrade cost to stations. Grantees will be permitted to exceed these equipment list expenditure caps to purchase similar, but more powerful equipment using their own funds. As discussed in Section 3, grantees will be required to provide NTIA with paid invoices for eligible equipment when submitting an application.

#### 6. Application Selection Procedures

NTIA also raised several issues in the Upgrade Program Notice and public meetings about how NTIA should select grant recipients. Issues discussed include how applications should be selected for funding and whether NTIA should consider any of the following alternatives:

(1) **Uniform grants.** If all 7,000 low-power stations were eligible for the program, each station could receive a grant of approximately \$9,000; if only half the stations were eligible for the program, the uniform grant would be approximately \$18,000, etc.

(2) **First-come, first-served.** NTIA could fund complete applications from otherwise eligible stations on a first-come, first-served basis, until all funds are awarded. A provision would have to be devised to provide for the stations that meet the statutory requirements for priority reimbursement.

(3) **Competitive grant cycle.** If NTIA were to award funds on a competitive basis, what selection factors and criteria should it establish to evaluate applications?

(4) **Single or multiple grant cycles.** How many grant cycles should NTIA plan to award the funds during the authorized period fiscal year 2009 through fiscal year 2012?<sup>79</sup>

Issues discussed also included the administrative matters related to the efficient implementation of the Upgrade Program, including preparation and

submission of applications, payment of funds, and grantee post-award obligations.

**Uniform Grants and First-Come, First-Served Grants.** The comments submitted express stations' desire for a simple electronic application procedure.<sup>80</sup> As part of this desire for a simple application procedure, many comments were supportive of NTIA's issuance of uniform grants or grants made on a first-come, first-served basis and not a competitive grant program.<sup>81</sup> GBC, however, opposed a first-come, first-served grant system "because constraints upon the resources of the staff of the station may result in poor applications or not allow the stations that need it most to receive program funding."<sup>82</sup> KNXT felt that NTIA should give "one point for each condition met. Stations should be awarded grants with the most points getting the highest priority."<sup>83</sup> No comments were received, however, on how the points should be assigned. Several comments were received recommending that applicants have the ability to submit funding requests for multiple station upgrades as part of a single application.<sup>84</sup>

NTIA cannot accept the recommendation that it issue uniform grants as it did in the Conversion Program. For the Conversion Program, NTIA's research indicated that there were sufficient funds available so all qualified stations could receive a uniform grant.<sup>85</sup> NTIA is not able to estimate the number of applicants eligible for the Upgrade Program. Therefore, it is unable to apply the same process used in the Conversion Program. Further, as discussed earlier in Section 5 on Eligible Equipment and Costs, the costs of upgrade will vary depending on a number of factors, including station power, channel selection, and whether the equipment can be modified or must be replaced. Given the limited availability of funds, NTIA believes that the needs of more stations can better be addressed if the caps reflect the needs of the project. NTIA, therefore, believes that it will be able to assist more stations by not awarding uniform grants to each station. In the interest of simplifying the

program while at the same time responding to the needs of different stations, NTIA has established two levels of Upgrade Program awards, \$6,000 and \$20,000 as discussed earlier in Section 5.

NTIA appreciates the recommendation that the Upgrade Program distribute funds on a first-come, first-served basis. We find, however, that such a procedure would be inconsistent with the objectives of the program. A primary requirement of the Act is that NTIA provide priority reimbursement to stations operated by non-profit corporations or those that serve rural communities of fewer than 10,000. NTIA cannot reconcile a first-come, first-served grant program with the requirement to provide priority reimbursement. NTIA has, therefore, designed the Upgrade Program as a competitive grant program so that it can provide priority reimbursement to those stations that meet the objectives of the Act. NTIA is, however, mindful of a statement by Couzens that the application form should be a simple one-page form with "mechanistic go/no-go tests."<sup>86</sup> NTIA agrees that the application process should be as easy and simple as possible. Applications will be fully reviewed by staff to ensure eligibility criteria, as described above, are met.

**Web-based Application Form.** NTIA will use the Conversion Program application procedure as the basic model for the Upgrade Program. NTIA will make an Online Fillable Form available on the web for completion by all applicants. Applicants will be able to prepare applications for multiple stations on a simple Internet website. Information for stations will be automatically entered from the FCC's database whenever possible and can be revised by the applicant. The application website will provide an easy link to other websites mentioned earlier for applicants to obtain FCC coverage maps or U.S. Census Bureau population data for urban areas, if needed. Finally, the applications must be signed and mailed to NTIA for receipt on or before the relevant closing dates indicated in the **DATES** section of this announcement.

