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

Office of Education

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### **NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES**

Construction Grants

## Title 45—Public Welfare

## CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## PART 153—NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES PROGRAM

## Regulations for Construction Grants

Notice of proposed rule making was published in the FEDERAL REGISTER on August 14, 1974 (39 FR 29318) setting forth proposed regulations for the Educational Broadcasting Facilities Program. Pursuant to section 503 of the Education Amendments of 1972, a public hearing was held October 1, 1974 in Washington, D.C. on the proposed regulations. In addition, written comments were received and considered.

**A. Summary of comments; changes in the regulations.** The following comments were submitted to the Office of Education regarding the proposed regulations, either at the public hearing held on October 1, 1974, or in writing. After the summary of each comment, a response is set forth stating changes which have been made in the regulations, or the reasons why no change is deemed necessary. The comments are arranged in order of the sections of the final regulations.

1. Section 153.4 *Eligible applicants.* **Comment.** A comment suggested that § 153.4 (a) (3) and (b) (3), making eligible for grants, "A college or university deriving its support in whole or in part from tax revenues," be extended to include private colleges and universities.

**Response.** The regulation provisions in question are taken from the authorizing statute, section 392(a) (1) (C) of the Communications Act of 1934, as amended (47 U.S.C. 392(a) (1) (C)). The proposed change cannot be made.

**Comment.** One comment suggested that the categories of eligibility be expanded to include Indian tribes and other Indian organizations.

**Response.** The specified categories of eligibility are taken from the authorizing statute, section 392(a) (1) of the Communications Act of 1934, as amended (47 U.S.C. 392(a) (1)), and the Commissioner is without authority to add to them. Indian tribes and other organizations may qualify for funding only if they come within the statutory categories of eligibility. There is precedent for regarding Indian tribes as municipalities which may, subject to other statutory restrictions, qualify for funding under 47 U.S.C. 392(a) (1) (E) and § 153.4 (a) (5) or (b) (5) of this part. Indian organizations may also form nonprofit foundations, corporations, or associations organized primarily to engage in or encourage non-commercial educational broadcasting, which would be eligible for funding under 47 U.S.C. 392(a) (1) (D) and § 153.4 (a) (4) or (b) (4) of this part.

2. Section 153.5 *Application for financial assistance.* **Comment.** One comment objected to the provisions of § 153.5(a) (2) relating to procedures for reactivating pending applications accepted for filing in a previous fiscal year. The commenter expressed concern that

unwary applicants would inadvertently allow their applications to lapse and opined that an application accepted for funding should remain eligible for review from year to year without further action by the applicant.

**Response.** The requirements of § 153.5 (a) (2) are deemed essential to insure that the Commissioner is not forced to review obsolete applications. The alternative to these procedures would be to return all unfunded applications at the end of each fiscal year. Since a notice of closing date is published in the FEDERAL REGISTER for each fiscal year and is mailed to all pending applicants, all interested applicants would have fair notice of necessary steps to avoid having its application lapse for failure to meet § 153.5(a) (2). Therefore, no change has been made.

**Comment.** One comment suggested that application forms be simplified, particularly in connection with a related suggestion that funds be earmarked for log recorders which could be separately applied for.

**Response.** The regulations do not cover application forms. Application forms for State and local government applicants are mandated by OMB Circular No. A-102 and described in §§ 100a.40-100a.45 of this chapter (the Office of Education General Provisions Regulations). The general point on simplifying applications for applicants other than State and local governments will be taken into account in devising appropriate applications. The comment on earmarking funds for log recorders is separately discussed in this that unwary applicants would inadvertently allow their applications to lapse and opined that an application accepted for funding should remain eligible for review from year to year without further action by the applicant.

**Response.** The requirements of § 153.5 (a) (2) are deemed essential to insure that the Commissioner is not forced to review obsolete applications. The alternative to these procedures would be to return all unfunded applications at the end of each fiscal year. Since a notice of closing date is published in the FEDERAL REGISTER for each fiscal year and is mailed to all pending applicants, it is unlikely that a pending applicant would inadvertently allow its application to lapse for failure to meet § 153.5(a) (2). Therefore, no change has been made.

**Comment.** One comment suggested that application forms be simplified, particularly in connection with a related suggestion that funds be earmarked for log recorders which could be separately applied for.

