

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 C¹ (hereinafter in this subsection

¹ See References in Text note below.

referred to as “recipients”), in accordance with the equal employment opportunity regulations of the Commission, and no person shall be subjected to discrimination in employment by any recipient on the grounds of race, color, religion, national origin, or sex.

(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 C¹ 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 opportunity 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.

(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 an-

nual 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) of this title. 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.

(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.

(c) Control over content or distribution of programs

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.

(June 19, 1934, ch. 652, title III, §398, formerly §397, as added Pub. L. 87-447, May 1, 1962, 76 Stat. 67; renumbered §398 and amended Pub. L. 90-129, title I, §103(g), title II, §201(3), (5), Nov. 7, 1967, 81 Stat. 367, 368; Pub. L. 95-567, title III, §309, Nov. 2, 1978, 92 Stat. 2420; Pub. L. 100-626, §9(b), Nov. 7, 1988, 102 Stat. 3211.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b)(5), commences with section 390 of this title.

Subpart C, referred to in subsec. (b)(1), (3)(A), was redesignated subpart D by Pub. L. 101-437, title II, §203(a)(2), Oct. 17, 1990, 104 Stat. 998.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100-626, §9(b), inserted “in accordance with the equal employment opportunity regulations of the Commission,” before “and no person”.

1978—Pub. L. 95-567 designated existing provisions as subsec. (a), substituted “public telecommunications entity” and “public telecommunications” for “educational broadcasting station or system” and “edu-

ational television or radio broadcasting”, respectively, and added subsecs. (b) and (c).

1967—Pub. L. 90-129, §§103(g), 201(5), inserted “or radio” and “, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation,” before and after “broadcasting”, where first appearing, respectively.

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.

§ 399. Support of political candidates prohibited

No noncommercial educational broadcasting station may support or oppose any candidate for political office.

(June 19, 1934, ch. 652, title III, §399, as added Pub. L. 90-129, title II, §201(8), Nov. 7, 1967, 81 Stat. 368; amended Pub. L. 93-84, §2, Aug. 6, 1973, 87 Stat. 219; Pub. L. 94-309, §7, June 5, 1976, 90 Stat. 685; Pub. L. 97-35, title XII, §1229, Aug. 13, 1981, 95 Stat. 730; Pub. L. 100-626, §10, Nov. 7, 1988, 102 Stat. 3211.)

AMENDMENTS

1988—Pub. L. 100-626, in section catchline, substituted “Support of” for “Editorializing and support of”, and in text, struck out provisions which prohibited editorializing by noncommercial educational broadcasting station which receives grant from Corporation under subpart C of this part.

1981—Pub. L. 97-35 revised subsec. (a) into existing provisions and, as so revised, added requirement respecting grant under subpart C of this part, and struck out subsec. (b), which related to program recording of broadcasts where issues of public importance are discussed.

1976—Subsec. (b)(5). Pub. L. 94-309 added par. (5).

1973—Pub. L. 93-84 designated existing provisions as subsec. (a) and added subsec. (b).

§ 399a. Use of business or institutional logograms

(a) “Business or institutional logogram” defined

For purposes of this section, the term “business or institutional logogram” means any aural or visual letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying any corporation, company, or other organization, and which is not used for the purpose of promoting the products, services, or facilities of such corporation, company, or other organization.

(b) Permitted uses

Each public television station and each public radio station shall be authorized to broadcast announcements which include the use of any business or institutional logogram and which include a reference to the location of the corporation, company, or other organization involved, except that such announcements may not interrupt regular programming.

(c) Authority of Commission not limited

The provisions of this section shall not be construed to limit the authority of the Commission to prescribe regulations relating to the manner in which logograms may be used to identify corporations, companies, or other organizations.

(June 19, 1934, ch. 652, title III, §399A, as added Pub. L. 97-35, title XII, §1230, Aug. 13, 1981, 95 Stat. 730.)

§ 399b. Offering of certain services, facilities, or products by public broadcast station

(a) “Advertisement” defined

For purposes of this section, the term “advertisement” means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;

(2) to express the views of any person with respect to any matter of public importance or interest; or

(3) to support or oppose any candidate for political office.

(b) Offering of services, facilities, or products permitted; advertisements prohibited

(1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities, or products in exchange for remuneration.

(2) No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement.

(c) Use of funds from offering services, etc.

Any public broadcast station which engages in any offering specified in subsection (b)(1) of this section may not use any funds distributed by the Corporation under section 396(k) of this title to defray any costs associated with such offering. Any such offering by a public broadcast station shall not interfere with the provision of public telecommunications services by such station.

(d) Development of accounting system

Each public broadcast station which engages in the activity specified in subsection (b)(1) of this section shall, in consultation with the Corporation, develop an accounting system which is designed to identify any amounts received as remuneration for, or costs related to, such activities under this section, and to account for such amounts separately from any other amounts received by such station from any source.

(June 19, 1934, ch. 652, title III, §399B, as added Pub. L. 97-35, title XII, §1231, Aug. 13, 1981, 95 Stat. 731.)

SUBCHAPTER IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

§ 401. Enforcement provisions

(a) Jurisdiction

The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this chapter by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this chapter.

(b) Orders of Commission

If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the