Public Law 95-567
95th Congress

An Act

To amend the Communications Act of 1934 to extend and improve the provisions of such Act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes.

Nov. 2, 1978
[H.R. 12605]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Telecommunications Financing Act of 1978".

Public Telecommunications Financing Act of 1978.
47 USC 609 note.

TITLE I—CONSTRUCTION AND PLANNING OF FACILITIES

DECLARATION OF PURPOSE

SEC. 101. Section 390 of the Communications Act of 1934 is amended to read as follows:

47 USC 390.

"DECLARATION OF PURPOSE

"SEC. 390. The purpose of this subpart is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. Section 391 of the Communications Act of 1934 is amended to read as follows:

47 USC 391.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 391. There are authorized to be appropriated $40,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.".

CONSTRUCTION AND PLANNING

SEC. 103. (a) Section 392 of the Communications Act of 1934 is amended to read as follows:

47 USC 392.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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"GRANTS FOR CONSTRUCTION AND PLANNING

"SEC. 392. (a) For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that—

"(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State;

"(2) the operation of such public telecommunications facilities will be under the control of the applicant;

"(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

"(4) such public telecommunications facilities will be used only for the provision of public telecommunications services;

"(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

"(6) the applicant will make the most efficient use of the grant.

"(b) Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amount shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

"(c) The Secretary may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligible requirements of subsection (a) to receive construction assistance.

"(d) Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary, if such studies are conducted through the use of funds received under this section.

Rules and regulations.

"(e) The Secretary shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

Post, p. 2408.

"(f) In establishing criteria for grants pursuant to section 393 and in establishing procedures relating to the order of priority established in subsection (e) in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and par-

ticipation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

Minorities and women, notice.

"(g) If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

"(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a) (1); or

"(2) such facilities cease to be used only for the provision of public telecommunications services (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

"(h) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all public telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

Recordkeeping requirements.

"(i) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.".

Books, documents, records, accessibility.

(b) (1) The provisions of section 392(g) of the Communications Act of 1934, as added by subsection (a), shall apply to any grant made under section 392 of such Act before, on, or after the date of the enactment of this Act. Any authority and responsibilities of the Secretary of Health, Education, and Welfare regarding the administration of such grants are hereby transferred to the Secretary of Commerce.

47 USC 392 note. *Ante*, p. 2405.

Administration of grants, transferred to Commerce.

(2) Subject to the provisions of section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), the following are hereby transferred to the Secretary of Commerce for appropriate allocation—

(A) the personnel employed in connection with or in support of, or as an integral part of the mission of, the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

(B) the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A).

Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds originally were authorized and appropriated.

(3) The Director of the Office of Management and Budget, in consultation with the Secretary of Commerce and the Secretary of Health, Education, and Welfare, shall—

(A) make such determinations as may be necessary with regard to the transfer of the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

(B) make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A);

as the Director may deem necessary to accomplish the purposes of this Act and the amendments made by this Act.

CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

47 USC 393.

SEC. 104. Section 393 of the Communications Act of 1934 is amended to read as follows:

"CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

"SEC. 393. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

Grants.

"(b) The Secretary shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) and designed to achieve—

"(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

"(2) the expansion of the service areas of existing public telecommunications entities;

"(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

"(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

Ante, p. 2405.

"(c) Of the funds appropriated pursuant to section 391 for any fiscal year, not less than 75 percent shall be available to extend delivery of public telecommunications services to areas not receiving such services through grants for facilities of new and existing public telecommunications entities, and preoperational expenses associated with such facilities. In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits.

Noncommercial radio broadcast station facilities.

"(d) Of the sums appropriated pursuant to section 391 for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.".

LONG-RANGE PLANNING FOR FACILITIES

SEC. 105. Section 394 of the Communications Act of 1934 is amended to read as follows: 47 USC 394.

"LONG-RANGE PLANNING FOR FACILITIES

"SEC. 394. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390. Such plan shall include a detailed 5-year projection of the broadcast and nonbroadcast public telecommunications facilities required to meet such objectives, and the expenditures necessary to provide such facilities. *Post*, p. 2405.

"(b) The plan required in subsection (a) shall be updated annually, and a summary of the activities of the Secretary in implementing the plan, shall be submitted concurrently to the President and the Congress not later than the 31st day of December of each year.". Report to President and Congress.