**Response.** The regulations do not cover application forms. Application forms for State and local government applicants are mandated by OMB Circular No. A-102 and described in §§ 100a.40-100a.45 of this chapter (the Office of Education General Provisions Regulations). The general point on simplifying applications for applicants other than State and local governments will be taken into account in devising appropriate applications. The comment on earmarking funds for log recorders is separately discussed in this

preamble under the heading of Appendix B.

3. Section 153.8 *Acceptance of applications.* **Comment.** One comment objected to the last sentence of § 153.8(a), arguing that acceptance of an application for filing created expectations of funding in the applicant and that, therefore, an accepted application should not be subject to subsequent return or disapproval as provided in the last sentence of § 153.8(a).

**Response.** The acceptance of applications for filing 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. It would be inappropriate for this part to deny the Commissioner authority to return or disapprove an application on grounds indicated in the last sentence of § 153.8 (a). At the same time, the commenter's concern with regard to the creation of false expectations in the applicant is well-taken. To mitigate this problem, paragraph (c) has been added to § 153.8 to clarify the purposes and effect of these procedures.

4. Section 153.9 *Comments on applications.* **Comment.** A comment requested that § 153.9 be amended to provide for publication of notices announcing the acceptance for filing of applications not only in the FEDERAL REGISTER, but also in local newspapers in areas affected by each such application.

**Response.** THE FEDERAL REGISTER is used by the Department as the formal means for soliciting public comments, typically in connection with rule making procedures under 5 U.S.C. 553. The provisions of § 153.9 go substantially beyond what is required by statute or what is generally provided in other programs administered by the Commissioner with respect to opportunity for public comment. It is felt that the administrative burdens of carrying out the subject suggestion would be disproportionate to the benefits to be derived. However, the Department does intend to make appropriate news releases to the national news media in connection with its acceptance of applications for filing. No change in the regulation is deemed appropriate.

5. Section 153.10 *Processing of applications.* **Comment.** One comment alleged that § 153.10 provided no authority for the Commissioner to establish and announce cutoff dates for the receipt of applications, as had been provided under former § 60.12 of this title. The commenter expressed concern that the absence of such authority would delay the processing of applications and the award of grants under this part.

**Response.** The authority of the Commissioner to establish and announce cutoff dates for applications is expressly provided for in § 100a.15 of this chapter, which is cross-referenced in § 153.5(a) (1) and (2) of this part.

6. Section 153.12 *Criteria for evaluation of applications.* **Comment.** One comment objected to the provisions of § 153.12(a) (3) and (6) on the ground that the ascertainment of a community's needs for educational broadcasting and the extent to which the proposed project

is necessary to meet those needs is within the province of the Federal Communications Commission, which to date has not imposed ascertainment procedures on noncommercial licensees. The commenter opined that it would be unfair for the Department of Health, Education, and Welfare to impose a standard which the Federal Communications Commission has not imposed and suggested that the Commissioner defer on ascertainment matters to the Corporation for Public Broadcasting.

*Response.* The basic statutory purposes of the Educational Broadcasting Facilities Program administered pursuant to this part relate to meeting the needs of communities for educational broadcasting services. Section 392(a) provides that the Secretary of Health, Education, and Welfare shall base his determinations in awarding grants on criteria designed to achieve, inter alia: "provision of non-commercial educational television broadcasting facilities or noncommercial educational radio broadcasting facilities, as the case may be, which will serve the greatest number of persons and serve them in as many areas as possible, and which are adaptable to the broadest educational uses." It is not clear how these statutory purposes could be realized if the Commissioner, in evaluating applications for funding, failed to consider a community's educational and cultural needs and how, in general, the proposed facilities would meet those needs. It has been the Commissioner's experience in administering the program that the cumulative amount of program funds annually requested by eligible applicants is greatly in excess of the funds available for grants. The subject criteria are designed to enable the Commissioner to make a rational selection of those applications with the greatest potential for realizing the statutory purposes specified in 47 U.S.C. 392(d). In applying these criteria, the Commissioner would of course weigh information or advice available from the FCC or the Corporation for Public Broadcasting (as well as from other interested parties), pursuant to §§ 153.9 and 153.11, but the application of these criteria to project proposals is a function delegated to the Commissioner pursuant to statute which the Commissioner may not in turn delegate to the FCC, the Corporation for Public Broadcasting, or other agencies or organizations. No change in the regulation has been made.

*Comment.* The same commenter objected to § 153.12(a)(11) on the ground that HEW ought not to consider the size of an applicant's professional staff.

