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PART IV



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Office of Education



**NONCOMMERCIAL
EDUCATIONAL
FACILITIES PROGRAM**

1976 Communications Act Amendments

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Office of Education

[45 CFR Part 153]

**NONCOMMERCIAL EDUCATIONAL
BROADCASTING FACILITIES PROGRAM**

**Communications Act of 1934; Proposed
Implementation of 1976 Amendments**

Pursuant to the authority contained in Part IV of Title III of the Communications Act of 1934, as amended, 47 U.S.C. 390 et seq., the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 153 of Title 45 of the Code of Federal Regulations (1) to implement revisions of the statute enacted by the Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976 (Pub. L. 94-309) and (2) to make other changes in the program regulation. The provisions of Section 392 A of the statute, as enacted by Section 8 of the 1976 Act, authorizing telecommunications demonstration grants are being implemented through regulation in Part 63 of Title 45 of the Code of Federal Regulations. A separate Notice of Proposed Rulemaking pertaining to these grants is being published in the FEDERAL REGISTER.

The preponderance of provisions in this proposed regulation is unchanged from the existing regulation. The whole regulation has been published in proposed form so that the proposed regulation will be more understandable to the public and to permit comments on all aspects of the program regulation.

1. *Program Purpose.* The Educational Broadcasting Facilities Program assists, through matching grants, in the development of public broadcast facilities for noncommercial educational radio and television broadcasting stations capable of serving local, State, and national needs. Grants are made on a competitive basis to eligible applicants for the acquisition of transmission and other authorized apparatus necessary for initial activation and/or the upgrading of existing noncommercial broadcast stations serving the educational, cultural, and informational needs of citizens. Authorized funds may not be used for land acquisition, the construction or repair of structures housing apparatus, or for broadcast station operation. The Federal Government maintains a 10-year interest in the continued noncommercial use of facilities funded under this program.

2. *1976 Amendments.* The 1976 amendments to the Communications Act of 1934 made the following changes affecting the Educational Broadcasting Facilities Program:

(a) An expansion of the eligible applicant categories to include private, nonprofit colleges, or universities, and other educational or cultural institutions affiliated with an eligible college or university. This change is reflected in §§ 153.3(b) and 153.4 of the proposed regulation;

(b) A revision of the grant criteria to recognize and reflect the disparity in the

development of public radio and television station facilities. This change is reflected in Appendix B of the proposed regulation;

(c) A redefinition of the term "construction" as used to identify eligible facilities for which grant funds may be used to include particular "reception" apparatus necessary for television or radio broadcasting. This change is reflected in § 153.3(b) of the proposed regulation; and

(d) Provision for grants without a matching requirement to prior grantees under the statute where necessary to acquire logging recorders to comply with Section 399(b)(1) of the Communications Act of 1934, as amended. This change is reflected in § 153.23 of the proposed regulation.

3. *Other Proposed Changes.* Other changes, not required by the amendments, have been included in the proposed regulation. For example, the several references to "transmission apparatus" have been revised to read "eligible apparatus" or "transmission and reception apparatus;" in other sections, the wording has been revised for purposes of clarification.

Provisions in existing §§ 153.13(a) and 153.22(d) providing for a petition for reconsideration of an application which has been denied approval for funding and therefore deferred for consideration until the next fiscal year have been deleted. Whether an eligible application is granted or deferred is based upon the collective evaluations of outside field readers, outside expert advisors, ratings of program officers, and a consensus of the Educational Broadcasting Facilities Program staff. This involves a competitive decision which may not lend itself to a petition for reconsideration. On the other hand, the petition for reconsideration is retained for decisions on acceptance for filing.

Other proposed changes include modifications to the evaluation criteria in § 153.12, including the addition of a criterion on performance under any prior grant, changes in the list of eligible equipment items in Appendix A, and clarification of the non-Federal matching requirement in § 153.14(b).

4. *Proposed Incorporation of Electronic Industries Association Standards.* Appendix A-II proposes to continue in effect the following standards and specifications of the Electronic Industries Association:

(a) Electronic Industries Association Standard RS-222-B (December, 1972), "Structural Standards for Steel Antenna Towers and Supporting Structures;"

(b) Electronic Industries Association Standard RS-170 (November, 1970), "Electrical Performance Standards—Monochrome Television Studio Facilities;" and

(c) Electronic Industries Association Standard RS-240 (April 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

These provisions were approved for incorporation by reference by the Director of the Federal Register March 7, 1975

and were incorporated by reference in the program regulation published March 10, 1975 (40 F.R. 11240).

In addition to these standards previously incorporated by reference, Appendix A-II proposes to incorporate:

(a) Electronic Industries Association Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations"; and

(b) Electronic Industries Association Standard RS-195A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors."

All of these standards would serve as benchmarks for determining the extent to which the various items of transmission apparatus proposed for a project are necessary to, and capable of, achieving the objectives of the project, a criterion for evaluation of applications set forth in proposed § 153.12(b)(6).

The materials proposed for incorporation, which are published by the Electronic Industries Association, an association of the manufacturers of electronic equipment, are widely recognized and utilized within the electronics industry as the appropriate standards and specifications for electronic equipment.

Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, N.W., Washington, D.C. 20006.

5. *Advance Comments on Restricting Commercial Use of Programs.* The public is invited to provide comments and suggestions not only on the specific provisions contained in the proposed regulation, but also on the issue of what regulation is needed, if any, on the question of the use for other than noncommercial educational broadcasting purposes of programming developed with Federally funded equipment.

The Communications Act of 1934, as amended, and the program regulation provide that further facilities assisted under the program must be used only for noncommercial educational purposes. However, neither the statute nor the existing regulation clarifies the scope of this limitation, with specific regard to secondary use of programming produced with funded facilities. The proposed regulation also does not squarely address this issue. Given the large implications and sensitivity of this area, guidance is sought from the public at this time as to whether regulation is needed and, if so, what it should be. Based on this guidance, the Office of Education will consider whether a subsequent proposed regulation should be issued relating to this problem.

Examples of issues which are being raised by grantees include whether program-funded equipment may be used to make a training video-tape recording at the standard charge rate for a commercial organization; whether tapes of local programming developed with program-

funded equipment may be made available for delayed commercial broadcast in return for an underwriting by the commercial station of the production costs; and whether tapes of local programming, e.g. (athletic events) developed with program-funded equipment may be provided to a nonprofit organization, e.g. ("booster club") to be used in conjunction with the promotional activities of the latter organization.

The primary issue appears to relate to secondary, delayed broadcast or closed circuit uses by commercial operations of programming initially developed for a noncommercial broadcast use with Federally funded equipment.

Public comments and suggestions are invited on the following and any other pertinent issues:

(a) Should limits on these uses be set forth in the regulation?

(b) If so, should the primary or initial use of the programming developed with funded facilities be distinguished from a secondary or delayed use of the program? If so, how should these uses be distinguished?

(c) With respect to any regulation concerning commercial use of programs developed with funded equipment, how should "commercial use" be defined?

