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WASHINGTON, D.C. 20548

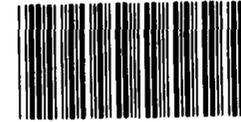
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FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-209796

DECEMBER 3, 1982

The Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on State,
Justice, Commerce, the Judiciary,
and Related Agencies
Committee on Appropriations
United States Senate



120040

The Honorable Dennis DeConcini
United States Senate

Subject: Inquiry Into Allegations of Improprieties at the
National Telecommunications and Information
Administration (GAO/FPCD-83-23)

In letters dated September 10 and September 17, 1982, you requested that we inquire into allegations made by an anonymous individual of misconduct or misappropriation of funds by officials in the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce. The allegations involved a wide range of charges.

Although we found that most of the specific charges were not valid, we did find instances of unnecessary travel. However, the Administrator took actions during the past 2 years which reduced travel costs by about 40 percent. Also, the Administrator changed the rules for awarding grants in 1982 but it is not apparent whether these changes affected the final selection of grantees. The individual allegations and the results of our inquiries are discussed in the enclosure.

OBJECTIVE, SCOPE, AND METHODOLOGY

As agreed in discussions with your office, the objective of our inquiry was to provide you with our observations on issues raised in the following areas:

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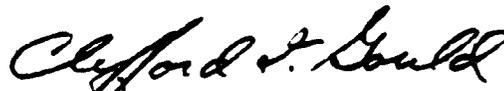
- travel,
- office renovations,
- personnel management,
- grants administration, and
- other miscellaneous allegations of improprieties.

In making our inquiry, we visited NTIA, the Department of Commerce, and the Office of Personnel Management in Washington, D.C. We also visited the National Bureau of Standards in Gaithersburg, Maryland, where the Department's administration of travel payments is centralized.

The review included interviews with officials of the above agencies. We reviewed relevant documents, laws, regulations, and other available information, including data obtained by Commerce's Office of Inspector General, which was also studying the allegations. Our review was performed during October and November 1982 in accordance with generally accepted Government audit standards.

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At the request of your offices, we did not obtain comments on this report from NTIA. However, we discussed the information in the report with NTIA officials. As arranged with your offices, we are sending copies of this report to Senator Ernest F. Hollings; the Administrator, NTIA; the Secretary, Department of Commerce; and other interested persons.


Clifford I. Gould
Director

Enclosure

RESULTS OF OUR INQUIRY INTO ALLEGATIONS
CONCERNING NTIA

TRAVEL

Allegations were made that funds were spent on unnecessary or inappropriate travel. The Administrator agreed that unnecessary and frivolous travel had occurred but that he had taken actions during 1981 and 1982 to cut back on travel. We also noted that the Department of Commerce's Inspector General observed in a January 1982 report that the National Telecommunications and Information Administration (NTIA) incurred excessive time and travel in performing vulnerability assessment surveys. ^{1/} The Administrator considers the vulnerability surveys to be unnecessary and wasteful. Beginning in fiscal year 1984, the program is to be eliminated.

The following chart shows the budgeted and actual travel costs for the past 3 fiscal years.

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Funds budgeted	\$609,000	\$523,000	\$518,000
Funds spent	516,000	456,000	323,000

The Administrator told us that, while NTIA's budget request for fiscal year 1983 includes \$518,000 for travel, it could operate with a travel appropriation of \$375,000.

Specific instances cited as inappropriate use of travel funds and our findings follow:

--A Special Assistant, who lacked technical expertise, was scheduled to accompany the Administrator on a trip to the Peoples Republic of China.

According to the Administrator, the Special Assistant was scheduled to make the trip but did not go because of medical reasons. The Administrator added that the Special Assistant was expected to perform administrative duties on the trip for which a technical background was unnecessary.

^{1/}These surveys focus on the adequacy of protection accorded to transmissions of Government-derived information over telecommunications networks.

--The Administrator attended international conferences replacing agency staff members.

The Administrator replaced a staff member who had been scheduled to attend a Senior Level North Atlantic Consultative Meeting in Rome, Italy. The Administrator said he believed he was qualified to represent the United States at the meeting and that he could save NTIA money because he would be attending a conference in Montreux, Switzerland, immediately before the Rome meeting. The private organization that sponsored the conference paid for the Administrator's trip to Switzerland. The NTIA official whom the Administrator replaced told us the Rome meeting was primarily a ceremonial event for top officials to get to know each other. This was the only trip we could identify where the Administrator replaced other NTIA staff.