Because the Upgrade Program grants are considerably larger than the \$1,000 per station awards of the Conversion Program, applicants will be required to submit several additional forms required by the Department of Commerce, as discussed further in Section III, Application Procedures. These additional forms also will be available on the Upgrade Program

<sup>80</sup> GBC at 5; Cannaliato and Good at 1; OPB at 4; Vegas PBS at 1.

<sup>81</sup> OPB at 4; KGCS at 1; KYDC at 1; Hillberry at 1; Indian Wells at 5; Vegas PBS at 8; OAB at 6; CBA at 5.

<sup>82</sup> GBC at 5.

<sup>83</sup> KNXT Comments at 1 (Oct. 24, 2008).

<sup>84</sup> APTS at 6; OPB at 4.

<sup>85</sup> To date, NTIA has been able to award every qualified application to the Conversion Program a grant of \$1,000 as originally proposed.

<sup>86</sup> Couzens at 2.

<sup>79</sup> 73 Fed. Reg. 59,588.

application website, and applicant information will be automatically inserted by the application program when possible. For the most part, these additional forms will require only a signature certifying the applicant's compliance with Departmental requirements.

**Length of Award Period.** Since NTIA requires that a station complete its digital upgrade prior to submission of the application, the Upgrade Program will operate in a manner similar to that of the Conversion Program. After an award is made, payment and project close-out will proceed with a minimum of grantee paperwork.

**Funds Available During Fiscal Year 2009.** APTS and CBA responded to the issue of how NTIA should plan to award the funds during the authorized period of fiscal year 2009 through fiscal year 2012. APTS recommended that funds be distributed during each of the four authorized fiscal years, with a majority of funds awarded in fiscal year 2009 "to encourage licensees to conduct expeditious transitions."<sup>87</sup> CBA also recommended distribution of funds during the four fiscal years, with the largest amount in fiscal year 2009, although it also supported the distribution of all funds in fiscal year 2009 "provided that this rapid distribution does not necessitate a dramatic increase in the overhead cost of the implementation" of the program.<sup>88</sup>

NTIA believes that the best way to encourage stations to upgrade to digital is to make all the funds in the Upgrade Program immediately available to applicants. Although an accelerated distribution of funds would impact overhead costs, NTIA believes that the benefit of making the reimbursement of funds available to the stations quickly would benefit the public by receiving the benefits of digital television broadcasts. NTIA, therefore, announces that it will fund qualified applications up to the full approximately \$44 million available in the Upgrade Program. This Notice establishes a Closing Date for the Priority Round as July 13, 2009. Applications will then be accepted on a monthly basis, beginning August 10, 2009 until all grant funds are awarded.

**Competitive Grant Program.** The Upgrade Program will be a competitive grant program, but one that will use simplified application procedures. As discussed above, NTIA will assign points to those stations meeting the two priority criteria in Section 4. Also, points will be awarded based on the

degree of rurality of the communities served as discussed in Section 1. Awards will be based on the number of points a station receives, and those stations qualifying for priority reimbursement will be funded first during each grant round.

## II. Award Information

### A. Eligibility

An eligible station is a low-power television broadcast station, Class A television station, television translator station, or television booster station (1) that is itself broadcasting exclusively in analog format; and (2) that has not converted from analog to digital operations prior to February 8, 2006.

In order to qualify for the Upgrade Program, an eligible station must provide service to a rural community that is eligible under the Act. Further discussion of the determination of eligible rural communities will be found in Part I, Section B.1 and Part IV, Section A.

### B. Funding Availability

Approximately \$44 million is available for grants for the Low-Power Television and Translator Upgrade Program. NTIA will provide updated information on a periodic basis at its website <http://www.ntia.doc.gov/lptv> regarding program awards and funds remaining for grants.

### C. Cost Share

There are no cost share requirements for this program.

## III. Application Procedures

### A. Content and Form of Application Submission

All applicants must use the official Office of Management and Budget (OMB)-approved Application Forms as listed below for the fiscal year 2009 grant cycle. These forms include a combination of government-wide Standard Forms (SF-424, SF-424A, SF-424B, SF-LLL), Department of Commerce form (CD-511), and Upgrade Program form (DTV-5).

To apply for an Upgrade Program grant, an applicant must file an original and one copy of a complete application in paper form or submit the application electronically via the Grants.gov website. NTIA does not accept pre-applications.