*Response.* 47 U.S.C. 392(d) charges the Secretary with the responsibility of developing criteria designed to achieve effective use of channels and facilities serving the greatest number of persons and adaptable to the broadest educational uses. The size of an applicant's professional staff is one indicium of its capacity to meet these statutory purposes and an appropriate consideration for the Department in weighing competing applications. No change has been made in the regulation.

7. Section 153.13 *Action on applications.* *Comment.* A comment proposed that the Corporation for Public Broadcasting be added to the list in § 153.13(b) of those agencies notified by the Commissioner of his actions on applications.

*Response.* The regulation has been amended to incorporate this suggestion.

8. Section 153.15 *Payment of Federal grant.* *Comment.* A comment suggested that the language "(by the date of the award)" be added at the end of § 153.15(a), indicating that many applicants are able to resolve their FCC problems between the time of preliminary review and the time of award announcements and that these applicants should not be penalized a whole year by delays in FCC processing.

*Response.* The requirements in § 153.15(a) relate not to the award of a grant, but to the making of payments under a grant. Preconditions to grant awards related to FCC authorization are described in § 153.6. These rules would not prejudice an application on account of any simple delays in FCC processing. No change in the regulation has been made.

9. Section 153.19 *Annual status reports.* *Comment.* In the interest of lessening paperwork for the grantee, a commenter recommended that status reports be required only at the end of the first, fourth, seventh, and tenth years following completion of the project instead of on an annual basis.

*Response.* Given the frequency with which changes in ownership or in use of facilities can occur, the requirement of reports on an annual basis is considered an essential monitoring device to insure the ten-year Federal interest in the facilities, as provided under 47 U.S.C. 392(f). The annual report requirement is an effective reminder to grantees of their duty to report changes in status to the Commissioner and helps to surface problems which the Office of Education may help to resolve on a timely basis. At the same time, particularly if there are no changes to report, the annual reports are simple to complete. No change in the regulation has been made.

10. Appendix A—*Educational radio and television transmission apparatus and related costs list and minimum equipment performance standards.* *Comment.* One comment complained about the cost of obtaining standards of the Electronic Industries Association which were proposed for incorporation by reference and suggested that these standards be deleted unless they could be provided without cost to the applicants.

*Response.* This comment is well-taken, and the Commissioner is prepared to make the incorporated standards of the Electronic Industries Association available upon request without cost to the applicant. No change in the regulation has been made.

*Comment.* One comment suggested that, in order to provide sufficient discretion in the Commissioner, only eligible equipment be listed in Appendix A-I, and not ineligible equipment, and that the eligible list be qualified by a proviso to the effect that equipment not listed

would be eligible only upon a showing that it falls within the purposes of the regulations.

*Response.* The introduction to the lists of eligible and ineligible equipment in Appendix A provides that neither list is intended to be all-inclusive. Express provision is made for specific justification for the eligibility of unlisted items. The list of ineligible items of equipment under heading I(D) has been carefully reviewed to insure that those items would in no circumstances be considered eligible. While it would be possible to list only eligible items of equipment, the listing of ineligible items as well would seem to give additional guidance to applicants, without sacrificing any appropriate discretion in the Commissioner. Therefore, no change in the regulation has been made.

*Comment.* A comment recommended that Appendix A-I(A) be amended to include as eligible transmission apparatus 16 mm. film cameras and processing machines.

*Response.* The purpose of the Educational Broadcasting Facilities Program, as provided in 47 U.S.C. 390, is to assist in the construction of educational broadcasting facilities. 47 U.S.C. 397(2) defines "construction" to mean the acquisition and installation of transmission apparatus necessary for television or radio broadcasting. 16mm. film cameras and processing machines are not necessary for the broadcasting transmission system and are therefore excluded. To clarify this, 16mm. cameras and film processors have been added to the list of ineligible items of equipment at Appendix A-I(D)(21).

*Comment.* Another commenter recommended the listing of SCA equipment, including the purchase of receivers for visually impaired persons, in Appendix A-I(A).

*Response.* The list of eligible transmission apparatus has been amended to include subcarrier generators. Such SCA equipment has been considered eligible since radio was added in the 1967 Public Broadcasting Act, but SCA receivers will continue to be ineligible because they are not a necessary part of the radio broadcasting transmission system.

*Comment.* A comment recommended inclusion of Electronic Industries Association Standard No. RS-240, "Electrical Performance Standards for Television Broadcast Transmitters."

*Response.* The regulation has been amended to incorporate the suggested standards.