(d) If explicit limits are established in the regulation, what sanctions, if any, should be established to govern violations? How should the sanctions, if any, be enforced?

6. *Public Input.* Discussions relative to the proposed changes in these regulations have been conducted with officials in the public broadcasting systems, eligible applicants, and constituent agencies interested in the development of telecommunications facilities for the distribution of health, education, and other public or social service information.

Interested persons are invited to submit written comments on the proposed regulation and on the issues raised under paragraph 5 above to Dr. John L. Cameron, Chief, Educational Broadcasting Facilities Program, Division of Educational Technology, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 3122A, ROB No. 3), Washington, D.C. 20202.

All comments must be received on or before March 7, 1977. These comments will be available for public inspection in the above office between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week.

Due to timing constraints to implement the statutory changes, no public hearings are planned on this proposed regulation. However, one or more public hearings may be scheduled prior to the submission of a subsequent regulation on the issues raised under paragraph 5 above once written comments are received.

The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance No. 13.413, Educational Broadcasting Facilities (Public Broadcasting))

Dated: January 11, 1977.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education,
and Welfare.

PART 153—EDUCATIONAL BROADCASTING FACILITIES PROGRAM

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- APPENDIX A—Educational Radio and Television Transmission Apparatus and related costs list and Minimum Equipment Performance Standards.
- APPENDIX B—Project Priorities.

AUTHORITY: Pub. L. 87-447, 76 Stat. 64-67, as amended (47 U.S.C. 390-395, 397-399), unless otherwise noted.

Subpart A—General

§ 153.1 Scope.

This part governs the provision of grants by the Commissioner under authority delegated by the Secretary for the construction of educational broadcasting facilities for noncommercial purposes pursuant to the provisions of Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395; 397-399).

(47 U.S.C. 394)

§ 153.2 Other pertinent rules and regulations.

(a) Assistance provided under this part shall be subject to applicable provisions contained in Subchapter A of this Chapter (General Provisions for Office of Education programs relating to fiscal, administrative, and other matters), ex-

cept to the extent that such provisions are inconsistent with, or expressly made inapplicable by, the provisions in this part.

(b) Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcasting stations are contained in the rules and regulations of the Federal Communications Commission, 47 CFR Part 1 (Practice and Procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking, and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distributional Services).

(47 U.S.C. 394)

§ 153.3 Definitions.

(a) Applicable definitions set forth in § 100.1 of this chapter shall apply to the regulations of this part, except that definitions of "equipment" and "project" set forth in § 100.1 of this chapter shall not be applicable to this part.

(b) The following terms shall have the following meanings when used in this part:

Notwithstanding the definition of "Acquisition" set forth in § 100.1 of this chapter, "Acquisition" means the assumption of ownership of apparatus eligible for funding under this part (including the receipt of gifts) and necessary delivery.

"Act" means Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395; 397-399).

"Affiliated" means that the educational or cultural institution is:

(1) (i) Contractually associated, for educational purposes, with an eligible college or university; or

(ii) A legally incorporated consortium made up in whole or in part of eligible colleges or universities.

(2) Qualified to be a licensee of a non-commercial educational broadcasting station.

(Senate Report No. 94-813, Committee Amendment pg. 8)

"Broadcasting" means the dissemination of standard AM, FM, or TV electronic energy through the atmosphere intended primarily for reception by the general public.

"Closed circuit" means a system for the distribution of electronic signals by a means other than broadcasting.

"College" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; (2) is legally authorized within such State to provide a program of education beyond the secondary level; (3) provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable for full credit toward such a degree;

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and (4) is accredited by a nationally recognized accrediting agency or association; or, if not so accredited; (1) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or (ii) is an institution whose credits are accepted, on transfer, by not less than three accredited institutions, on the same basis as if transferred from an accredited institution.

"Construction" means the planning for, acquisition, and installation of transmission and reception apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, video recording equipment, non-video recording equipment, radio subcarrier receivers, and satellite transmitters) necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which must be used primarily for open broadcast purposes, but which may incidentally be used for producing and/or transmitting closed circuit television or radio programs for public or private nonprofit agencies. However, the term does not include the construction or repair of structures to house this apparatus.

"Corporation" means the Corporation for Public Broadcasting established pursuant to Subpart B of the Act (47 U.S.C. 396).

"Educational broadcasting" means broadcasting of educational, community service, and cultural programs of benefit to the area or community served by such broadcasting.

"Facilities" means transmission and reception apparatus as defined in this section.

"Fair-market value" means the price determined by a seller who is willing to sell, and a buyer who is willing to buy, where both parties are freely negotiating in good faith. Criteria used to establish fair-market value include: (1) The price at which a like item (model, age, and condition) has changed hands; (2) in the case of a donation, the donor's purchase price or cost of manufacture, less reasonable allowance for depreciation due to use and age; (3) the catalog or other established price of a new item of the same type, less reasonable allowance for depreciation due to use and age; or (4) appraisal, satisfactory to the United States, made by one or more qualified impartial appraisers.

"FCC" means the Federal Communications Commission.

"Installation" means assembling, affixing, and taking any other steps necessary or required in order to make ready for use transmission and reception apparatus included in the project.

"Interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space

satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to noncommercial educational broadcasting stations.

"Owned by the applicant" as applied to transmission and reception apparatus means that the applicant's interest in such eligible apparatus is, at least, the primary, equitable, or beneficial interest, including the obligation to own.

"Planning" means such engineering, legal, and other activities as are provided for in Appendix A to this part, but does not include the preparation of statewide or regional plans, the conduct of surveys, or the preparation and conduct of proceedings or contests before the FCC beyond the preparation, filing, and routine prosecution normally required for uncontested applications.

"Project" means the planning, acquisition, and installation of only those items of eligible apparatus, in accordance with the provisions of Appendix A to this part, related to one noncommercial educational broadcasting station which the Commissioner determines to be eligible for Federal financial assistance pursuant to provisions of this part. Where an applicant may more cost efficiently operate two or more television or radio stations which are interconnected or are served by a common staff, the project may relate to more than one television station or to more than one radio station. The project may not relate to a combination of radio and television stations.

"Reception apparatus" means control room and studio monitors, radio subcarrier receivers for stations with FCC approved Subsidiary Communications Authority (SCA), and satellite transmitters necessary for television or radio broadcasting.

"Regional plan" means an organized design for the dispersion of noncommercial educational broadcasting facilities within a geographical area not otherwise specifically defined by either State boundaries or by the broadcast contours of an individual noncommercial educational broadcast station.

"Reserved channel" means a channel reserved by the FCC for the exclusive use of a noncommercial educational broadcast station.

"Service area" means:

(1) In the case of the television, that area included within the station's predicted Grade B contour.

(2) In the case of AM radio broadcasting, that area included within the station's predicted 500 microvolt contour, and

(3) In the case of FM radio broadcasting, that area included within the station's predicted 1 millivolt contour.