--Travel expenses of agency consultants were charged to one NTIA office without the office's knowledge or approval.

When a consultant was hired by the Administrator, the travel costs of his initial visit to Washington were charged to the Administrator's office. All of the subsequent travel costs of the consultant were charged to the International Policy office. NTIA officials said that the consultant was working on international affairs issues related to transborder data flow (transmission of radio and TV waves across international borders). Policy office officials said they were aware that part of the consultant's travel, as well as pay, was being charged to their office but they did not object.

--Travel orders for an Associate Administrator, who accompanied President Ronald Reagan on trips to his California ranch, state that such trips were essential to the accomplishment of agency programs and missions.

An Associate Administrator told us that, when he was hired by the Department of Commerce, arrangements were made by the White House to have him accompany the President on all trips to the ranch in Santa Barbara, California. NTIA issued travel orders for two trips during July and August 1982, authorizing the Associate Administrator to assist White House officials in Santa Barbara. The agency was subsequently reimbursed by the White House for the cost of these trips.

The Associate Administrator said that, on the trips, he performed ranch chores and anything else the President asked him to do and did not perform any NTIA work. NTIA officials said they included the statement that the travel was essential for the accomplishment of agency programs and missions on the travel orders because they believed that they were required to put it on all employees' travel orders regardless of the purpose of the trips. NTIA has discontinued placing this statement on all travel orders. All travel arrangements and payments for more recent trips of the Associate Administrator to the ranch have been handled directly by the White House.

--The General Counsel was authorized to begin a trip to Los Angeles on Friday before the 1982 Labor Day weekend rather than on Tuesday after the holiday.

The travel voucher showed that, although the trip commenced on Friday afternoon, the traveler did not claim any subsistence costs until Tuesday.

OFFICE RENOVATIONS

Renovations by NTIA were alleged to have been wasteful or in violation of a Presidential directive. The specific allegations and our findings follow:

--The redecoration of the new NTIA office space was in violation of a Presidential directive.

A memo from the President to heads of executive departments and agencies, dated January 22, 1981, stated in part:

"Appointees are not to redecorate their offices. This directive does not preclude reasonable and necessary cleaning, painting, and maintenance, or structural changes essential to the efficient functioning of an office."

In the fall of 1981, NTIA moved from rented space into Government-owned quarters in the Department of Commerce headquarters building and made certain renovations in the new space. The Inspector General's Office has reviewed NTIA's renovations and concluded that they were reasonable and that no unnecessary redecorating was

involved. Because of NTIA's move, the Inspector General's Office concluded that the expenditures were necessary to establish new executive office space and, thus, were not in violation of the President's directive.

--The same piece of furniture (a loveseat) was reupholstered twice.

NTIA officials had several pieces of furniture reupholstered when they established new office space. We found two purchase orders prepared on the same date for reupholstering two different loveseats, but we found no indication that any item of furniture was reupholstered twice.

PERSONNEL MANAGEMENT

The allegation was made that certain NTIA officials were unqualified because they lacked a background in telecommunications. The allegation and our findings follow.

--The Administrator's close group of associates includes totally unqualified individuals in virtually every top level position of authority.

The Senior Executive Service (SES) includes managerial and supervisory positions in the executive branch. NTIA currently has 15 SES positions, 4 of which are vacant. Of the 11 filled positions, 8 are career appointments selected under the merit staffing process. The three noncareer SES positions are the Deputy Administrator, the Chief Counsel, and the Associate Administrator for Policy Analysis and Development. All SES members are required to meet the qualifications of the positions in which they serve, and career appointees must be approved by the Office of Personnel Management as possessing the necessary managerial qualifications.

Each agency is required to establish one or more executive resources boards selected from its top management. These boards conduct the merit promotion process for the agency's career SES candidates. The boards also review the career and noncareer SES candidates' qualifications to determine whether they meet the position qualification standards.

We reviewed documentation for the three noncareer SES appointees and found that NTIA's Executive Resources Board certified that they were evaluated against the qualification standards for their positions and met those qualifications.