*Comment.* A commenter alleged that Electronic Industries Association standards for studio and mobile equipment proposed for incorporation in Appendix A-II(B) apply only to black and white television equipment and are therefore superfluous. The commenter further suggested that at such time as Electronic Industries Association standards for color studio and mobile equipment come into existence they should be considered for incorporation in this part.

*Response.* The subject standards proposed for incorporation contain some



generic standards applicable to color, as well as to black and white, equipment. In the absence of appropriate published standards designed specifically for color equipment, the standards proposed for incorporation are retained to the extent they apply to color equipment. Appropriate amendments have been made in Appendix A-II. If specific EIA standards for color equipment become available, they would be considered for appropriate use in connection with this part.

11. Appendix B—*Project priorities.* *Comments.* A large number of comments were submitted concerning the proposed priorities. Most concerned the proposed preference for funding additional equipment for existing stations rather than for the construction of new stations which had been accorded the highest priority in Fiscal years 1972 and 1973.

With respect to television applications, comments were received both in favor of and in opposition to the proposed preference for funding additional equipment for existing stations. Comments in opposition argued that the preference for expanding and upgrading existing television stations would discriminate against unserved populations and against the western states. On the other hand, both the Corporation for Public Broadcasting and the Public Broadcasting Service endorsed the preference for existing television stations.

With respect to radio applications, the seven commenters, including the Corporation for Public Broadcasting, were unanimous in urging that the highest priority be placed upon the establishment of new, full-service radio stations and that, if the proposed priorities were retained for television applications, a separate set of priorities be developed for radio applications.

*Response.* The preference for expanding and upgrading existing stations in the television area reflects a determination by the Department of Health, Education, and Welfare that more equipment to meet minimum production and reproduction requirements is needed by stations if they are to provide effective local programming for the broadest educational uses. To prefer the construction of new stations, which require disproportionate amounts of money, would preclude the effective meeting of these needs.

The television priorities would not discriminate against the western states. The priorities in Appendix B do not supersede other criteria contained in § 153.12, including § 153.12(a)(4) related to equitable geographic distribution. Moreover, as indicated in response to another comment described below in this preamble, the priorities are not designed to require that all applications in the highest priority category be funded before any application in a lower priority category may be funded. Instead, as indicated in the introductory language in Appendix B-I, it will be a purpose of the Commissioner to achieve a fair distribution of funds over the major priority categories consistent with the pattern of needs reflected in applications under consideration for a given fiscal year. It

should be noted that over the history of the Educational Broadcasting Facilities Program, the twenty-four states west of the Mississippi River, which are estimated to include 35 percent of the households in the United States, have received 38 percent of the total grant funds awarded under the program.

The development of public radio stations has been much slower than that for public television stations, with the effect that only about 65 percent of the total population of the United States is served by a full-service public radio station (compared to about 79 percent for public television stations). At the same time, a large number of low-power radio stations have come on the air within the past few years. As the Corporation for Public Broadcasting has indicated, "these 10-watt stations are being placed in the spectrum in such a way as to block the development of new high-powered, full-service public radio stations on any channel. Thus, if the proposed regulations are not written to give the establishment of new high-powered stations top priority, public radio may be precluded from developing the technical capability required to serve nearly one-third of the American people." Accordingly, the regulation has been revised to establish a separate set of priorities for the radio area which would place the highest priority upon the establishment of full-service radio stations, whether through a new activation, expansion, or acquisition of a station.

*Comment.* Three comments concern the nature of the priorities and the extent to which they permit flexible review of applications. One of these comments opined that the priorities ought to be deleted altogether because they "tend to rigidify the grant process" and deny the Commissioner the ability to deal responsively with varying applicant circumstances and needs. The Public Broadcasting Service supported the thrust of the priorities, but urged that they be flexibly administered to achieve a fair distribution of funds over the major priority categories. Another commenter raised questions as to the effect of a priority assignment.

*Response.* Published priorities of the sort set out in Appendix B have been utilized by the Commissioner in reviewing applications for funding under the Educational Broadcasting Facilities Program for Fiscal Years 1972, 1973, and 1974. The priorities have proved most useful in clarifying and rationalizing the application review process for the program and have generally been very well received by applicants for the program.

The introduction to the priorities, as set forth in Appendix B-I, indicates that the priorities are not applied as a firm hierarchy. It is not necessary that all eligible I-A applications will be funded before any I-B or II-A application may be funded. Proportions of funds to be awarded in the various categories will be determined "to achieve a fair distribution of funds over the major priority categories consistent with the pattern of needs reflected in applications under consideration in a given fiscal year." These provisions should allow for sufficient flexibility.