"Situated in any State" means, with respect to a noncommercial educational broadcast station and all transmission and reception apparatus resulting from a project associated with such station, situated (irrespective of physical location) in the State in which the channel occupied or applied for is assigned by the FCC, unless the Commissioner, in light

of all the pertinent facts and circumstances of a particular case, specifically determines otherwise.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State educational television agency" and "State educational radio agency" mean, with respect to television broadcasting and radio broadcasting, respectively:

(1) A board or commission established by State law for the purpose of promoting such broadcasting within a State;

(2) A board or commission appointed by the Governor of a State for such purpose if such appointment is not inconsistent with State law; or

(3) A State officer or agency responsible for the supervision of public elementary or secondary education or public higher education within the State which has been designated by the Governor to assume responsibility for the promotion of such broadcasting. In the case of the District of Columbia, the term "Governor" as used in this paragraph means the Mayor of the District of Columbia, and, in the case of the Trust Territory of the Pacific Islands, means the High Commissioner.

"Transmission apparatus" means telecommunications apparatus which is necessary for noncommercial educational broadcasting in accordance with provisions of Appendix A to this part.

(47 U.S.C. 392, 394, 397; 20 U.S.C. 1221)

Subpart B—Eligibility and Applications

§ 153.4 Eligible applicants.

(a) Applications for Federal financial assistance under this part for an educational television project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational television agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational television broadcasting and is eligible to receive a license from the FCC for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the FCC in effect on April 12, 1962; or

(5) A municipality which already owns and operates a facility used only for noncommercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(b) Applications for Federal financial assistance under this part for an educational radio project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or

secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational radio agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage non-commercial educational radio broadcasting and is eligible to receive a license from the FCC, or meets the requirements of paragraph (a) (4) of this section and is organized primarily to engage in or encourage such radio broadcasting and is eligible for such a license for such a radio station; or

(5) A municipality which already owns and operates a facility used only for non-commercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(47 U.S.C. 392(a) (1), 394, 397.)

§ 153.5 Application for financial assistance.

(a) (1) An applicant eligible for grant assistance under this part must file an application in triplicate with the Commissioner as provided in § 100a.15 of this chapter.

(2) To reactivate any deferred application accepted for filing in a previous fiscal year, the applicant must, on or before such cutoff date as may be provided by the Commissioner pursuant to § 100a.15 of this title, submit a statement indicating that it wishes the application to be reconsidered, and amend its application.

(3) Any application or amendment thereto shall contain (i) a current project summary, (ii) information required under paragraph (c) of this section, and (iii) such other information relating to noncommercial broadcasting activities as may be deemed necessary by the Commissioner pursuant to §§ 100a.15; 100a.16, except paragraph (b) thereof; 100a.17; 100a.18; and 100a.19 of this chapter.

(4) On proposed projects for which an assessment of environmental impact is required under § 100a.185, applications submitted under Subpart A of the Act must include a copy of the environmental impact statement which is provided to the FCC as required of all broadcast applications for construction permits (§ 1.1311 of the FCC Rules and Regulations); and

(5) The applicant may submit amendments or additional information relevant to its application.

(b) Radio and television applications must be submitted separately.

(47 U.S.C. 394.)

(c) Except as provided in § 153.23 for audio logging recorder applications, no project will be approved unless the applicant has provided in the application information to establish, to the Commissioner's satisfaction, that:

(1) (i) The applicant meets the requirements of eligibility set forth in § 153.4;

(ii) The applicant's organic or corporate powers include the authority to construct and operate noncommercial educational broadcast facilities, and to receive Federal funds for such construction.

(2) In the case of a nonprofit foundation, corporation, or association eligible under § 153.4 (a) (4) or (b) (4), the applicant is so organized as to be reasonably representative of the educational, cultural, and civic groups in the community to be served, and free from such control by a single private entity (either through membership on its board of directors, source of funds, or otherwise) as would prevent or restrict it from serving overall community needs or interests;

(3) The transmission and reception apparatus to be acquired and installed under the project will be owned by the applicant;

(4) The operation of the noncommercial educational broadcast facilities will be under the control of the applicant or an agency or institution qualified under § 153.4 to be an applicant during the 10 year period of Federal interest;

(5) Sufficient funds will be available when needed:

(i) To meet the non-Federal share of the cost of the project;

(ii) To acquire all land and to construct and install all facilities, structures, and equipment, in addition to the eligible apparatus included in the project, necessary to place the proposed noncommercial educational broadcast facilities in operation; and

(iii) To operate and maintain the noncommercial educational broadcast facilities at a level which will provide adequate program services to the community on a scale consistent with the intent of the Act and the proposed project;

(6) All non-Federal financial sources available for the project have been taken into account, and the non-Federal share stated by the applicant as being available for use in the project is the maximum contribution available from such sources;

(7) The applicant holds appropriate title or lease to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, and remove such apparatus, sufficient to assure continuity of operation of the station for a period of 10 years following completion of the project;

(8) The eligible apparatus to be acquired and installed under the project will be used primarily for educational broadcasting purposes and only incidentally for educational purposes by means of closed circuit;

(9) There has been comprehensive planning for educational broadcasting facilities and services in the area the applicant proposes to serve, and the applicant has participated in such planning; and

(10) The applicant will make the most efficient use of the frequency assigned to him by the FCC.

(47 U.S.C. 392 (a), (d), and (e), 394.)

§ 153.6 FCC authorization.

(a) Any FCC authorization or authorizations required for the project and for the operation of the station with which the project is to be associated must be in the name of the applicant.

(b) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(c) For any project requiring a new authorization or authorizations from the FCC, the applicant must file with the Commissioner a copy of each FCC application and any amendments thereto.

(d) If the applicant fails to file a required FCC application or applications by any closing date established pursuant to § 100a.15 of this chapter, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Commissioner may return the application for Federal financial assistance to the applicant.

(47 U.S.C. 392(a), 394, 395.)

§ 153.7 Service to applications.

(a) Each applicant shall promptly serve a copy of his application, and each amendment thereto, for Federal financial assistance under this part upon each of the following:

(1) The Secretary, Federal Communications Commission, Washington, D.C. 20554; and

(2) The State educational television or radio agency, if any, in the State in which the channel associated with the project is assigned by the FCC, or, if the channel in question is assigned jointly to communities in different States, upon the State educational television or radio agency, if any, in each of such States.

(b) Each applicant must also give written notice of the filing of the application to the State educational television/radio agency, if any, in any State, any part of which is within the service area of the proposed broadcast station.

(47 U.S.C. 392(c), 394.)

§ 153.8 Acceptance of applications.

(a) Applications tendered for filing with the Commissioner will be given a preliminary examination. Those found to be complete and in accordance with the provisions of this part will be accepted for filing. Applications which are not complete or which are determined to be not in accordance with the provisions of this part will not be accepted for filing and will be returned to the applicant: *Provided*, That within 30 days of such return, the applicant may file with the Commissioner a petition pursuant to § 153.22. Acceptance of an application for filing will not preclude subsequent return or disapproval of the application if it is found to be not in accordance with the provisions of this part, or if the ap-

applicant fails to file any additional information or documents requested by the Commissioner.