MISCELLANEOUS PROVISIONS

SEC. 106. (a) The heading for part IV of title III of the Communications Act of 1934 is amended to read as follows: 37 USC 390.

"PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING".

(b) The heading for subpart A of part IV of title III of the Communications Act of 1934 is amended to read as follows:

"Subpart A—Assistance for Public Telecommunications Facilities".

(c) The position of Deputy Assistant Secretary of Commerce for Communications and Information, established in Department of Commerce Organization Order Numbered 10-10 (effective March 26, 1978), shall be compensated at the rate of pay in effect from time to time for level V of the Executive Schedule under section 5316 of title 5, United States Code. 5 USC 5316 note. Compensation.

TITLE II—TELECOMMUNICATIONS DEMONSTRATIONS

ASSISTANCE FOR DEMONSTRATION PROJECTS

SEC. 201. Part IV of title III of the Communications Act of 1934 is amended by striking out section 392A and section 395, by redesignating subpart B and subpart C as subpart C and subpart D, respectively, and by inserting after subpart A the following new subpart: 47 USC 392a, 395.

"Subpart B—Telecommunications Demonstrations

"ASSISTANCE FOR DEMONSTRATION PROJECTS

"SEC. 395. (a) It is the purpose of this subpart to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants 47 USC 395.

to, and enter into contracts with, public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

Application approval.

"(b) The Secretary may approve an application submitted under subsection (a) if he determines that—

"(1) the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this subpart;

"(2) demonstrations and related activities assisted under this subpart will remain under the administration and control of the applicant;

"(3) the applicant has the managerial and technical capability to carry out the project for which the application is made; and

"(4) the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

Contract with applicant.

"(c) Upon approving any application under this subpart with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

"(d) Funds made available pursuant to this subpart shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incidental to the installation of such facilities or equipment.

"Nonbroadcast telecommunications facilities."

"(e) For purposes of this section, the term 'nonbroadcast telecommunications facilities' includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, or other means.

Funding.

"(f) The funding of any demonstration pursuant to this subpart shall continue for not more than 3 years from the date of the original grant or contract.

Summary and evaluation.

"(g) The Secretary shall require that the recipient of a grant or contract under this subpart submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

Recordkeeping requirements.

"(h)(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Books, documents, records, accessibility.

"(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, docu-

ments, papers, and records of the recipient that are pertinent to assistance received under this subpart.

"(i) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under this subpart or to determining the amounts of grants for such projects. **Rules and regulations.**

"(j) The Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Corporation. **Assistance.**

"(k) There are authorized to be appropriated $1,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary to carry out the provisions of this subpart. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.". **Appropriation authorization.**

TITLE III—CORPORATION FOR PUBLIC BROADCASTING

DECLARATION OF POLICY

SEC. 301. Section 396(a) of the Communications Act of 1934 is amended to read as follows: **47 USC 396.**

"SEC. 396. (a) The Congress hereby finds and declares that—

"(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

"(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services;

"(3) expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels;

"(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

"(5) it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence;

"(6) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States; and

"(7) a private corporation should be created to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.".

CHAIRMAN OF THE BOARD

47 USC 396.

SEC. 302. Section 396(d)(1) of the Communications Act of 1934 is amended by striking out "President shall designate one of the members first appointed to the Board as Chairman; thereafter the".

COMPENSATION OF OFFICERS AND EMPLOYEES

SEC. 303. (a) Section 396(e)(1) of the Communications Act of 1934 is amended by inserting after the first sentence the following new sentence: "No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code.".

47 USC 396 note.

(b) The amendment made by subsection (a) shall not be construed to reduce the annual rate of pay of any officer or employee of the Corporation for Public Broadcasting in any case in which (1) such officer or employee was appointed or named to any position in the Corporation before the date of the enactment of this Act; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(e)(1) of the Communications Act of 1934, as amended by subsection (a).

PURPOSES AND ACTIVITIES OF CORPORATION

SEC. 304. Section 396(g) of the Communications Act of 1934 is amended to read as follows:

"Purposes and Activities of Corporation

"(g)(1) In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a), the Corporation is authorized to—

"(A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

"(B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of public telecommunications services so that all public telecommunications entities may disseminate such services at times chosen by the entities;

"(C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and

"(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities.