All forms required for the Upgrade Program application and the Online Fillable Form are available on the Internet at <http://www.ntia.doc.gov/lptv/Application/appform.htm>. Applicants can complete many parts of the Upgrade Program application on the

Internet using the Online Fillable Form found on this website. The Online Fillable Form requires no special software. Applicants will be able to save, edit, and print their forms. The software will complete all math operations, transfer, and place correct figures in appropriate locations, provide help for each question, and check for common errors. **The form must be printed and submitted with original signatures.** NTIA does not accept facsimile or email applications.

Alternatively, you may submit your application electronically by completing the application forms available at the Grants.gov website. If your organization is not registered with the Central Contractor Registration, it must do so at <http://www.ccr.gov>. The e-business point-of-contact at your organization will then be able to register you as an authorized organization representative. The Grants.gov registration process takes three to five business days. Applications filed electronically through Grants.gov do not need the original signatures as required below.

A complete application includes the following items:

### Information about the APPLICANT and the APPLICATION

**SF-424 Form, "Application for Federal Assistance,"** which provides general information about the applicant, the type of project submitted, and the estimated project cost. This form is a certification and the original application must contain an original signature from an authorized representative of the applicant organization.

**DUNS number must be entered into item 8(c) of the SF-424.** All applicants are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants. For additional information, see 67 Fed. Reg. 66,177 (Oct. 30, 2002); 68 Fed. Reg. 17,000 (April 8, 2003). Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1-866-705-5711 or via the Internet (<http://www.dnb.com>).

**SF-424A Form, "Budget Information Non-Construction Programs."** This form is required from all applicants, in spite of the reference to "non-construction" programs.<sup>89</sup> The Online Fillable Form will automatically prepare this form after the equipment sections of the application (DTV-5 form) are completed. All applicants must submit only page 1 of the form with

<sup>89</sup> The Upgrade Program will not be using Federal SF-424C, "Budget Information—Construction Programs," which is used for projects to construct highways, airports, etc.

<sup>87</sup> APTS at 5.

<sup>88</sup> CBA at 5.

information on the appropriate lines in item 6, column 1.

**Exhibit A.** If the applicant is a Non-Profit Corporation, submit an IRS Letter or equivalent document showing your organization's tax-exempt status.

**Exhibit B.** Provide the following certifications in this Exhibit:

**Standard Form 424B, "Assurances—Non-Construction Programs."** This form is required from all applicants, in spite of the reference to "non-construction" programs, and must have an original signature on the second page.<sup>90</sup>

**Department of Commerce Form CD-511, "Certification Regarding Lobbying."** This form is required from all applicants and must have an original signature.

**Standard Form LLL, "Disclosure of Lobbying Activities."** This form is required from all applicants that employ lobbyists in an effort to obtain a grant.

**Information for EACH STATION for which Upgrade Program Funding is requested.**

**DTV-5 Form, "Upgrade Program Supplemental Application."** This form requests information specific to the Upgrade Program application, such as information for each station for which funding is requested, including a request for eligible equipment.

**Exhibit [call letters] — 1. FCC Documents.** All applicants must submit a copy of the most current FCC authorization for the analog station that was upgraded and the most current FCC authorization for the corresponding completed digital station. Applicants that have modified an existing transmission system must submit a copy of their transmission system modification letter filed with the FCC pursuant to section 74.796(b)(5) of the FCC Rules, 47 C.F.R. § 74.796(b)(5).

**Exhibit [call letters] — 2. FCC Coverage Map.** All applicants must provide maps of the analog station's coverage area. Applicants requesting funds for several stations at the same site must supply a map for each analog station, since the power levels and service areas of the stations may be different. Maps of the analog station's service area for stations that have built digital companion channels can be printed from the following FCC website: <http://www.fcc.gov/mb/video/tvq.html>. To locate the proper map, enter the station's call sign. If more than one record appears, select the current license (Status = LIC). When the station page opens, scroll down to the record

that is licensed, and select Area: Service Contour Map. The page Service Area on a Tiger Census Map will open. Print this page and submit it with the application. Maps of the analog station's service area for stations that have flash-cut are no longer available from the FCC website and will be provided by NTIA as part of the Online Fillable Form and must be printed and submitted as part of the application.

**Exhibit [call letters] — 3. Rurality Score Worksheet or other Population Documentation.** The Rurality Score Worksheet is required only from a station which has an urban area in its coverage with a population greater than 20,000. Applicants who checked item 15(d) on the DTV-5 form should place their documentation of population coverage here.