(b) Applications proposing projects which require new authorization or authorizations from the FCC will not be accepted for filing by the Commissioner until after the FCC has accepted for filing the necessary application or applications to the FCC for such authorization or authorizations.

(c) The acceptance of applications for filing, as provided in paragraph (a), is a procedure designed for making preliminary determinations of eligibility and for providing an opportunity for public comment on applications, as described in § 153.9. Acceptance of an application for filing does not assure that application of being funded; it merely qualifies that application to compete for funding with other applications accepted for filing.

(47 U.S.C. 392(a), 394, 395.)

§ 153.9 Comments on applications.

(a) The Commissioner will publish notice in the FEDERAL REGISTER of the acceptance for filing of each application and of the receipt of each amendment which substantially changes the proposed project.

(b) Within 30 calendar days from the date on which notice is published in the FEDERAL REGISTER of the acceptance for filing of an application or an amendment to an application any State educational television and/or radio agency and any other interested person may file comments with the Commissioner supporting or opposing the application or amendment, setting forth the grounds for support or opposition, accompanied by a certification that a copy of the comments has been mailed to the applicant.

(c) Within 15 calendar days from the last day for filing such comments, the applicant may file a reply to any comments opposing its application or an amendment thereof.

(d) The time periods referred to in paragraphs (b) and (c) of this section may be extended by the Commissioner if good cause is shown.

(47 U.S.C. 394.)

§ 153.10 Processing of applications.

With respect to applications accepted for filing pursuant to § 153.8, the Commissioner may at any time establish limitations on the maximum amount of Federal grants which may be approved for projects situated in each of the several States in order to comply with the limitation in the Act on grants for any State to 8½ per centum of the appropriation for any fiscal year or if in the Commissioner's judgment such an action would assist in promoting equitable distribution of such Federal grants throughout the several States.

(47 U.S.C. 392 (b) and (d), 394.)

§ 153.11 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act

and this part, the Commissioner may consult with:

(a) The FCC with respect to functions which are of interest to or affect functions of the FCC;

(b) The Corporation for Public Broadcasting with respect to functions which are of interest to or affect the functions of the Corporation; and

(c) Other agencies, organizations, and institutions administering programs which may be coordinated effectively with Federal assistance provided under this part.

(47 U.S.C. 394, 395.)

§ 153.12 Criteria for evaluation of applications.

(a) The Commissioner may set aside a portion of funds appropriated to carry out this part for projects to acquire audio logging recorders under § 153.23. Applications which request assistance only to acquire and install an audio logging recorder will be governed by § 153.23 and will not be subject to criteria in this section.

(b) In order to achieve the objectives of § 392(d) of the Act, the Commissioner, in determining whether to approve an application for a Federal grant in whole or in part and the amount of such grant, or whether to defer action on such an application, will consider, in addition to criteria set forth in § 100a.26(b) of this chapter, excepting paragraphs (3), (6), and (8) of § 100a.26(b) of this chapter, the following factors:

(1) Specific program priorities set forth in Appendix B to this part;

(2) The extent to which the applicant has assessed specific educational, informational, and cultural needs of the local community, State, or Nation for public broadcasting service, as well as the need, where applicable, for local outlets to provide first or supplemental service, extend existing service, or strengthen production and reproduction capability;

(3) The extent to which station objectives and the proposed project respond to meeting the needs described under subparagraph (2);

(4) The extent to which provision has been made for community participation by the service agencies, educational and cultural institutions, and organizations within the service area of the station, and the extent to which intended audiences are using or will use broadcast services;

(5) Equitable geographical distribution of funds throughout the States;

(6) The extent to which the various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and are making the most efficient use of the frequency assignment;

(7) The cost-effectiveness of Federal funds in relationship to objectives of the project, and the extent to which non-Federal funds will be used to meet the total cost of the project;

(8) The standards by which the non-commercial educational broadcasting station will operate, including the number of hours of broadcast proposed, the size of the professional staff to be em-

ployed, and the adequacy of facilities, power, and program service;

(9) The adequacy and continuity of financial resources for long-term operational support, which assure the station's continual service to the communities within the coverage area; and the availability of necessary funds for capital expenditures;

(10) The provisions of any relevant statewide or regional noncommercial educational broadcast plans;

(11) The recommendations, if any, of the State educational television or radio agency; and

(12) Past performance by the applicant in carrying out any prior grants to it under this part in accordance with the applicable terms and conditions, provided that if the Commissioner decides to deny an application based upon this criterion, the Commissioner will do so only after providing the applicant with notice and an opportunity to rebut the basis for the decision.

(c) Applications under this part will not be approved by the Commissioner if they request funding to:

(1) Establish or improve a station with very low transmission power, except where the project is to convert a low transmission power station to a high transmission power station, or where low transmission power can be justified in terms of meeting the project's purposes;

(2) Provide program services which are limited in nature, scope, and hours of broadcast; or

(3) Acquire transmission or reception apparatus which is to be used primarily for student training purposes.

(47 U.S.C. 392 (a), (c), (d), and (e); 394 397(2).)

§ 153.13 Action on applications.

(a) After consideration of the application accepted for filing under § 153.8, any comments and replies filed by interested parties, and any other relevant information, the Commissioner will take one of the following actions provided for in § 100a.27(a) of this chapter: select the application for funding; return the application to the applicant; or defer the application for reconsideration pursuant to § 153.5, provided that when the Commissioner returns or defers the application, the Commissioner will notify the applicant of the grounds and reasons therefor.

(b) Upon the Commissioner's approval or deferral, in whole or in part, of an application, the Commissioner will, in accordance with the provisions of § 100a.27

(c) of this chapter, inform:

(1) The applicant,

(2) Each State educational television or radio agency, if any, in any State, any part of which lies within the service area of the applicant's broadcast station,

(3) The FCC, and

(4) The Corporation.

(c) If the Commissioner awards a grant, the grant award document shall include grant terms and conditions set forth in Appendix A to Subchapter A of this Chapter, excepting terms and conditions 2, 3(b) and (c), 5(e), 10, 11, 14,

20(a), 23, and 24 of this Appendix, and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program supported under this part.

(47 U.S.C. 392(c), 394.)

Subpart C—Federal Financial Participation and Conditions of Federal Grant

§ 153.14 Amount of Federal grant.

(a) In accordance with §§ 100a.50 and 100a.51 of this chapter, and subject to the provisions of paragraphs (b) and (c) of this section, the Federal grant award shall be an amount determined by the Commissioner and set forth in the grant award document, which, except as provided in § 153.23, shall not exceed 75 percent of the amount determined to be the estimated, total, reasonable, and necessary cost of the project. This cost shall include the following:

(1) The purchase price of transmission and reception apparatus (or fair market value of donated eligible apparatus) to be acquired in the project (in accordance with the provisions of Appendix A to this part); and

(2) Other costs related to the planning, acquisition, and installation of transmission and reception apparatus in the project (in accordance with provisions of Appendix A to this part).