The Chief Counsel's position did not require the incumbent to have a background in telecommunications. However, the other two noncareer SES positions required the incumbents to have knowledge and technical expertise in the area of telecommunications and information policy. The Deputy Administrator acquired some knowledge and expertise in this area while serving for 8 months as a Special Assistant to the Administrator and while dealing with telecommunications issues when serving for 3 years as a legislative assistant to a member of Congress. The Associate Administrator developed some knowledge in this field while working for 2 years as a consultant for a telephone company. Neither individual had an educational background in the telecommunications field.

As requested, we made an analysis of NTIA's authorized positions at the end of the last 4 fiscal years and found that the number of authorized positions (both total and SES) had been reduced as of the end of fiscal year 1982. The following table shows the decline.

<u>Date</u>	<u>Authorized positions</u>	<u>SES authorized positions</u>	<u>Noncareer SES positions</u>
9/30/79	354	19	4
9/30/80	331	19	4
9/30/81	332	19	1
9/30/82	291	15	3

GRANTS ADMINISTRATION

The allegations made related to two NTIA grants programs: the Public Telecommunications Facilities Program and the Satellite Applications Program. In fiscal year 1982, \$18 million in grants were available under the facilities program, and approximately \$850,000 under the satellite program. NTIA's facilities program was established by the Public Telecommunications Financing Act of 1978 to extend delivery of public telecommunications services in the United States, increase the participation of minorities and women in such services, and

strengthen the capabilities of existing public television and radio stations. The satellite program, which was initiated in fiscal year 1980 in accordance with a presidential directive, is designed to assist in market aggregation, technology transfer, and possible development of domestic and international public satellite services.

During the past 2 years, there have been a number of changes in NTIA's policies and procedures for administration of the grants programs. For example, in March 1981, the President proposed to the Congress that budget authority of \$25.7 million be rescinded, which would have terminated the facilities program. The proposal was not approved by the Congress; however, program funding was reduced in each of the last 2 fiscal years. NTIA continues to favor termination of the program. In this regard, one of the Administrator's goals under NTIA's management-by-objectives system is to carry out a plan for phasing out the facilities program. His strategy for accomplishing this has been to fund grants which would increase total coverage for public television and radio service, because NTIA believes the lack of total coverage is the Congress' principal reason for continuing the facilities program. Following issuance of the fiscal year 1982 grants, NTIA has discontinued the satellite program.

Allegations of improprieties in grants administration and our findings follow.

--The Administrator promised grantees (the State of Mississippi and Howard University) approval of their applications before conclusion of the grant evaluation process.

We found that NTIA officials considered early funding of the Mississippi application under an interim change in the facilities program rules; however, the grant was awarded in September 1982 along with all other program grants. The Mississippi application was originally submitted in fiscal year 1981 but was not funded for a number of reasons. Among these was the fact that the applicant had not obtained the required Federal Communications Commission clearance. The Commission granted the clearance early in 1982. Also, NTIA facilities program officers were concerned about whether (1) the proposal was responsive to local service requirements of communities in Mississippi and (2) listeners' needs and

interests had been explored and evaluated, particularly those of minority groups.

On January 29, 1982, a meeting attended by representatives of the applicant, the Administrator, and several NTIA staff members was held to discuss the application. Three NTIA staff members present at the meeting told us that they interpreted statements made by the Administrator as implying that the grant would receive favorable consideration. These staff members added that the Administrator's intention to fund the application was more clearly expressed to them after the meeting. They said the Administrator instructed one of them to explore what could be done to fund the grant before the issuance of other 1982 grants, for example, through a waiver or a change in grant rules. Further, they said the Administrator or one of his staff was to contact the Commission to check on problems regarding the application.

The Administrator told us he believed this meeting probably precipitated the belief that a grant was promised since he did tell the staff that he believed the applicant should have received a grant in 1981 and should probably be funded in 1982. However, the Administrator said he made no implicit or explicit promise of funding to the applicant. He also stated that he did not discuss granting a waiver or changing grant rules.

