

Secretary of Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their designees.

On August 15, 2003, the Board published proposed regulations to implement the LOCAL Television Loan Guarantee Program (Program or LOCAL TV Program).<sup>1</sup> The proposed regulations outlined proposed eligibility and guarantee requirements, the application process, as well as the administration of guarantees made by the Board. Additionally, the proposed regulations outlined the proposed process through which the Board would consider application under the priority considerations required in the Act. The Board received eight comments in response to the proposed regulations. In this document, the Board adopts rules to implement the LOCAL TV Program.

#### *Section 2201.1 Definitions*

One commenter suggested that the Board amend the proposed rule to provide that the Board will publish contour maps for each Designated Market Area (DMA), including grade A and B contours, to ensure that all applicants are using the same definitions and data sets.

The Act does not require the Board to create contour maps and the Board does not have funds available to undertake such a project. Applicants are required to indicate the number of nonserved and underserved households their projects will reach. See Section 2201.11(c)(4) of the regulations. It is expected that applicants will also disclose the manner in which this determination was made. This information, along with the other information requested as part of the application, will be analyzed in a consistent manner across all applicants by the Board.

A number of commenters suggested amending the definition of "local television broadcast signals" to include all local television broadcast stations in a DMA or, at least, all local television broadcast stations eligible for mandatory carriage under Federal Communications Commission (FCC) rules applicable to cable television systems or satellite providers. These suggestions were made because of the concerns of commenters that the proposed definition would have one of four possible negative results: (1) It would overlook some local stations in determining the existing availability of service; (2) it would cause some areas

currently receiving local broadcast signals from a cable or satellite provider in accordance with FCC rules to be considered nonserved or underserved erroneously; (3) it would limit the applicability of the loan guarantee to that portion of a loan required to finance facilities necessary to provide only some of the local signals that a cable or satellite provider would be required by FCC rules to provide; or (4) it would direct applicants to provide retransmission of a smaller number of signals than the FCC's rules would dictate, thereby possibly running afoul of both FCC rules and copyright laws. While we do not agree that all of these results were possible, because nothing in the Board's rules would have affected the power of copyright law or the authority of the FCC's rules regarding carriage of local signals by providers applying for loan guarantees under the program, the Board acknowledges that the proposed definition could be improved.

Therefore, the Board has amended the definition of Local Television Broadcast Signals to include all television broadcast signals located in a DMA, subject to limitations pertaining to duplication, similar to the rules the FCC has used in Part 76 of Title 47 of the Code of Federal Regulations. The Board has also added definitions of the terms "low power television station," "television broadcast station," "television broadcast translator station," and "television network" to ensure that these terms are well understood in the revised definition of "local television broadcast signals."

To address the concern that the local signals carried by a cable or satellite provider under the FCC's rules might, in some case, not accord with the definition of "local television broadcast signals" in this rule, the Board has added a new Section 2201.9 which clarifies that the local signals carried by cable or satellite providers in accordance with the FCC's rules will always be considered to meet the definition of "local television broadcast signals" for the purposes of this regulation.

#### *Section 2201.10 Loan Amount and Guarantee Percentage*

One comment recommended that the regulations be amended to delete the proposed \$1 million minimum size of a guaranteed loan (floor), so that the Board might consider applications for small loans on a case-by-case basis. The commenter indicated that, while the proposed \$1 million floor would not pose a problem for it, it might serve to deter certain small companies from

applying for a loan guarantee under the program.

The floor was set by the Board after taking into consideration the full costs to the Board of analyzing the eligibility and creditworthiness of applicants and their compliance with appropriate statutes and regulations. Such costs, which might appear to be borne by the Board, would be passed on to applicants through application and origination fees. Lenders would be authorized to charge reasonable fees as well. For loans of less than \$1 million, total amount of fees charged by the Board and the lenders would be larger than the benefit of reduced interest expense of the borrower from receiving a Federal loan guarantee. Therefore, the Board will not delete the \$1 million floor from the regulations.

Two commenters expressed concern about how the Board would determine the portion of the loan eligible for coverage by the guarantee under Section 2201.10. The Act makes clear that the guarantee should not cover any portion of a loan being used for purposes other than the establishment of the means by which local television broadcast signals will be delivered to a nonserved or underserved Area. However, if the Board were to prorate the costs of facilities based simply on the percentage of local television broadcast signals carried relative to all signals carried or the percentage of signals delivered to nonserved or underserved areas relative to all Areas served and adjust the portion of the loan eligible for guarantee accordingly, the effect would be to undermine the effectiveness of the LOCAL TV Program, by dropping the actual guarantee percentage significantly in many cases. Nonetheless any separable costs used to pay for features, services, or facilities not essential to the means by which local television broadcast signals will be delivered to a nonserved or underserved Area will be excluded from the portion of the loan eligible for coverage by the guarantee. A new subsection 2201.10(b)(3) has been added to clarify this policy.

#### *Section 2201.11 Application Requirements*

*Credit Opinion.* The proposed rules require applicants for loans of \$5 million or more to submit to the Board a preliminary credit rating opinion letter. The Board solicited comment on whether the minimum amount should be set within the range of \$5 million to \$25 million. One comment argued that this requirement could serve as a costly barrier for potential applicants and that this credit opinion letter was not

<sup>1</sup> See 68 FR 48814 (August 15, 2003). The proposed regulations can also be viewed at [http://www.usda.gov/rus/localtvboard/legislative\\_docs.htm](http://www.usda.gov/rus/localtvboard/legislative_docs.htm).