(b) No part of the grantee's matching share of the eligible project costs may be met with Federal funds (including funds supplied by the Corporation for Public Broadcasting), except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(c) Project costs shall not include the value of:

(1) Eligible apparatus owned by the applicant prior to the effective date of acceptance by the Commissioner for filing of the application, and services related thereto. The effective date of acceptance for filing shall be specified in the FEDERAL REGISTER notice provided for under § 153.9(a) and shall be no earlier than the date on which the application was first received by the Commissioner in substantially approvable form;

(2) Transmission and reception to the extent acquired or installed by donation from the United States or with Federal funds provided from sources other than under this part; and

(3) Transmission and reception apparatus previously acquired or installed by a person other than the applicant by donation from the United States, or with Federal funds pursuant to this part or any other provisions of law.

(d) If the actual costs incurred in completing the project are less than the estimated costs which constituted the basis for the Commissioner's determination of the amount of the Federal grant award, the amount of the final grant shall be that amount of the actual total project cost remaining after deducting the amount of local matching funds used as a basis for the grant award time of project approval (including the

fair-market value of gifts, if any) provided that in no case shall the final Federal grant exceed the Federal grant award.

(e) Notwithstanding § 100a.51 of this chapter, grant awards under this part will not be revised by the Commissioner if the effect of the revision is to increase the amount of the grant award.

(47 U.S.C. 392(e), 394; 20 U.S.C. 1221c(b)(1), 1221c(b)(3))

§ 153.15 Payment of Federal grant.

(a) No payments under any award will be made unless and until the recipient complies with all relevant requirements imposed by this part, and until confirmation has been received from the FCC that any necessary existing authorization is current and valid and any necessary new authorization has been granted and such grant has become final.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, and notwithstanding §§ 100a.60-100a.64 of this chapter, payment will be made to the grantee in such installments consistent with construction progress, as the Commissioner may determine. The Commissioner may require as a precondition to any such payments such site visits by representatives of the Department as he may deem appropriate to determine construction progress.

(47 U.S.C. 392(e), 394)

§ 153.16 Conditions of Federal grant.

(a) (1) Federal grants under this part shall not be subject to §§ 100a.156, 100a.159, 100a.161, 100a.172, 100a.173, 100a.260, 100a.270, and 100a.276 of this chapter.

(2) As applied to grants under this part, the terms "construction" and "facilities" used in Subpart K of Part 100a of this chapter shall have the applicable definitions set forth in § 153.3.

(3) As applied to grants under this part, "program income", as the term is used in Subpart M of Part 100a, of this chapter, shall not include income to the grantee generated by its television or radio programming.

(b) Each Federal grant under this part shall be subject to the conditions that the grantee shall:

(1) Continue to meet the requirements set forth in § 153.5(c);

(2) Use the Federal grant funds for the purposes for which the Federal grant was made and for the item of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Commissioner;

(3) Promptly complete the project and place the noncommercial educational broadcast facilities into operation;

(4) Maintain, during construction of the project and for 10 years after completion of the project, protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent

the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to transmission and reception apparatus acquired and installed under the project;

(5) Permit inspections by the Commissioner or a duly authorized representative of the Commissioner of the transmission and reception apparatus acquired with Federal financial assistance at the time of completion of the project and at any other reasonable time within 10 years after completion of the project.

(47 U.S.C. 392(d)(1), 392(f), 394)

Subpart D—Accountability for Federal Funds

§ 153.17 Retention of property records.

(a) Each grantee shall keep intact and accessible fiscal records in accordance with the provisions of § 100a.477 of this chapter, provided that final disposition of nonexpendable personal property purchased under this part for purposes of § 100a.477(b)(2) of this chapter shall be deemed to have occurred 10 years after completion of the project.

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

(47 U.S.C. 392(f), 393, 394, 20 U.S.C. 1232c(a))

§ 153.18 Final certification.

Upon completion of the project, the grantee shall:

(a) Certify that the noncommercial educational broadcasting station has, where required, FCC authorization to broadcast following acquisition and installation of project equipment; and

(f) Certify that the acquisition and installation of the project equipment has been completed in accordance with the project as approved by the Commissioner.

(47 U.S.C. 392(f), 394, 20 U.S.C. 1232c(b)(3); 20 U.S.C. 1221c(b)(1))

§ 153.19 Annual status reports.

In addition to reports which may be required to be filed under § 100a.406 and § 100a.433 of this chapter, the grantee must file with the Commissioner during the 10-year period commencing with the date of completion of a project, an annual status on or before each April 1 following completion of the project, certifying that:

(a) The grantee continues to be an eligible agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4;

(b) There has been no change in ownership or use of the project apparatus during the reporting period, or describing any change during such period;

(c) Project apparatus, owned by the grantee as of that date, is being used for noncommercial educational broadcasting purposes; and

(d) The requirements of § 153.16(b) continue to be met.

(47 U.S.C. 392(f), 394)

§ 153.20 Termination.

In addition to grounds for termination for cause specified in § 100a.495(a) of this chapter, the following circumstances shall constitute grounds for termination under § 100a.495 of this chapter:

(a) Final action by the FCC revoking a construction permit required for a project, denying an application for extension or a required modification of the construction permit, denying an application for a construction permit to replace the required construction permit, or denying an application for a license to cover the construction permit; or

(b) Forfeiture of a construction permit required for a project for which a grant has been approved.

(47 U.S.C. 394; 20 U.S.C. 1221c(b)(1))

§ 153.21 Change in eligibility or use.

(a) Notwithstanding §§ 100a.215 (b), (c), and (d) and 100a.216 of this chapter, if assistance under this part is terminated pursuant to § 153.20 or if within 10 years after completion of any project with respect to which a Federal grant has been made pursuant to this part:

(1) The grantee ceases to be an agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4 as being eligible to receive a Federal grant; or

(2) Any of the eligible apparatus included in the project ceases to be used primarily for noncommercial educational broadcasting, either permanently or for an indefinite period of time, or such apparatus is used or disposed of for other than noncommercial educational broadcasting (other than as a trade-in for acquisition of other eligible apparatus), then the grantee shall (except as provided in paragraph (b) of this section) pay to the United States the amount bearing the same ratio to the then fair-market value of such apparatus, as the amount of the Federal participation bore to the cost of acquisition or installation of such apparatus.

(b) Where a grantee proposes to cease using any of the eligible apparatus included in the project primarily for noncommercial educational broadcasting (as set forth in paragraph (a)(2) of this section), that grantee may file a petition with the Commissioner requesting release from the obligation to make repayment to the United States, and setting forth with particularity the grounds and reasons for the request. These petitions will be granted by the Commissioner only for good cause, and only if the proposed cessation of use for noncommercial educational broadcasting has not already taken place, unless the petitioner demonstrates to the satisfaction of the Commissioner that the cessation was due to causes not under the control of the petitioner. If the Commissioner denies the petition, the grantee may within 30 calendar days from the date of receipt of notice of the denial, file a petition for reconsideration pursuant to § 153.22.

