

## SUBPART E—GENERAL PROVISIONS

**§ 397. Definitions**

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 D.

(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 November 2, 1978, 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, but 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.

(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 subpart B, and the Secretary of Health and Human Services when such term is used in subpart C, subpart D, 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.

(June 19, 1934, ch. 652, title III, § 397, formerly § 394, as added Pub. L. 87-447, May 1, 1962, 76 Stat. 67; renumbered § 397 and amended Pub. L. 90-129, title I, §§ 103(f), 105, 106, title II, § 201(3), (6), Nov. 7, 1967, 81 Stat. 366-368; Pub. L. 94-192, § 5, Dec. 31, 1975, 89 Stat. 1100; Pub. L. 94-309, § 6, June 5, 1976, 90 Stat. 684; Pub. L. 95-567, title IV, § 401, Nov. 2, 1978, 92 Stat. 2422; Pub. L. 97-35, title XII, § 1234(b), Aug. 13, 1981, 95 Stat. 736; Pub. L. 101-437, title II, § 203(b), Oct. 17, 1990, 104 Stat. 1000; Pub. L. 104-316, title I, § 126(a), Oct. 19, 1996, 110 Stat. 3840.)

#### REFERENCES IN TEXT

This part, referred to in provision preceding par. (1), commences with section 390 of this title.

#### PRIOR PROVISIONS

A prior section 397, act June 19, 1934, ch. 652, title III, § 397, as added May 1, 1962, Pub. L. 87-447, 76 Stat. 67, was renumbered section 398 by Pub. L. 90-129, and is classified to section 398 of this title.

#### AMENDMENTS

1996—Par. (9). Pub. L. 104-208, in closing provisions, struck out “and approved by the Comptroller General pursuant to section 396(g)(5) of this title” after “by the Corporation” and “with respect to such services provided to public telecommunications entities after such standards are approved by the Comptroller General and only” before “, with respect to such an entity”.

1990—Par. (2). Pub. L. 101-437, § 203(b)(1), substituted “subpart D” for “subpart C”.

Par. (15). Pub. L. 101-437, § 203(b)(2), inserted “and subpart B” after “subpart A” and substituted “subpart C, subpart D” for “subpart B, subpart C”.

1981—Par. (15). Pub. L. 97-35 substituted “Health and Human Services” for “Health, Education, and Welfare”.

1978—Pub. L. 95-567, revised definition of “construction”, “corporation”, “interconnection”, “noncommer-

cial educational broadcast station”, “non-Federal financial support”, “Secretary” and “State”, inserted definitions of “meeting”, “interconnection system”, “noncommercial telecommunications entity”, “pre-operational expenses”, “public telecommunications entity”, “public telecommunications facilities”, and “public telecommunications services”, and deleted definitions of “educational television or radio programs” and “State educational television agency” in order to make such definitions consistent with the chapter as amended.

1976—Par. (2). Pub. L. 94-309 substituted “transmission and reception apparatus” for “transmission apparatus” and “closed circuit television or radio programs” for “closed circuit television programs” and inserted in parenthetical text reference to non-video recording equipment, radio subcarrier receivers and satellite transceivers.

1975—Pars. (10), (11). Pub. L. 94-192 added pars. (10) and (11).

1967—Par. (1). Pub. L. 90-129, § 105(a), included the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands in definition of “State”.

Par. (2). Pub. L. 90-129, §§ 103(f)(1), 106, provided for application of term “construction” to educational radio broadcasting facilities and defined such term to include acquisition and installation of transmission apparatus necessary for radio broadcasting, and included costs of planning, respectively.

Par. (4). Pub. L. 90-129, §§ 103(f)(2), 105(b), substituted “The terms ‘State educational television agency’ and ‘State educational radio agency’ mean, with respect to television broadcasting and radio broadcasting, respectively,” for “The term ‘State educational television agency’ means” and “such broadcasting” for “educational television” in cls. (A) and (B), and defined “Governor” to include the High Commissioner of the Trust Territory of the Pacific Islands, respectively.

Pars. (6) to (9). Pub. L. 90-129, § 201(6), added pars. (6) to (9).

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-567 effective Nov. 2, 1978, see section 403 of Pub. L. 95-567, set out as a note under section 390 of this title.

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

### § 398. Federal interference or control

#### (a) Prohibition

Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this chapter; or (2) except to the extent authorized in subsection (b) of this section, 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.

#### (b) Equal opportunity employment

(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<sup>1</sup> (hereinafter in this subsection

<sup>1</sup> See References in Text note below.