"(2) In order to carry out the purposes set forth in subsection (a), the Corporation is authorized to—

"(A) obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

"(B) contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use by public telecommunications entities, except that—

"(i) to the extent practicable, proposals for the provision of assistance by the Corporation in the production or acquisition of programs or series of programs shall be evaluated on the basis of comparative merit by panels of outside experts, representing diverse interests and perspectives, appointed by the Corporation; and

"(ii) nothing in this subparagraph shall be construed to prohibit the exercise by the Corporation of its prudent business judgment with respect to any contract or grant to assist in the production or acquisition of any program or series of programs recommended by any such panel;

"(C) make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of public telecommunications services by such entities, particularly innovative approaches to such services, and other costs of operation of such entities; **Payments.**

"(D) establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;

"(E) arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of public telecommunications services to public telecommunications entities;

"(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

"(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

"(H) make grants or contracts for the use of nonbroadcast telecommunications technologies for the dissemination to the public of public telecommunications services; and

"(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a).

Nothing contained in this paragraph shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

"(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-1001 et seq.), except that the Corporation is prohibited from— **Prohibitions.**

"(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system,

interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

"(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

"(4) All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as are set forth in subsection (k)(4).

Post, p. 2415.

Study, completion.

"(5) The Corporation, in consultation with public broadcast stations, shall undertake a study to determine the manner in which personal services of volunteers should be included in determining the level of non-Federal financial support pursuant to subsection (k)(2)(A). The study, which shall be completed not later than 180 days after the effective date of this paragraph, shall include an examination of any fiscal, administrative, or other factors which should be taken into account in determining the manner in which such services should be so included, and shall include proposed valuation standards. Upon completion, the study and the proposed valuation standards shall be submitted to the Comptroller General of the United States for approval.

Submission to Comptroller General.

"(6) The Corporation, in consultation with interested parties, shall create a 5-year plan for the development of public telecommunications services. Such plan shall be updated annually by the Corporation.".

INTERCONNECTION SERVICE

47 USC 396.

SEC. 305. Section 396(h) of the Communications Act of 1934 is amended to read as follows:

"Interconnection Service

"(h)(1) Nothing in this Act, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Commission may prescribe.

"(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.".

ANNUAL REPORT TO CONGRESS

SEC. 306. Section 396(i) of the Communications Act of 1934 is amended to read as follows:

"Report to Congress

"(i)(1) The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President for transmittal to the Congress on or before the 15th day of February of each year. The report shall include—

Report to President and Congress.

"(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;

"(B) a comprehensive and detailed inventory of funds distributed by Federal agencies to public telecommunications entities during the preceding fiscal year; and

"(C) the summary of the annual report provided to the Secretary pursuant to section 398(b)(4).

Post, p. 2420.

"(2) The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (1), or any other matter which such committees may determine.".

FINANCING; OPEN MEETINGS AND FINANCIAL RECORDS

SEC. 307. (a) Section 396(k) of the Communications Act of 1934 is amended to read as follows:

47 USC 396.

"Financing; Open Meetings and Financial Records

"(k)(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the 'Fund'), to be administered by the Secretary of the Treasury.

Public Broadcasting Fund. Establishment.

"(B) There is authorized to be appropriated to the Fund, for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $121,000,000 for fiscal year 1978, $140,000,000 for fiscal year 1979, and $160,000,000 for fiscal year 1980

Appropriation authorizations.

"(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, and 1983, an amount equal to 50 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $180,000,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, and $220,000,000 for fiscal year 1983.

"(D) Funds appropriated under this subsection shall remain available until expended.

"(2)(A) The funds authorized to be appropriated by this subsection shall be used by the Corporation, in a prudent and financially responsible manner, solely for its grants, contracts, and administrative costs, except that the Corporation may not use any funds appropriated under this subpart for purposes of conducting any reception, or providing any other entertainment, for any officer or employee of the Federal Government or any State or local government. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to

in paragraph (1) for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

"(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter.

Reservation for distribution.

"(3)(A) The Corporation shall reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to—

"(i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed is $88,000,000 or more, but less than $121,000,000;

"(ii) not less than 45 percent of such funds in each fiscal year in which the amount disbursed is $121,000,000 or more, but less than $160,000,000; and

"(iii) not less than 50 percent of such funds in each fiscal year in which the amount disbursed is $160,000,000 or more.