(c) In any case where the Commissioner has reason to believe that any change in eligibility or use of transmis-

sion and reception apparatus (as described in paragraph (a) of this section), has already taken place, the grantee will be notified promptly of the grounds and reasons that repayment to the United States is required. The grantee may, within 30 calendar days from the date of receipt of this notification, file with the Commissioner a petition for reconsideration pursuant to § 153.22.

(d) If the Commissioner determines that the grantee is obligated to make a repayment to the United States, the Commissioner will seek to reach agreement as to the amount and method of repayment. If an agreement cannot be reached, the Commissioner will cause an action to be brought in the U.S. District Court for the district in which the noncommercial educational broadcasting facilities are situated to determine the amount of the repayment, and will take the necessary action to secure repayment.

(47 U.S.C. 392(f), 394)

§ 153.22 Petition for reconsideration.

(a) A petition for reconsideration as provided in §§ 153.8 and 153.21 must be filed with the Commissioner within 30 calendar days, must state with particularity in what respect the Commissioner's action is claimed to be unjust, unwarranted, or erroneous, must specifically indicate the relief sought, and must be accompanied by a written statement on the question presented. The petition for reconsideration may be accompanied by a request for a hearing, in which event the petitioner must state with particularity the grounds and reasons for a hearing. If the Commissioner designates the matter for hearing, the Commissioner will specify the questions in issue, designate the hearing officer, and specify the procedures and rules relating to the conduct of the hearing. If the Commissioner does not find that sufficient grounds and reasons exist for granting the relief sought or for providing a requested hearing, the Commissioner will notify the petitioner, giving reasons for the refusal.

(b) In the event of a hearing the hearing officer shall make a written report to the Commissioner based upon the hearing and containing a recommended decision on the issues. A copy of the report shall be mailed to the petitioner, and the petitioner shall have 15 calendar days from the date of receipt (or such additional time as may be given for good cause) to file with the Commissioner a written statement setting forth with particularity alleged errors in the report and discussing any policy and legal issues presented.

(c) If no written statement is made by the petitioner or by a State educational television or radio agency on the report of the hearing officer and if the Commissioner does not decide to review it, the Commissioner shall review the administrative decision without further proceedings. If a written statement is made on the report of the hearing officer or if the Commissioner decides to review

it, the Commissioner shall review the record of the proceedings and issue a decision based on it, setting forth the grounds and reasons.

(d) The Commissioner will notify each State education television or radio agency, if any, in any State, any part of which lies within the service area of the petitioner's broadcasting station, of the filing of a petition for reconsideration under this section and each agency will be given an opportunity to comment upon the petition.

(e) Interested persons other than a State educational television or radio agency referred to in paragraph (d) of this section may comment in writing upon any petition for reconsideration filed under this section and for good cause shown, and may be given an opportunity to participate in a hearing held pursuant to this section to an extent the Commissioner determines appropriate.

(47 U.S.C. 394)

Subpart E—Audio Logging Recorders**§ 153.23 Audio logging recorders.**

(a) The Commissioner may make a grant to any licensee of a noncommercial educational broadcast station to acquire no more than one audio logging recorder per station to permit the licensee to comply with Section 399(b) of the Act.

(b) (1) An applicant may receive up to the full amount of the cost of acquiring and installing each audio logging recorder if the applicant:

(i) Previously received financial assistance under Part IV of Title III of the Communications Act of 1934, as amended, and

(ii) Establishes, to the Commissioner's satisfaction, that:

(A) applicant has no funds from non-Federal sources available to apply toward the costs of acquiring and installing the audio logging recorder; and

(B) An audio logging recorder is not already available to the applicant and is needed to comply with Section 399(b) of the Act.

(2) If the applicant does not meet the requirements in subparagraph (1), it may receive assistance to acquire and install an audio logging recorder subject to the non-Federal matching requirements in § 153.14.

(c) An application which requests assistance only for one or more audio logging recorders must meet the requirements in § 153.5 (a) and (c) (1), (2), (3), and (4) and if it seeks assistance beyond the Federal 75% matching share in § 153.14, must:

(1) Provide information meeting the requirements in paragraph (b) (1) of this Section; and

(2) Be a separate application from any other application for a facilities grant under this part.

(d) If funds are not adequate to fund all eligible applications which seek assistance for audio logging recorders, such application shall be competitively evaluated on the basis of the applicant's financial need for Federal assistance and

its need for the audio logging recorder to comply with Section 399(b) of the Act. The evaluation criteria in § 153.12 and the priorities in Appendix B will not apply to these applications.

(e) Audio logging recorders acquired under this section must meet all applicable Standards in Appendix A.

(47 U.S.C. 392, 394, 397(2) 399 (b))

APPENDIX A—EDUCATIONAL RADIO AND TELEVISION TRANSMISSION APPARATUS AND RELATED COSTS LIST AND MINIMUM EQUIPMENT PERFORMANCE STANDARDS

This appendix sets forth requirements and standards related to eligible and ineligible costs list for assistance under this part, including:

(a) List of transmission and receiving apparatus and related costs, including installation, considered to be eligible for grant participation and a list of items and costs which are specifically ineligible for grant participation. In general, only items of the transmission systems from the lens of the camera or the housing of the microphone to the radiating element of the antenna are eligible. Neither list is intended to be all-inclusive. It is recognized that both technological changes and/or specific circumstances related to individual applications may warrant amendments to the lists or consideration of specific justification for the eligibility and inclusion of unlisted items in certain projects; and

(b) Standards for determining acceptable minimum performance requirements which will meet the capability of achievement criterion contained in § 153.12(b)(6). Information included in this Appendix is applicable to both radio and television projects.

I. ELIGIBLE AND INELIGIBLE PROJECT COSTS

(A) *Transmission Apparatus Eligible for Federal Matching Grants.*

(1) Antenna systems:

(a) Tower (guyed or self-supporting) and tower construction including test borings;

(b) Antenna and erection;

(c) Transmission line system or waveguides;

(d) Tower painting and lighting, including lighting controls (new installations only);

(e) Tower footings, guy anchors, and guy wires;

(f) Gas pressure equipment for transmission line; and

(g) De-icing equipment and controls.

(2) Transmitter:

(a) Transmitter, including modulator, power supply, one set of spare tubes, and subcarrier generators;

(b) Diplexers, filters, etc., as required;

(c) Crystals, including one set of spares;

(d) Dummy load and wattmeter to measure transmitter power output;

(e) Transmitter and operational console, picture and calibrated wave form monitors, where necessary;

(f) Frequency and modulation monitoring apparatus in compliance with FCC requirements;

(g) Input items required, including stabilizing amplifier;

(h) Mounting racks;

(i) Cables and hardware for installation; and

(j) Test equipment required by good engineering practice.

(3) Translators:

(a) Apparatus of the type listed under "Antenna system" and "Transmitter" necessary for the operation of translators; and

(b) Special receiver required for supplying programs to the translator.