On March 15, 1982, NTIA issued an interim set of revised rules for the facilities program. In part, these rules were designed to reflect a 1981 amendment to the Communications Act of 1934 which permitted applicants to use funded equipment for other purposes. However, the interim rules also made a number of other changes in program rules and procedures, including a change to eliminate NTIA's evaluation of an applicant's proposed programming and the requirement that an applicant perform studies of listener's needs in the applicant's service area. The Administrator told us that these changes were not related to the Mississippi application and had been contemplated prior to the January 1982 meeting with the applicant.

In addition, the interim rules established a new procedure for evaluating deferred applications. Previously, deferred applications were reevaluated along

with new applications for the next fiscal year. Under the new procedures, deferred applications were to no longer be reevaluated but, rather, to be judged on the basis of the previous year's evaluation. Further, the Administrator was to have the discretion to award grants for deferred applications at any time after the expiration of a 45-day amendment period after the closing date for the filing of new applications. The Administrator could make awards before all applications were evaluated if he could determine with reasonable certainty that the particular project was exceptionally meritorious and would most likely be funded after all remaining applications were evaluated. While public comment was solicited on the changes in rules and procedures, NTIA adopted them on an interim basis prior to receipt of public comment and applied them to its evaluation of fiscal year 1982 grants. One organization, in its comments on the revised facilities program rules, noted that the mechanism allowing early funding of deferred grants was unnecessary and could subject NTIA to undue pressure from unsuccessful applicants. Final rules were published in November 1982.

In May 1982, prior to the end of the 45-day amendment period, negotiations took place between the Mississippi Authority for Educational Television and NTIA. (The negotiation process usually occurs after all applications have been evaluated and initial selections have been made.) However, the Administrator decided not to fund the Mississippi application ahead of other fiscal year 1982 applications. He told us he had received complaints from minority groups about the application and was concerned that allegations of racism or favoritism might be made if the application was funded early. Even though the new procedures did not require it, the application was reevaluated by a panel of individuals from the private sector along with other applications for fiscal year 1982 grant funds.

Based on the revised procedures for scoring applications used by NTIA in fiscal year 1982, the application received an average score of 70 out of 100. Scores for other applications within the same priority category ranged from 24 to 97 and some applications receiving scores as low as 60 were funded.

Howard University requested a fiscal year 1982 facilities grant of approximately \$512,000 to purchase a transmit earth station for linking up with a satellite to be used in connection with its television station WHMM-TV. Among other things, the earth station was to be used to transmit programing produced by WHMM to other public television stations and colleges, particularly small, black colleges. Although Howard originally applied for a grant under the facilities program, in July 1982, it also asked for consideration under the satellite program.

In June 1982, NTIA changed its procedures for the satellite program to (1) allow facilities grant applicants to request funding under the satellite program if their applications met the program's basic goals and (2) eliminate an outside review panel which had been used to read and evaluate applications and instead have NTIA itself evaluate the applications, with the Administrator having complete discretion to make final decisions. The Administrator said these rule changes were made to increase program coverage, encourage innovative program applications, and address concerns he had about program administration. In comments to NTIA on these proposed changes, the Director of Commerce's Office of Financial Assistance noted that these changes could be misconstrued by potential applicants to mean that NTIA favored a particular applicant and the policy changes were simply to accommodate that applicant.

The Administrator met with officials from Howard University twice during 1982 and also toured WHMM's facilities. An NTIA staff member said she attended one meeting and believed that a commitment had been made to fund the application. The Administrator and Deputy Administrator said that this staff member did not attend any meetings between them and the Howard representatives. The Administrator said he was favorably impressed with the application's concept and expressed this view to the applicant but made no promise of a grant.

WHMM's station manager told us that the University had been promised nothing other than that its application would receive careful consideration. He also stated that the NTIA staff member had not attended any meeting

between him and the Administrator. He said he had spoken with her after meeting with another NTIA staff member who advised him that Howard's best chance of receiving a grant would be under the satellite rather than the facilities program. He believes this may have given her the impression that a commitment was made.

The Howard application did not receive funding under either the facilities or satellite program in fiscal year 1982. The Administrator said that the application was not funded because Howard had not been able to get a Federal Communications Commission license to operate the earth station.

--The Administrator either reprogramed or refused to re-lease the majority of facilities and satellite grant funds.