Annual budget, establishment.

"(B)(i) The Corporation shall establish an annual budget according to which it shall make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, for acquisition of such programs by public telecommunications entities, for interconnection facilities and operations, for distribution of funds among public telecommunications entities, and for engineering and program-related research. A significant portion of funds available under the budget established by the Corporation under this subparagraph shall be used for funding the production of television and radio programs. Of such portion, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs.

Funds, distribution to outside entities.

"(ii) All funds contained in the annual budget established by the Corporation under clause (i) shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

"(iii) During each of the fiscal years 1981, 1982, and 1983, the annual budget established by the Corporation under clause (i) shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A).

"(iv) In determining the amount of funds which shall be made available for radio programming and operations under this subparagraph, the Corporation shall take into account the increased financial needs relating to radio programming and operations resulting from the expansion and development of noncommercial radio broadcast station facilities through the use of funds made available pursuant to section 393(d).

Ante, p. 2408.

"(C) In fiscal year 1981, the Corporation may expend an amount equal to not more than 5 percent of the funds made available by the Secretary of the Treasury during such fiscal year pursuant to paragraph (2)(A) for those activities authorized under subsection (g)(2) which are not among those grant activities described in subparagraph (B).

"(D) In fiscal years 1982 and 1983, the amount which the Corporation may expend for activities authorized under subsection (g)(2) which are not among those grant activities described in subparagraph (B) shall be 105 percent of the amount derived for the preceding fiscal year.

Open meetings.

"(4) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person's name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.

Funds distribution, restriction.

"(5) Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (1)(3)(B).

Review.

"(6)(A) The Corporation, in consultation with public television and radio licensees, shall review annually the percentage of funds reserved pursuant to paragraph (3)(A), and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations.

Funds, distribution.

"(B) The funds reserved for public broadcast stations pursuant to paragraph (3)(A) shall be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations. The Corporation shall make a basic grant from the portion reserved for television stations to each licensee and permittee of a public television station that is on the air. The balance of the portion reserved for television stations and the total portion reserved for radio stations shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

"(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

"(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

"(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

Limitation.

"(7) No distribution of funds pursuant to this subsection shall exceed, in any fiscal year, 50 percent of a licensee's or permittee's total non-Federal financial support during the fiscal year second preceding the fiscal year in which such distribution is made.

"(8) The funds distributed pursuant to paragraph (3)(A) may be used at the discretion of the recipient for purposes relating to the provision of public television and radio programming, including, but not limited to—

"(A) producing, acquiring, broadcasting, or otherwise disseminating public television or radio programs;

"(B) procuring national or regional program distribution services that make public television or radio programs available for broadcast or other dissemination at times chosen by stations;

"(C) acquiring, replacing, or maintaining facilities, and real property used with facilities, for the production, broadcast, or other dissemination of public television and radio programs; and

"(D) developing and using nonbroadcast communications technologies for public television or radio programming purposes.

Community advisory board.

"(9)(A) Funds may not be distributed pursuant to this subpart to any public broadcast station unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that the composition of its advisory board reasonably reflects the diverse needs and interests of the communities served by such station.

Review.

"(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.

"(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.

Time limitation.

"(D) In the case of any public broadcast station in existence on the effective date of this paragraph, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after such effective date.

"(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

Funds distribution, prohibition.

"(10) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any

successor organization) unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code.".

(b) Section 396(k)(10) of the Communications Act of 1934, as added by subsection (a), shall not be construed to reduce the annual rate of pay of any officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization) in any case in which (1) such officer or employee was appointed or named to any position in the Public Broadcasting Service or National Public Radio (or any successor organization) before the date of the enactment of this Act; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(k)(10) of the Communications Act of 1934, as added by subsection (a).

47 USC 396 note.
Ante, p. 2415.

FINANCIAL MANAGEMENT AND RECORDS

SEC. 308. Section 396(l)(3) of the Communications Act of 1934 is amended to read as follows:

47 USC 396.

"(3)(A) Not later than 1 year after the effective date of this paragraph, the Corporation, in consultation with the Comptroller General, and as appropriate with others, shall develop accounting principles which shall be used uniformly by all public telecommunications entities receiving funds under this subpart, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities.