(4) *Microwave apparatus (studio-transmitter links, interconnecting microwave relays, and mobile microwave units):*

(a) Transmitter, complete;

(b) Receiver, complete;

(c) Waveguide or transmission line;

(d) Control apparatus as required;

(e) Antennas and protective domes;

(f) Antenna supports and mountings;

(g) Reflectors;

(h) Waveguide switches;

(i) Ferrite isolator and circulator;

(j) Sound diplexing apparatus;

(k) Mounting racks; and

(l) Auxiliary radio communications apparatus to install, maintain, and operate the total broadcast facility.

(5) *Recording and receiving apparatus:*

(a) Broadcast quality video and audio tape recorders and playback machines including video cassette and audio cartridge machines;

(b) Time base correctors;

(c) Time code generator, reader, synchronizer assemblies;

(d) Recorders using other techniques if capable of maintaining standards of good engineering practice;

(e) Related monitoring apparatus, including calibrated oscilloscopes;

(f) Accessories required, including electronic editors and spare recording heads as required by good engineering practice;

(g) Logging recorders; and

(h) FM subcarrier receivers.

(6) *Studio production equipment (including that intended for remote or mobile program origination):*

(a) Cameras, with control units, picture monitors, and wave form monitors;

(b) Telecine systems;

(c) Camera lenses, zoom lenses;

(d) Camera pedestals, tripods, friction heads, and cradles (professional models);

(e) Camera cables, plugs, and connectors;

(f) Sync generator, including a spare and switchover mechanism;

(g) Video switcher and console, picture, and calibrated wave form monitors, and electronic effects generator;

(h) Calibrated wave form monitor and picture monitor with provision to display pulse cross for checking sync pulses;

(i) Utility monitors;

(j) Power supplies, regulated;

(k) Broadcast-type control consoles, amplifiers, VU meter, etc.;

(l) Microphones, low impedance, high quality;

(m) Microphone booms;

(n) Broadcast quality turntables with accessories required;

(o) Broadcast quality audio tape recorders with accessories required;

(p) Equipment racks, patch panels, plugs, cords, loudspeakers; and

(q) Test equipment required by good engineering practice.

(7) Satellite equipment:

(a) Transceivers;

(b) Transmitter;

(c) Parabolic antenna and hardware; and

(d) Amplifiers, demodulators, and related apparatus.

(8) *Other interconnection equipment:* Interconnection equipment is eligible to the extent reasonable and necessary, as determined by the Commissioner, for the reception and utilization of program material made available via interconnection systems.

(9) Other apparatus:

Automation apparatus, character generators, quadrophonic equipment, sound improvement systems, spare or back up systems or equipment may be included when the necessity for this apparatus in the proposed system can be specifically justified and is consistent with standards of good broadcast engineering practice.

(47 U.S.C. 392(a) and (d), 394)

(B) *Installation Costs Eligible for Federal Matching Grants.*

Labor and materials necessary for the initial installation of project apparatus, including direct supervision but not including indirect or overhead costs.

(47 U.S.C. 392(a) and (d), 394)

(C) *Planning Costs Eligible for Federal Matching Grants.*

Engineering, legal, and other activities which are performed by appropriately licensed employees or consultants and which are directly related to the planning of the project, the preparation and filing of appropriate applications to HEW and FCC, and the installation of apparatus; but not including indirect or overhead costs. Approvability of such items is subject to final determination by the Commissioner. Such services may include:

(1) Project planning;

(2) Equipment planning;

(3) Engineering planning;

(4) Hardware and engineering aspects of preparing and filing the HEW application for grant and related FCC applications for construction permits;

(5) Preparation of specifications;

(6) Evaluation of bids;

(7) Supervision of installation;

(8) Inspection upon completion;

(9) Proof of performance;

(10) Legal services, to the extent reasonably required for the preparation, filing, and routine prosecution of uncontested applications; and

(11) Other services related to site location and planning, frequency or channel search, and feasibility or structural studies conducted prior to the filing of an application.

(47 U.S.C. 392 (a) and (d), 394)

(D) *Items Ineligible for Federal Matching Grants.*

(1) Land and land improvements for studio and/or transmitter building, tower, and the like;

(2) Structures, including any reinforcement or modification to house or support any transmission apparatus or any other radio or television equipment or facilities, including structural analysis studies;

(3) Maintenance equipment such as hand and power tools and maintenance services;

(4) Vehicles, including those in which mobile equipment is mounted or carried;

(5) Broadcast receiving equipment (except as required for station personnel to monitor transmitted programs or for rebroadcast purposes, SCA subcarrier receivers, or satellite transceivers);

(6) Manual film or tape editing equipment;

(7) Studio lighting and control equipment;

(8) Air conditioning for control or equipment rooms, studios, transmitter, and mobile units, except that the cost to provide ventilation of project apparatus as is required by good engineering practice is an eligible installation cost;

(9) Reels (film or tape);

(10) Office intercom equipment;

(11) Primary power supply, regulators, and associated equipment;

(12) Furniture, fixtures, studio clocks, and the like;

(13) Office equipment, printing and duplicating supplies;

(14) Scenery and props;

(15) Production devices such as prompting systems, background screen projection systems, wind generators, and the like;

(16) Storage cabinets;

(17) Cleaning equipment;

PROPOSED RULES

- (18) Film;
 - (19) Recording tape;
 - (20) Art supplies and equipment;
 - (21) 16mm cameras, sound synchronization systems, and film processors;
 - (22) Expendable items, including tubes normally considered spares except for the transmitters; and
 - (23) Staff time necessary for planning and preparation of applications, except as permitted under Section I(C) of this Appendix.
- (47 U.S.C. 392(a) and (d), 394)

II. STANDARDS FOR PROJECT APPARATUS

Project apparatus must comply with the specifications and performance requirements contained in the FCC's rules and regulations cited in § 153.2. The FCC requirements primarily relate to transmitters, translators, and antenna systems. The following performance standards, which are in addition to FCC requirements, shall serve as benchmarks for determining minimum system capacities for purposes of § 153.12(b) (6). Electronic Industries Association (EIA) standards specified in the following paragraphs of this Appendix are hereby incorporated in this part by reference, as approved by the Director of the FEDERAL REGISTER. Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, NW, Washington, D.C. 20006.

(A) Broadcast Transmitting Apparatus (Antenna System, Transmitter System, and Related Items).

(1) In addition to current pertinent FCC requirements, EIA Standard RS-222-B (December 1972) "Structural Standards for Steel Antenna Towers and Supporting Structures," established by the EIA should apply to the tower and antenna system of broadcast stations. EIA Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations," should apply to earth station antennas with high geothermal for satellite communications. EIA Standard RS-195-A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors," should apply to microwave relay systems operating above 890 Mc.

(2) Where an antenna system is to be added to an existing tower, a structural analysis should be performed to assure that the added facility will not overload the tower.

(3) Selection of transmission lines or waveguide should be dictated by good engineering practice in keeping with high efficiency and minimal attenuation.

(4) Selection of transmitter and the component visual and aural transmitters should be dictated by the good engineering practice specified in EIA Standard RS-240 (April, 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

(B) Studio Equipment.