**Exhibit [call letters] — 4. Invoices.** Place copies of paid invoices for the eligible costs in this Exhibit.

#### *B. Submission Dates and Times*

Completed applications for the Priority Round must be received at NTIA no later than 5 p.m., Eastern Daylight Time July 13, 2009, the Priority Round Closing Date. Applicants must ensure that the carrier they use guarantees delivery of the application by the Priority Round Closing Date. Applicants should note that all material sent via the U.S. Postal Service (including "Overnight" or "Express Mail") is subject to delivery delays of up to two weeks due to mail security procedures at the Department of Commerce. If an application is received after the Priority Round Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Priority Round Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Priority Round Closing Date or later and received after the deadline.

After August 10, 2009, applications for the next grant round must be received at NTIA by 5 p.m., Eastern Time, the first business day of each subsequent month as long as funds are available (Closing Dates). Applications received after any of the monthly Closing Dates will be held until the next grant round.

Applicants submitting applications by hand-delivery are notified that all packages must be cleared by the Department of Commerce security office. Entrance to the Department of Commerce Building for security

clearance is through entrance number 10 on the 15th Street side of the building. Due to screening procedures at the Department of Commerce, packages arriving via the U.S. Postal Service are irradiated, which can damage the contents. NTIA encourages applicants to consider the impact of this procedure in selecting their application delivery method.

NTIA encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline. Applications submitted electronically via the Grants.gov website must be received and logged by Grants.gov by 5 p.m., Eastern Daylight Time on the Priority Round Closing Date or the subsequent monthly Closing Dates. Difficulties encountered by applicants filing through Grants.gov will not justify filing deadline extensions. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov website. As soon as possible after the Priority Round Closing Date and subsequent monthly Closing Dates, the designated Administrative Contacts of all applicants are sent notices by email that their submissions have been received and giving the file number assigned to each application by NTIA.

Applications not received by a deadline will be held until the deadline for the next grant round for processing. NTIA also will hold until the next grant round any application that lacks information necessary to complete the processing of the application, including individual stations within the application. NTIA will inform the applicant of the information required to process the application.

NTIA will reject and return any application that is materially incomplete or when it finds that either the applicant or the project is ineligible for funding. Applicants will be informed of the reason for the return of any application.

#### *C. Funding Restrictions*

##### *1. Equipment Costs*

These grants fund only equipment plus installation costs when installation must be performed by contractors. Eligible equipment for the Upgrade Program includes the apparatus necessary for the upgrade of analog low-power television stations, Class A television stations, translator stations and boosters to digital — including translators; mask filters; transmit antennas; encoders; multiplexers; receive antennas and lines; regenerators;

<sup>90</sup> The Upgrade Program will not be using Federal SF-424D, "Assurances for Construction Programs," which is used for projects to construct highways, airports, etc.

GPS filers; surge suppressors; and engineering services and installation.

A complete listing of equipment eligible for funding by the Upgrade Program is posted on the NTIA website at <http://www.ntia.doc.gov/lptv>.<sup>91</sup> The website provides applicants with two funding levels and corresponding listings of eligible equipment/costs. One listing is based on the *modification* of an existing 100 watt NTSC station to digital (25 watts ATSC) and has an award cap of \$6,000. The other equipment listing is based on the *replacement* of a similar 100 watt NTSC station with a new 25 watt digital unit, with a cap of \$20,000. Grantees will be permitted to exceed these equipment list expenditure caps to purchase similar, but more powerful, equipment using their own funds. NTIA does not fund salary expenses, including staff installation costs.

## 2. Audit Costs

Audits must be performed in accordance with audit requirements contained in OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997, and as revised in the **Federal Register** on June 27, 2003. OMB Circular A-133 requires that non-profit organizations, Government agencies, Indian tribes, and educational institutions expending \$500,000 or more in Federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Other audits may be conducted by the Office of the Inspector General. NTIA will fund audit costs only in exceptional circumstances.

## 3. Indirect Costs

Indirect costs are not supported by this program.

### *D. Mailing and Delivery Address for Applications*

The mailing and delivery address for the Upgrade Program is:

NTIA Upgrade Program, Room H-4812, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

Hand-deliveries of applications must be made through Room 1874, located at Department of Commerce's entrance number 10 on 15th Street, N.W.

The Upgrade Program does not accept facsimile submissions, but does provide an Online Fillable Form at its website, <http://www.ntia.doc.gov/ptfp>, and

accepts electronic applications submitted through Grants.gov. Further information on the Online Fillable Form and Grants.gov is contained in Part A of this section, Content and Form of Application Submission.