Accounting principles, development.

"(B) Each public telecommunications entity receiving funds under this subpart shall be required—

Recordkeeping requirements.

"(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

"(ii) to undergo an annual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; and

"(iii) to furnish annually to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

"(C) Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(D) The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records

Books, documents, papers, and records, accessibility.

of any recipient of assistance for the purpose of auditing and examining all funds received or expended for public telecommunications purposes by the recipient. The Comptroller General of the United States or any of his duly authorized representatives also shall have access to such books, documents, papers, and records for the purpose of auditing and examining all funds received or expended for public telecommunications purposes during any fiscal year for which Federal funds are available to the Corporation.".

EQUAL EMPLOYMENT OPPORTUNITY

47 USC 398.

SEC. 309. Section 398 of the Communications Act of 1934 is amended to read as follows:

"FEDERAL INTERFERENCE OR CONTROL PROHIBITED; EQUAL EMPLOYMENT OPPORTUNITY

"SEC. 398. (a) Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this Act; or (2) except to the extent authorized in subsection (b), to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

Equal opportunity employment.

Ante, p. 2409.

"(b)(1) Equal opportunity in employment shall be afforded to all persons by the Public Broadcasting Service and National Public Radio (or any successor organization) and by all public telecommunications entities receiving funds pursuant to subpart C (hereinafter in this subsection referred to as 'recipients'), and no person shall be subjected to discrimination in employment by any recipient on the grounds of race, color, religion, national origin, or sex.

Rules and regulations.

"(2)(A) The Secretary is authorized and directed to enforce this subsection and to prescribe such rules and regulations as may be necessary to carry out the functions of the Secretary under this subsection.

"(B) The Secretary shall provide for close coordination with the Commission in the administration of the responsibilities of the Secretary under this subsection which are of interest to or affect the functions of the Commission so that, to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public telecommunications entities shall be uniformly based upon consistent definitions and categories of information.

"(3)(A) The Corporation shall incorporate into each grant agreement or contract with any recipient entered into on or after the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A), a statement indicating that, as a material part of the terms and conditions of the grant agreement or contract, the recipient will comply with the provisions of paragraph (1) and the rules and regulations prescribed pursuant to paragraph (2)(A). Any person which desires to be a recipient (within the meaning of paragraph (1)) of funds under subpart C shall, before receiving any such funds, provide to the Corporation any information which the Corporation may require to satisfy itself that such person is affording equal opportunity in employment in accordance with the

requirements of this subsection. Determinations made by the Corporation in accordance with the preceding sentence shall be based upon guidelines relating to equal oportunity in employment which shall be established by rule by the Secretary.

"(B) If the Corporation is not satisfied that any such person is affording equal opportunity in employment in accordance with the requirements of this subsection, the Corporation shall notify the Secretary, and the Secretary shall review the matter and make a final determination regarding whether such person is affording equal opportunity in employment. In any case in which the Secretary conducts a review under the preceding sentence, the Corporation shall make funds available to the person involved pursuant to the grant application of such person (if the Corporation would have approved such application but for the finding of the Corporation under this paragraph) pending a final determination of the Secretary upon completion of such review. The Corporation shall monitor the equal employment opportunity practices of each recipient throughout the duration of the grant or contract.

Review.

Monitoring of equal opportunity practices.

"(C) The provisions of subparagraph (A) and subparagraph (B) shall take effect on the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A).

"(4) Based upon its responsibilities under paragraph (3), the Corporation shall provide an annual report for the preceding fiscal year ending September 30 to the Secretary on or before the 15th day of February of each year. The report shall contain information in the form required by the Secretary. The Corporation shall submit a summary of such report to the President and the Congress as part of the report required in section 396(i). The Corporation shall provide other information in the form which the Secretary may require in order to carry out the functions of the Secretary under this subsection.

Report.

Report summary to President and Congress.

Ante, p. 2414.