While our review indicated that most funds available for grants under the programs have been awarded to grantees, some funds have been either reprogramed or not yet expended on grants projects. As part of NTIA's 1982 budget allocation process, \$250,000 of satellite program funds were transferred to NTIA's spectrum operations program for a planned computer study. An NTIA official said that no formal reprogramming notification was given to the Appropriations Committees because NTIA believed the action was within the reprogramming guidelines. The Appropriations Committees specified that they expected to be notified of any reprogramming of funds in excess of \$250,000 or 10 percent, whichever is less, between programs or activities. ^{2/} This action reduced the amount of 1982 satellite program funds including salaries and expenses from \$1,262,000 to \$1,012,000, of which \$864,560 was awarded to grantees.

The guideline was not, however, included in the continuing budget resolution which funded NTIA. When a reprogramming guideline is included in a committee report but not in a statute, the agency is not legally bound by it. Rather, an agency's compliance is largely a matter of "keeping faith" with the committees.

^{2/}See H. Rept. 97-180, 97th Cong., 1st Sess. 6 (1981) and S. Rept. 97-265, 97th Cong., 1st Sess. 81 (1981).

In this instance, the question of whether NTIA's failure to report the \$250,000 reprogramming is consistent with the Committees' guideline rests primarily on the interpretation afforded to the word "program." This term may be used in various contexts for budget purposes. However, it should be noted that in both its fiscal year 1982 congressional budget submission and in its response to written questions from the House Appropriations Committee on its 1982 appropriation request, NTIA refers to the "Public Telecommunications Services" or "Satellite Communications" program of which satellite grants are a part. Thus, while the \$250,000 which NTIA reprogrammed is less than 10 percent of the budget line item of which the satellite program is a part, the reprogramming action can reasonably be interpreted as falling within the notification guidelines since it was greater than 10 percent of the \$1,262,000 appropriated for this program. In such a situation, it would appear prudent for an agency to notify the Committees of the reprogramming even if there is some uncertainty as to the reporting guidelines' applicability.

NTIA officials said that they checked with budget personnel in both the Department of Commerce and the Office of Management and Budget who told them that it was only necessary to report reprogramming of funds in excess of 10 percent of a line item.

According to NTIA officials, \$113,706 of fiscal year 1981 facilities program funds have not been obligated. Program officials said they became aware at the end of 1981 that some fiscal year 1981 funds had not been used and prepared memoranda to the Administrator recommending other applicants for awards. For example, a January 21, 1982, memorandum identified five applicants to whom \$93,448 in unexpended fiscal year 1981 funds could be given. An NTIA official told us in early November 1982 that no decision had been made on what to do with these unobligated funds. He stated, however, that NTIA has begun actions to reaward approximately \$200,000 of fiscal year 1982 funds which was turned down by 1982 grantees.

During the past 2 years, \$557,362 in unexpended facilities program funds were also deobligated from grants awarded in fiscal years 1976 through 1980. NTIA has returned the funds deobligated in 1981 (\$168,157) to

the Treasury while as of November 1, 1982, no decision had been made on what action to take on the funds deobligated in 1982 (\$389,205).

Section 391 of the Communications Acts of 1934, as amended, states that sums appropriated for any fiscal year shall remain available until expended on grants for projects for approved applications submitted within such fiscal year. This appears to restrict NTIA to awarding funds appropriated for a given fiscal year to applicants who applied for grants in that fiscal year. Before 1981, it was NTIA's practice to review applications submitted during the years from which funds were deobligated and to reaward the funds. An August 12, 1982, memorandum from the Administrator regarding the funds deobligated during 1981 states that NTIA had reviewed all unfunded applications still pending and partially funded applications for fiscal years 1976 through 1980 and determined that there were no qualified applicants. Therefore, NTIA believes it must return the deobligated funds to the Treasury.

It appears to us, however, that at least some of the deobligated funds returned to the Treasury could have been used to fund applications submitted in fiscal years from which funds were deobligated. For example, one program official provided us with a list of five applications which were originally submitted in 1979 but not funded until 1982 as reactivated applications. The program official said that any of these applications could have been funded with the deobligated fiscal year 1979 funds (\$34,784), freeing the fiscal year 1982 funds for applications submitted in fiscal year 1982 which were not funded.