## IV. Application Review Information

### *A. Evaluation Criteria*

Each application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here.

Each station identified in an application will receive a score based on the three evaluation criteria that were discussed in Part I, Funding Opportunity Description, and summarized in Section 6., Application Selection Procedures.

The three criteria used to evaluate applications are listed below.

(1) Degree of rurality of communities served: 0–10 points.

A station whose FCC 50/50 Longley-Rice coverage contour serves an area that does not include an urban area with population greater than 20,000 people will receive ten points. A station whose coverage contours include urban areas with a population greater than 20,000 can receive between six and nine points. Stations receiving fewer than six points are not located in an eligible rural community and thus not eligible to participate in the Upgrade Program.<sup>92</sup>

(2) Whether the station serves fewer than 10,000 viewers: 10 points.

A station serving a population within the FCC 50/50 Longley-Rice coverage contour of fewer than 10,000 people who are not within an urban area will receive ten points.

(3) Whether the FCC license of the applicant is held by a non-profit corporation: 10 points.

Stations whose FCC license is held by a non-profit corporation will receive ten points.

Each station in an application can be assigned a maximum of 30 points.

The Upgrade Program Online Fillable Form application will assist applicants in completing the above evaluation criteria. When necessary, NTIA will revise scores to reflect NTIA's evaluation of the documentation presented.

### *B. Review and Selection Process*

Applicants are required to complete the Upgrade Program Online Fillable Form Application (DTV-5). Once the required information is entered on the form by applicants, a numerical score

for each of the three criteria listed above will be generated automatically for each of the applicant's stations. NTIA staff will review the documentation submitted by the applicants in support of the generated scores for accuracy and completeness. Applications also may receive a technical assessment by NTIA engineers.

Each station will receive a separate score. The NTIA staff prepares a rank order based on the scores and technical assessments and provides the Upgrade Program Director with funding recommendations. The Upgrade Program Director recommends the funding order of the applications and presents the recommendations to the Associate Administrator, Office of Telecommunications and Information Applications, for review and approval. The Upgrade Program Director's recommendations and the Associate Administrator's review and approval take into account the following selection factors:

- (a) Rank level of station scores;
- (b) The program staff recommendations;
- (c) The geographic distribution of the proposed grant awards; and
- (d) The availability of funds.

Upon approval by the Associate Administrator, the Upgrade Program Director's recommendations are presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator makes final award selections taking into consideration the Upgrade Program Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes.

Prior to award, applications may be negotiated between NTIA and the applicant to resolve any differences between the original request and what NTIA is willing to consider funding. Some applications may be dropped from the slate due to lack of FCC authorization, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made.

### *C. Anticipated Announcement and Award Dates*

NTIA anticipates that awards will be announced 30 to 90 days after the Priority Round Closing Date and each subsequent monthly Closing Date.

## V. Award Administration Information

### *A. Award Notices*

Successful applicants are sent a standard Department of Commerce

<sup>91</sup> The eligible equipment is shown on the online application form under section "Station/Site Specific Info," item 17. The equipment you are eligible for will appear after you indicate your current transmission equipment.

<sup>92</sup> See the discussion under Part I, Section B.1. Community Eligibility — Rurality Factors.

Grant Award package, "Financial Assistance Award" Form CD-450, containing all of the terms and conditions of the award. The CD-450 signed by the grants officer is the authorizing document and is sent to the applicant's designated Administrative Contact via overnight delivery service, thus a street address is very important and must be included on the first page of the application. Two copies of the CD-450 must be signed and returned to the National Institute of Standards and Technology, Grants and Agreements Management Division (NIST/GAMD) within 30 days. NIST/GAMD provides grant administrative services for all Upgrade Program grants.

Unsuccessful applicants are designated "deferred" and will be held until the next grant round. Ineligible applications will be returned.

#### *B. Administrative and National Policy Requirements*

##### 1. Payment of Federal Funds

All awards are made on a reimbursement basis only. The Department will not make any payment under an award, until the grantee has returned the signed CD-450 accepting the award and unless and until the recipient complies with all relevant requirements.

##### 2. Protection of Equipment

The grantee will comply with 15 C.F.R. § 14.34 regarding the use, maintenance of records, and disposal of Upgrade Program funded equipment.