*Comment.* One comment requested that the Commissioner set aside a proportion of the Educational Broadcasting Facilities program appropriation in a special fund to assist public radio stations to purchase channel logging recorders with time code generators and tape stock in order to comply with the requirements of section 399(b) of the Communications Act of 1934, as added by Pub. L. 93-84, concerning the retention of audio recordings.

*Response.* Channel logging recorders and related equipment needed to meet the requirements of section 399(b) of the Act constitute broadcasting facilities eligible for grant assistance. To the extent that such facilities are included in applications for support submitted to the Office of Education, they will be reviewed on the basis of priorities set forth in this part. However, the statute does not authorize the Department of Health, Education, and Welfare to establish a separate fund for these facilities as proposed in the comment.

*Comment.* A comment objected that the television priorities do not sufficiently reflect the importance of remote television capability.

*Response.* The funding priorities make no distinction between studio production equipment and remote production equipment. They both earn priority I-B status until the state-of-the-art basic production capability is reached. Production studio or remote equipment requested which is beyond the basic capability is placed in a lower priority category. The capability to produce remote programs as part of a station's local production would also constitute an important indicium of the extent to which an applicant would satisfy criteria in § 153.12 related to the meeting of community needs for broadcasting. No change has been made in the regulation.

12. *General Comment.* A comment recommended that, to mitigate confusion, a third appendix be added setting forth those provisions of the Office of Education General Provisions Regulation on administrative and fiscal matters (implementing OMB's Circular No. A-102) which are applicable to this part.

*Response.* It would be inappropriate to repeat regulations which are made applicable by cross-reference. However, the Office of Education intends to have available for applicants and grantees, upon request, a compilation of those General Provisions Regulations applicable to this part.

B. *Incorporation of Electronic Industries Association standards.* Appendix A-II incorporates by reference the following standards and specifications of the Electronic Industries Association:

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

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

3. Electronic Industries Association Standard RS-219 (April, 1959), "Audio

Facilities for Radio Broadcasting Systems."

4. Electronic Industries Association Standard RS-240 (April, 1961), "Electrical Performance Standards for Television Broadcast Transmitters." All but the last (i.e., EIA Standard RS-240) of these standards were proposed for incorporation in the proposed rule.

These standards will 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(a) (7).

The materials incorporated, 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 SW., Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street NW., Washington, D.C. 20006.

C. *Other changes.* 1. A number of typographical and technical corrections have been made.

2. Words importing the masculine gender have been deleted.

3. Section 153.3 has been amended to add provisions on interconnection from the old § 60.3 which had been omitted from the proposed rule.

4. Section 153.4 has been amended to clarify that the eligibility of municipalities is not limited to municipalities which already own and operate a facility used only for noncommercial educational broadcasting, but also includes municipalities which will own and operate the facility for which assistance is requested only for noncommercial educational broadcasting.

5. Section 153.11 has been amended to provide for coordination not only with the Corporation for Public Broadcasting, but also with the Federal Communications Commission, and with other interested agencies and organizations.

6. Section 153.12(a) (11) has been amended to encompass within the criterion of the standards by which the station will operate: the adequacy of income, operating budget, facilities, power, and program service.

7. A cross-reference to the requirements of § 153.16(b) (4) related to insurance protection has been added to the requirements for annual status reports in § 153.19.

8. Language clarifying the general nature of eligible items of transmission apparatus has been added to the introduction in Appendix A.

9. Subcarrier generators have been added to the list of eligible transmitter apparatus in Appendix A-I(A) (2) (a).

10. Logging recorders have been added to the list of eligible transmission apparatus in Appendix A-I(A) (5).

11. Automation apparatus, character generators, quadrasonic equipment, sound improvement systems, and spare or backup systems or equipment have been moved from the list of ineligible items of equipment to the list of eligible items of equipment, subject to the indicated qualifications, in Appendix A-I (A) (3).

12. In Appendix A-I(C), language has been added to clarify the ineligibility of indirect costs in projects assisted under this part.

13. 16 mm. cameras, sound synchronization systems, and film processors have been added to the list of ineligible items of equipment as Appendix A-I(D) (21).