(1) Studio equipment and mobile equipment should comply with specifications contained in EIA Standard RS-170 (November 1957) "Electrical Performance Standards—Monochrome Television Studio Facilities," to the extent those specifications are applicable to color equipment.

(c) Special Purchase Equipment.

Audio logging recorders and FM subcarrier channel receivers should comply with the following minimum performance standards:

(1) A program logging recorder should be a four-track program tape recorder designed for continuous, long duration audio recording which records and plays in both directions to equal performance specifications.

Adjustable level and equalization for each head, bias and calibration adjustments; signal to noise ratio minimum 43dB, one percent maximum wow and flutter, frequency response is within 3dB from 200 to 2700 Hz. Total unattended time—204 hours 48 minutes at $1\frac{1}{2}$ i.p.s. using triple play tape; 307 hours 12 minutes at $\frac{3}{4}$ i.p.s. using triple play tape. Straight-line threading, automatic tape lifters, interlocked controls, editing and cueing components, remote control, solenoid actuated capstan control, solenoid actuated brakes, automatic reversing; tape counter, playback timing accuracy within one percent at all speeds. Standard $10\frac{1}{2}$ inch NAB reels and hubs, or EIA 7-inch plastic reels; tape $\frac{1}{4}$ inch wide, $\frac{1}{2}$ mil to $1\frac{1}{2}$ mil thick, with tape speeds of $1\frac{1}{2}$, $1\frac{1}{4}$, and $\frac{3}{4}$ i.p.s.

(2) An FM/SCA subcarrier channel receiver should be a crystal controlled, self-contained receiver factory tuned to a specific frequency in the 88-108 MHz range, AC or DC powered. It should have a combined on/off power switch and volume control; main/SCA program select switch; headphone jack, telescopic whip antenna, $3\frac{1}{2}$ inch fully extended; screw terminals on rear for optional external 75 ohm antenna for "fringe areas" or a master antenna; front mounted permanent magnet high efficiency dynamic speaker with an all solid state design, wide dynamic range RF amplifier; an audio output of 1.0 watt rms with less than 1.5 percent total harmonic distortion; frequency response balanced for voice and music; sensitivity for SCA channel: 3.5 uV for 30 dB quieting, for Main channel: 1.0 uV for 30 dB quieting; crosstalk: main to subchannel at least 45 dB below a 400 Hz reference tone; hum and noise 50 dB or greater below full modulation of subcarrier; auxiliary audio output (with phone jack) with level at 100 millivolts, rms at 400 Hz; and power cord.

APPENDIX B—PROJECT PRIORITIES

I. Assignment of priorities to applications. Applications which have been filed in accordance with § 153.5 and accepted by the Commissioner under procedures established in § 153.8 will be assigned one or more of the following priorities. If an application consists of components which fall into more than one priority category, the applicant must be prepared to accept, for the entire project, a grant award for whatever portion, if any, the Commissioner determines can be accommodated within the funding limitations of a fiscal year. With regard to projects funded in part, components not funded must be resubmitted as new applications in accordance with § 153.5 and accepted for filing as provided in § 153.8.

Proportions of the available funds to be awarded in various priority categories will be determined by the Commissioner to achieve a fair distribution of funds over the improved quality of services to the public as measured against the funding criteria and with the pattern of needs reflected in applications under consideration for a given fiscal year. As the percentage of the U.S. population brought within the coverage range of at least one noncommercial broadcast station is enlarged, it is expected that the implementation of these priorities will result in the expenditure of an increasing share of appropriated funds to extending the facilities of existing stations to provide for essential initial and basic capabilities required to (1) serve fully their local communities; (2) develop a national system of effective noncommercial stations; and (3) provide for production capability justified by national, regional, statewide, and local programming commitments.

As used in this Appendix, the terms "public radio station" or "public television station" refer to noncommercial educational broadcasting stations other than those sub-

ject to disapproval under the terms of § 153.12(c).

II. Project Priorities for Television. Priority

A. Projects to provide stations with their first state-of-the-art production and/or reproduction capability. This refers to color capability of a videotape recorder, film chains, studio color cameras, switches, and related apparatus where this need can be justified by proven production and/or reproduction requirements to meet identified community needs.

B. Projects to provide local stations with state-of-the-art broadcast apparatus which, while used primarily for educational broadcasting, will be used also for the production and distribution of programs designed for non-broadcast educational uses which are in conjunction with but incidental to the station's broadcast service. Such a project will enable the station's facilities to be adapted to serve the greatest number of persons, to serve them in as many areas of the total station's service area as possible, and to broaden the educational uses of those facilities.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend station coverage where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including transmission colorization) for larger population groupings, and provide comparability with commercial station coverage.

D. Projects to acquire apparatus for the interconnection of stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services. Such apparatus may include satellite transceivers and related earth station equipment.

Priority II. A. Projects to establish new public television stations in areas currently without such a station with appropriate local or State license, to serve populations of 500,000 or more. Proposals to establish the first public television station in a State.

B. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license, to serve populations between 250,000 and 500,000.

C. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such a production need the applicant must demonstrate the inability of presently owned apparatus to meet production requirements, and the apparatus requested may not exceed the reasonable requirements of the verified production commitments.)

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population does not justify inclusion in Category IC.

Priority III. A. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license where population to be served is less than 250,000.

B. Projects to augment production and reproduction capabilities of local stations beyond the basic or initial capability. These proposals will require documentation of local live production requirements in excess of existing capability.

Priority IV. A. Projects to establish second (or more) public television stations in areas

already served by such a station under an appropriate local or State license.

B. Projects to equip auxiliary studios at other than the main studio.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

III. Project Priorities for Radio. Priority I.

A. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of 500,000 or more. Projects to establish the first public radio station in a State.

B. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing stations, or the expansion of existing low power stations) to serve populations between 250,000 and 500,000.

C. Projects to provide public radio stations with first state-of-the-art production capability, where this need can be justified by proven production requirements to meet identified community needs. This refers to the provision of stereo and SCA capability for FM facilities and up-dating of AM facilities, the provision of tape recorders, SCA side band generator, modulator and receivers, audio consoles, turntables, microphones,

logging recorders, remote amplifiers, and other related apparatus.

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend area coverage of an existing public radio station where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including the improved audio capability, by the addition of SCA, or stereo) for larger population groupings and provide comparability with commercial station coverage.

Priority II. A. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of less than 250,000.

B. Projects to establish, in major population centers where one or more public radio stations already provide service, full service public radio stations which will provide a broadened program service designed for special interest, minority, and educational uses.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population served does not justify inclusion in Category ID.

D. Projects to augment production and reproduction capabilities of local stations

beyond the basic or initial capability. Such proposals will require documentation of local live production requirements in excess of existing capability.

Priority III. A. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such production need; the applicant must demonstrate the inability of presently owned apparatus to meet production requirements; and the apparatus requested may not exceed the reasonable requirements of the verified production commitments.)

B. Projects to equip studios auxiliary to the main studio.

C. Projects to acquire apparatus for the interconnection of public radio stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

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