#### **VI. Agency Contacts**

Upgrade Program Officers are prepared to give technical assistance to potential applicants before the Priority Round Closing Date and each subsequent monthly Closing Date, within available resources. They may be contacted by telephone at (202) 482-5802, by fax at (202) 482-2156, or by mail at the address given in Part III D (NTIA Upgrade Program mailing and delivery address for applications), above. The Upgrade Program's email address is [lptv@ntia.doc.gov](mailto:lptv@ntia.doc.gov).

The program officers, their email addresses, direct phone numbers, and their areas of responsibility are listed below:

Lynn Chadwick ([lchadwick@ntia.doc.gov](mailto:lchadwick@ntia.doc.gov), (202) 482-8338): Projects from States in the Upper Mid-West and the Rocky Mountains, Colorado, Kansas, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, and Wyoming.

Larry Dyer ([ldyer@ntia.doc.gov](mailto:ldyer@ntia.doc.gov), (202) 482-1762): Projects from States along

the Pacific Coast, Alaska, California, Hawaii, Oregon, and Washington.

Brian Gibbons ([bgibbons@ntia.doc.gov](mailto:bgibbons@ntia.doc.gov), (202) 482-6094): Projects from the remaining States and U.S. Territories.

Applicants may also contact: William Cooperman, Upgrade Program Director ([wcooperman@ntia.doc.gov](mailto:wcooperman@ntia.doc.gov), (202) 482-5802).

Charles Mellone, Chief Engineer ([cmellone@ntia.doc.gov](mailto:cmellone@ntia.doc.gov), (310) 456-1357): Equipment questions from all applicants.

[NTIAHelpdesk@ntia.doc.gov](mailto:NTIAHelpdesk@ntia.doc.gov) ((202) 482-4631): Contact for electronic access problems.

"Frequently Asked Questions" about Upgrade Program grants and applications are answered online at <http://www.ntia.doc.gov/lptv>.

Questions regarding Department of Commerce grant policies may be directed to: Joyce Brigham, NIST/GAMD Grants Officer ([Joyce.brigham@nist.gov](mailto:Joyce.brigham@nist.gov), (301) 975-6329)

#### **VII. Other Information**

##### *A. FCC Authorizations*

Applications for a station only may be submitted by that station's FCC licensee. Applicants are urged to submit their FCC applications with as much time before the Priority Round Closing Date or subsequent monthly Closing Date as possible. No grant will be awarded for a project without submission of a copy of a station's FCC digital license, STA, FCC Form 347 (Application for a Low Power TV, TV Translator or TV Booster Station License), or FCC Form 302-CA (Application for Class A Television Broadcast Station Construction Permit or License) for a license to cover a Construction Permit.

##### *B. Department of Commerce Procedural Matters*

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements is applicable to this solicitation.<sup>93</sup>

##### *C. Executive Order 12866*

This notice has been determined to be not significant for the purposes of Executive Order 12866.

##### *D. Executive Order 13132 (Federalism)*

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

<sup>93</sup> See Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, Notice, 73 Fed. Reg. 7696 (February 11, 2008).

##### *E. Executive Order 12372 (Intergovernmental Review)*

Applications under this program are not subject to the provisions of Executive Order 12372 "Intergovernmental Review of Federal Programs."

##### *F. Administrative Procedures Act and Regulatory Flexibility Act*

Prior notice and an opportunity for public comment are not required by the Administrative Procedures Act, or any other law, for rules related to public property, loans, grants, benefits or contracts (5 U.S.C. § 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

##### *G. Paperwork Reduction Act (PRA)*

The Upgrade Program includes new collection of information requirements on the DTV-5 form that are subject to the Paperwork Reduction Act. Upgrade Program application form has been approved by OMB under Control Number 0660-0029.

The information collection will be used by NTIA to review applications from low-power television and translator stations requesting Federal assistance to purchase digital transmission equipment. The estimate in information collection burden hours is one hour for each station. Approximately 4,000 stations are eligible for the Federal assistance under the Upgrade Program. All applicants must use the official OMB-approved Application Forms as listed below for fiscal years 2009 through 2012 grant cycles. These Forms include a combination of government-wide Standard Forms (SF-424, SF-424A, SF-424B, SF-LLL), Department of Commerce form (CD-511), and Upgrade Program forms (DTV-5). The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB Control Number.

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Dated: May 6, 2009.

**Dr. Bernadette McGuire-Rivera,**

*Associate Administrator, Office of  
Telecommunications and Information  
Applications.*

[FR Doc. E9-10961 Filed 5-11-09; 8:45 am]

**BILLING CODE 3510-60-S**