14. Electronic Industries Association Standard TR-144 has been deleted from Appendix A-II(B) (1).

15. Equipment standards in Appendix A-II(B) (2), (3), and (7) (a) of the proposed rule have been deleted.

16. A reference to consultation with a panel of national advisors in Appendix B-I has been deleted pending further consideration by the Department as to the appropriateness of constituting such a panel for the indicated functions.

D. *Effective date:* Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

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

Dated: February 7, 1975.

T. H. BELL,  
U.S. Commissioner of Education.

Approved: March 3, 1975.

CASPAR W. WEINBERGER,  
Secretary of Health, Education  
and Welfare.

Title 45 of the Code of Federal Regulations is amended by redesignating Part 60 as Part 153, with appropriate redesignations of section numbers, and by amending the provisions of such redesignated part to read as follows:

**PART 153—EDUCATIONAL BROADCASTING FACILITIES PROGRAM**

**Subpart A—General**

- Sec. 153.1 Scope.
- 153.2 Other pertinent rules and regulations.
- 153.3 Definitions.

**Subpart B—Eligibility and Applications**

- 153.4 Eligible applicants.
- 153.5 Application for financial assistance.
- 153.6 FCC authorization.
- 153.7 Service of applications.
- 153.8 Acceptance of applications.
- 153.9 Comments on applications.
- 153.10 Processing of applications.
- 153.11 Coordination with interested agencies and organizations.
- 153.12 Criteria for evaluation of applications.
- 153.13 Action on applications.

**Subpart C—Federal Financial Participation and Conditions of Federal Grant**

- Sec. 153.14 Amount of Federal grant.
- 153.15 Payment of Federal grant.
- 153.16 Conditions of Federal grant.

**Subpart D—Accountability for Federal Funds**

- 153.17 Retention of property records.
- 153.18 Final certification.
- 153.19 Annual status reports.
- 153.20 Termination.
- 153.21 Change in eligibility or use.
- 153.22 Petition for reconsideration.

**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 noncommercial educational broadcasting facilities 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), except 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 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 transmission apparatus (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).  
 "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, 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 (2) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

"Construction" means the acquisition and installation of transmission apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, and recording equipment) necessary for television broadcasting, or radio broadcasting, as the case may be, including apparatus which may incidentally be used for transmitting closed circuit television programs, but does not include the construction or repair of structures to house such apparatus.

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

"Deriving its support in whole or in part from tax revenues," as applied to a college or university, means that such college or university receives direct and continuing State or local tax revenues for a current academic program of instruction for which credit is offered at the higher education level.

"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 apparatus as defined in this section.

"Fair-market value" means the price arrived at 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 the assembling, affixing, and taking any other steps necessary or required in order to make ready for use transmission 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 apparatus means that the applicant's interest in such transmission apparatus is, at least, the primary, equitable, or beneficial interest, including the obligation to own.

"Planning" means such engineering, legal, and other activities performed by qualified employees or consultants 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 transmission apparatus, in accordance with the provisions of Appendix A to this part, related to one noncommercial educational broadcasting station (except that the apparatus may be related to two or more such stations where interconnection is involved) which the Commissioner determines to be eligible for Federal financial assistance pursuant to the provisions of this part.

"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 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.

"Sited in any State" means, with respect to a noncommercial educational broadcast station and all transmission 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 thereof.

"Transmission apparatus" means that apparatus which is necessary for noncommercial educational broadcasting in accordance with the 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 college or university deriving its support in whole or in part from tax revenues;

(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 college or university deriving its support in whole or in part from tax revenues;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial 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 noncommercial 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 with the Commissioner as provided in § 100a.15 of this chapter.

(2) To reactivate any pending 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, (i) submit a statement indicating that it wishes the application to be considered as it stands or (ii) amend its application.

(3) Any application or substantive amendment thereto shall contain (i) a new or revised 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) 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) 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, 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 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 a person qualified under § 153.4 to be an applicant;

(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 transmission 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 transmission 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 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 of 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 his application, and each amendment thereto, to the State educational broadcast agency, if any, in any State, any part of which is within the service area of the proposed broadcast station unless such agency has been served in accordance with paragraph (a) of this section.

(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 or substantially complete and in accordance with the provisions of this part will be accepted for filing. Applications which are not substantially complete or which are determined to be substantially 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 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 affects an application.

(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 (and within 10 calendar days from the date on which notice is published in the FEDERAL REGISTER of the receipt of an amendment) any State educational television and/or radio agency and any other interested person may file comments with the Commissioner in support of or in opposition to the application or amendment, setting forth the grounds for such support or opposition, accompanied by a certification that a copy of such 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 therefor.