"(5) Whenever the Secretary makes a final determination, pursuant to the rules and regulations which the Secretary shall prescribe, that a recipient is not in compliance with paragraph (1), the Secretary shall, within 10 days after such determination, notify the recipient in writing of such determination and request the recipient to secure compliance. Unless the recipient within 120 days after receipt of such written notice—

"(A) demonstrates to the Secretary that the violation has been corrected; or

"(B) enters into a compliance agreement approved by the Secretary;

the Secretary shall direct the Corporation to reduce or suspend any further payments of funds under this part to the recipient and the Corporation shall comply with such directive. Resumption of payments shall take place only when the Secretary certifies to the Corporation that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose funds have been reduced or suspended under this paragraph may apply at any time to the Secretary for such certification.

Reduction or suspension of payments.

"(c) Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services, or over the curriculum or program of instruction of any educational institution or school system.".

TITLE IV—MISCELLANEOUS PROVISIONS; EFFECTIVE DATE

DEFINITIONS

47 USC 397.

SEC. 401. Section 397 of the Communications Act of 1934 is amended to read as follows:

"DEFINITIONS

"SEC. 397. For the purposes of this part—

"(1) The term 'construction' (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and modernization of public telecommunications facilities and planning and preparatory steps incidental to any such acquisition, installation, or modernization.

"(2) The term 'Corporation' means the Corporation for Public Broadcasting authorized to be established in subpart C.

"(3) The term '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 public telecommunications entities.

"(4) The term 'interconnection system' means any system of interconnection facilities used for the distribution of programs to public telecommunications entities.

"(5) The term 'meeting' means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body's business, or the committee's business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.

"(6) The terms 'noncommercial educational broadcast station' and 'public broadcast station' mean a television or radio broadcast station which—

"(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

"(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.

"(7) The term 'noncommercial telecommunications entity' means any enterprise which—

"(A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation, or association; and

"(B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

"(8) The term 'nonprofit' (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"(9) The term 'non-Federal financial support' means the total value of cash and the fair market value of property and services (including, to the extent provided in the second sentence of this paragraph, the personal services of volunteers) received—

"(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or instrumentality of the United States; or (ii) any public broadcasting entity; or

"(B) as gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials with respect to the provision of educational or instructional television or radio programs.

Such term includes the fair market value of personal services of volunteers, as computed using the valuation standards established by the Corporation and approved by the Comptroller General pursuant to section 396(g)(5), but only with respect to such services provided to public telecommunications entities after such standards are approved by the Comptroller General and only, with respect to such an entity in a fiscal year, to the extent that the value of the services does not exceed 5 percent of the total non-Federal financial support of the entity in such fiscal year.

Ante, p. 2412.

"(10) The term 'preoperational expenses' means all nonconstruction costs incurred by new telecommunications entities before the date on which they begin providing service to the public, and all nonconstruction costs associated with expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"(11) The term 'public broadcasting entity' means the Corporation, any licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.

"(12) The term 'public telecommunications entity' means any enterprise which—

"(A) is a public broadcast station or a noncommercial telecommunications entity; and

"(B) disseminates public telecommunications services to the public.

"(13) The term 'public telecommunications facilities' means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including, but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, or both, signal processors and switchers, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment, and other means of transmitting, emitting,

storing, and receiving images and sounds, or intelligence, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

"(14) The term 'public telecommunications services' means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

"(15) The term 'Secretary' means the Secretary of Commerce when such term is used in subpart A, and the Secretary of Health, Education, and Welfare when such term is used in subpart B, subpart C, and this subpart.

"(16) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(17) The term 'system of public telecommunications entities' means any combination of public telecommunications entities acting cooperatively to produce, acquire, or distribute programs, or to undertake related activities.".

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ANNUAL REPORT

Report to Congress.

SEC. 402. The National Telecommunications and Information Administration shall submit an annual report to the Congress not later than January 31 of each calendar year, beginning with calendar year 1980. Each such report shall relate to the preceding calendar year and shall contain information on the activities of the Administration with respect to domestic communications, international communications, Federal Government communications, spectrum plans and policies, and any other matters.

EFFECTIVE DATE

47 USC 390 note.

SEC. 403. The provisions of this Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act.

Approved November 2, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1178 (Comm. on Interstate and Foreign Commerce) and No. 95-1774 (Comm. of Conference).

SENATE REPORT No. 95-858 accompanying S. 2883 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):
July 10, considered and passed House.
Sept. 19, considered and passed Senate, amended, in lieu of S. 2883.
Oct. 13, House agreed to conference report.
Oct. 14, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 44:
Nov. 2, Presidential statement.