--The Administrator held applications in his office contrary to public availability requirements of the law, which prevented the grants process from proceeding as required.

This allegation appears to relate to the Administrator's action to have 1982 facilities applications sent directly to his office after they were evaluated by an outside review panel rather than returning them to facilities program officers. While the applications were returned to the program officers after the Administrator's evaluation, the application evaluations prepared by the outside reviewers were not. Likewise, these

evaluations have not been made available to grant applicants as they have been in past years. After discussions with Commerce's Deputy General Counsel, the Administrator decided that making the evaluations available would be inconsistent with departmental policy regarding the release and dissemination of pre-decision information developed during the deliberative process. According to program officers, the information contained in the outside reviewers' evaluations is useful to unsuccessful applicants in determining weaknesses in their applications and in making necessary corrections before the next grants cycle. The Administrator told us that he believed the staff did not need reviewers' evaluations to advise unsuccessful applicants about weaknesses in the applications.

MISCELLANEOUS ALLEGATIONS

Additional allegations were made concerning the improper use of a Government car, unjustifiable expenses incurred for a portable telephone, and expenditures of appropriated funds for minority programs.

--The Administrator insisted on a Government car for personal use when his own was being used by his wife.

The Administrator said the allegation is false and that he and his wife each have a car. He stated that he had no reason to and did not use a Government car for personal use. The Administrator requested Commerce to lease a car for NTIA's exclusive use for such things as messenger service. However, Commerce denied the request because Department "pool" cars could meet NTIA's requirements.

Commerce's Office of Inspector General reviewed the Department's top executives' use of chauffeured pool cars, including the use by NTIA's Administrator. The Inspector General found that the Administrator used a Government pool car to travel to Government buildings and restaurants during business hours.

--The Administrator leased a portable telephone with Federal funds and made personal use of the telephone.

The Administrator said that the portable telephone is the type of technology that NTIA should be promoting,

and he takes it with him for use when out of the Commerce building. Even though the pool cars are equipped with telephones, the Administrator said he often could not obtain a dial tone and the reception was very poor. The Administrator considers the portable telephone a superior instrument and not plagued with technical problems. After reviewing the use of the leased telephone for the first 4 months of use, Commerce's Inspector General found five instances where calls were made to the Administrator's home.

--There is no evidence that the funds appropriated specifically for minority programs have been expended for that purpose.

NTIA's minority telecommunications program, which was created in 1978, focuses on coordinating the efforts of the Federal Government and the private sector to increase minority ownership and control and to enhance minority participation in the telecommunications field. NTIA anticipated spending \$122,000 and \$129,000 for its minority telecommunications program in 1981 and 1982, respectively. Its budget did not specifically identify an amount to be spent on minority telecommunications programs.

In fiscal year 1981, \$94,000 was obligated for the program, including \$54,000 in salaries and benefits and \$32,000 in overhead. In fiscal year 1982, \$47,000 was obligated for the program, virtually all of which was spent on salary and benefits of its program manager. As a result of relocating the program from the Office of Policy Analysis and Development to the Administrator's office in fiscal year 1982, overhead charges applied to the program were reduced to \$1,000. The program has been placed back under the Office of Policy Analysis and Development for budget purposes in fiscal year 1983.

The minority telecommunications program manager told us that she discussed the 1982 program operating plan she prepared with the Administrator. She stated, however, that, when she requested funds for specific projects covered in the plan, she was informed they were not available. She believed that this limited her ability to effectively carry out the program since it, among other things, restricted her travel and attendance at telecommunications conferences where she planned to conduct

minority outreach efforts. Both NTIA's Administrator and Deputy Administrator told us that a 1982 program operating plan was never approved. The Administrator also said that he never discussed the operating plan with the program manager.

An NTIA official said the reason that all of the 1981 and 1982 funds had not been expended for the program was that NTIA was still trying to determine how to spend them effectively in view of the fact that an operating plan was not approved. The official said that because these are "no year" funds, some program funds from previous years may be available for the program in 1983 in addition to the funds already allocated to the program. NTIA records indicate approximately \$2.3 million in NTIA funds were carried over from 1982 into 1983. This includes \$13,000 in broadcast, cable, and special services funds of which minority telecommunications program funds are a part.