(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 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 the FCC, the Corporation, and other agencies, organizations, and institutions administering programs which may be effectively coordinated with Federal assistance provided under the Act and this part.

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

#### § 153.12 Criteria for evaluation of applications.

(a) In order to achieve the objectives of section 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 non-commercial educational broadcasting station associated with the project will contribute to meeting the needs for, and to improving the quality of, non-commercial educational broadcasting in the State and Nation;

(3) The general and specific educational and cultural needs of the local geographic area and population for non-commercial educational broadcasting service, as well as the need for local outlets for the origination of non-commercial educational broadcasting programs; the extent to which those needs are being or will be met by existing or proposed non-commercial educational broadcasting stations; and the extent to which the project is necessary to meet those needs;

(4) Equitable geographical distribution of funds throughout the States, and the impact of the Federal funds requested upon the State maximum limitation set forth by the Act;

(5) The need to equip existing stations for:

(i) Minimum state-of-the-art reproduction and/or program production capability consistent with current technological development and

(ii) Effective use of channels comparable to commercial stations in the same locality;

(6) The extent to which provision has been made for the cooperation and participation of educational, cultural, and community service agencies, institutions, and organizations within the service area of the station;

(7) The extent to which the various items of transmission apparatus proposed are necessary to, and capable of, achieving the objectives of the project (as measured in part by standards for project apparatus specified in Appendix A-II to this part);

(8) 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;

(9) How quickly the applicant can be expected to complete the project after grant award;

(10) Whether the transmission apparatus will be used for noncommercial educational broadcasting on a reserved channel;

(11) 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 employed, and the adequacy of income, operating budget, facilities, power, and program service.

(12) The nature, amount, and recency of any prior grants to the same applicant;

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

(14) The recommendations, if any, of the State educational television or radio agency.

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

(1) Establish (or to improve only the production facilities of) a station with very low transmission power;

(2) Provide a facility primarily for student training activities; and/or

(3) Provide program services which are limited in nature, scope, and hours of broadcast.

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

#### § 153.13 Action on applications.

(a) After consideration of the application, any comments and replies filed by interested parties, and any other relevant information, the Commissioner will take one of the actions provided for in § 100a.27(a) of this chapter, *Provided*, That when the Commissioner denies approval of the application, in whole or in part, the Commissioner will set forth in writing the grounds and reasons therefor. Such denial shall not become final until 30 calendar days from the date of such denial, within which time the applicant may file with the Commissioner a petition for reconsideration pursuant to § 153.22 unless the right to file such a petition is waived in writing by the applicant.

(b) Upon the Commissioner's approval or denial, 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 such 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 in no case shall exceed 75 percent of the amount which he determines to be the estimated, total, reasonable, and necessary cost of the project. Such cost shall include the following:

(1) The purchase price of transmission apparatus (or fair market value of donated transmission 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 apparatus in the project (in accordance with provisions of Appendix A to this part).

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

(1) Transmission apparatus owned by the applicant prior to the effective date of acceptance by the Commissioner for filing of the application, and services related thereto. Such 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 apparatus 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 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.

(c) The total amount of the Federal grant award may not exceed the amount reasonable and necessary to meet the monetary cost of the transmission apparatus and personnel services in the project which are not donated.

(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 certified by the applicant at the time of project approval as being available for use in the project (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, payments 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 items of transmission 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 and provided that such substitutions will not result in an increase in the grant award and are approved 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 apparatus acquired and installed under the project;

(5) Permit inspections by the Commissioner or a duly authorized representative of the Commissioner of the transmission 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.

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.

(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

(b) 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:

(a) An annual status report on or before each April 1 following completion of the project, certifying that:

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

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

(3) Such transmission apparatus as is owned by the grantee as of that date is being used for noncommercial educational broadcasting purposes; and

(4) The requirements of § 153.16(b) (4) continue to be met.

(b) A copy of each of the following applications and reports, if any, which the grantee files with the FCC with respect to any such transmission apparatus: applications for extension of construction permit, license to cover construction permit, modification of construction permit or license, renewal of license, and for voluntary or involuntary assignment or transfer of control.

(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 such project, denying an application for extension or a required modification of such construction permit, denying an application for construction permit to replace

such 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 transmission apparatus included in the project ceases to be used 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 transmission apparatus to be used for such purposes); 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 the grantee proposes to cease using any of the transmission apparatus included in the project for noncommercial educational broadcasting (as set forth in paragraph (a)(2) of this section), he 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. Such 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 such 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 such 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 of use of transmission apparatus (as described in paragraph (a) of this section), has already taken place, he will promptly notify the grantee of the grounds and reasons for his belief that repayment to the United States is required. The grantee may, within 30 days from the date of receipt of such 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, he will

seek to reach agreement as to the amount of such repayment. If such 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 such action as may be necessary 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, 153.13, and 153.21 must be filed timely with the Commissioner, 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 therefor. 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, such report shall become the final 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 thereon, setting forth the grounds and reasons therefor.

(d) The Commissioner will notify each State educational 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 such agency will be given an opportunity to comment upon the petition. In the event the Commissioner provides a hearing with respect to an action taken under § 153.13, each such State educational television or radio

agency will be given an opportunity to appear and to present relevant information and arguments. Any such agency participating in the hearing will be furnished the report of the hearing officer referred to in paragraph (b) of this section and given an opportunity to make a written statement thereon, prior to the expiration of the time period during which time the petitioner may file its statement under paragraph (b) of this section.

(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, may be given an opportunity to participate to such extent as the Commissioner may determine is appropriate in a hearing held pursuant to this section.

(47 U.S.C. 394)

**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 costs for applicants for assistance under this part, including:

(a) An itemization of transmission apparatus and related costs, including installations, 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 system 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.

(b) Standards for determining acceptable minimum performance requirements which will meet the capability of achievement criterion contained in § 153.12(a)(7). 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 system.**
  - (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
  - (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  
(1) Cables and hardware for installation  
(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

(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 duplexing apparatus  
(k) Mounting racks

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

(5) Recording apparatus.

(a) Broadcast quality video and audio tape recorders and playback machines

(b) Kinescope film recorders

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

(d) Related monitoring apparatus, including calibrated oscilloscopes

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

(f) Logging recorders

(g) Studio production equipment (including that intended for remote or mobile program origination).

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

(b) Film camera chain, multiplexer, mounting stand, control equipment, and television film, slide, and opaque projectors

(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

(q) Test equipment required by good engineering practice

(7) Other interconnection equipment.

Interconnection equipment, to the extent reasonable and necessary, as determined by the Commissioner, for the reception and utilization of program material made available via interconnection systems.

(8) Other apparatus.

Automation apparatus, character generators, quadrophonic equipment, sound im-

provement systems, spare or back up systems or equipment, when the necessity for such 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 performed by qualified employees or consultants directly related to planning for the project, preparation, and filing of the appropriate applications to HEW and FCC and 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) proofs or 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 and tower, etc.; (2) Structures, including any reinforcement or modification thereof 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); (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, etc.; (13) Office equipment, printing and duplicating supplies; (14) Scenery and props; (15) Production devices such as prompting systems, background screen projection systems, wind generators, etc.; (16) Storage cabinets; (17) Cleaning equipment; (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 heading 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(a)(7). Electronic Industries Association 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, Electronic Industries Association Standard RS-222-B (December 1972) "Structural Standards for Steel Antenna Towers and Supporting Structures," established by the Electronic Industries Association should apply to the tower and antenna system.

(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 Electronic Industries Association 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 Electronic Industries Association Standard RS-170 (November, 1957) "Electrical Performance Standards—Monochrome Television Studio Facilities," to the extent such specifications are applicable to color equipment.

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, and applicants will be notified of the priority or priorities assigned to each project. 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 major priority categories consistent 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 those noncommercial educational broadcasting stations which would not be subject to disapproval under the terms of § 153.12(b).

**II. Project Priorities for Television. Priority I.**

**A.** Projects to provide stations with their first state-of-the-art reproduction capability. This refers to color capability of a videotape recorder and film chains and other associated apparatus.

**B.** Projects to provide local stations with first state-of-the-art "live" production capability (i.e., first studio color cameras, switchers, and related apparatus) where this need can be justified by proven production requirements to meet identified community needs.

**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.

**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 be-

yond 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.)

**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. Such 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 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 and modulator, log 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 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.

**C.** 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.

**D.** 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.)

**Priority III. A.** Projects to establish second (or more) public radio stations in areas already served by such a station under appropriate local or State license.

**B.** Projects to equip auxiliary studios at other than 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)

**NOTE:** Incorporation by Reference provisions approved by the Director of the Federal Register March 7, 1975.

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