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ANALYSIS OF PART IV OF COMMUNICATIONS ACT -- ADOPTED MAY 1, 1962

The following brief analysis has been prepared to outline the fundamental provisions of the recent legislation amending the Communications Act of 1934 to provide for Federal grants to assist in the construction of educational television stations. Some provisions will be interpreted by the Health, Education and Welfare Department on a case to case basis, and the statements which follow are general expressions based upon the legislative history of the Bill.

This interpretation has been prepared by Leonard H. Marks, as General Counsel of the NAEB, who was closely identified with the legislation for the past seven years. For convenience, the interpretation has been put in question and answer form to develop the principal areas involved and to anticipate the inquiries that might normally be made by those who are totally unfamiliar with the legislation. The text of the legislation has been reproduced as an appendix to this analysis.

Q. What is the purpose of Part IV of the Communications Act as adopted by the Congress in 1962?

A. To assist through matching grants in the construction of educational television broadcasting facilities. The clear legislative intent is to encourage the development of the 273 reserved educational channels of which 63 are now in use.

Q. What is the maximum amount available to any one applicant?

A. There is a limit of \$1,000,000 to applicants in any state to be matched by an equal amount by the applicant. Although any one applicant could qualify for the total sum, it is unlikely that the Health, Education and Welfare Department would award this sum to a single school, university or community group. However, if a plan were presented for the coverage of an entire state, it is possible that a single award could be made for the maximum amount.

Q. Who is qualified to apply?

A. The bill provides in Section 392 that an applicant can be: (A) an agency or officer responsible for the supervision of public elementary or secondary education or public higher education within that State, or within a political subdivision thereof, (B) the State educational television agency, (C), a college or university deriving its support in whole or in part from tax revenues, or (D) a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage educational television broadcasting and is eligible to receive a license from the Federal Communications Commission for a non-commercial educational television broadcasting station pursuant to the rules and regulations of the Commission in effect on April 12, 1962.

Q. Does this permit a private college or university to apply?

A. Yes, if it derives its support in part from tax revenues. It can also participate as a member of a nonprofit community group as defined in Sec. 392(d).

Q. Are sectarian groups excluded?

A. No, if they meet all other qualifications.

Q. How will the Health, Education and Welfare Department determine who will receive grants?

A. The Act provides in Section 392(d) that criteria will be established by regulations designed to achieve (1) prompt and effective use of all educational television channels remaining available, (2) equitable geographical distribution of educational television broadcasting facilities throughout the States, and (3) provision of educational television broadcasting facilities which will serve the greatest number of persons and serve them in as many areas as possible, and which are adaptable to the broadest educational uses.

Q. How will the matching funds provision work?

A. The intent of the Act is to provide Federal assistance for the construction of educational television stations, and that a grant shall not ordinarily exceed 50% of the cost of the project proposed. The remaining 50% is to be advanced by the applicant. In addition, the applicant must furnish assurance that the necessary funds to operate and maintain the station will be available when needed (Sec. 392(a)(3)).

Q. Can the station receiving a grant carry a limited amount of non-educational programming to assist in raising operating revenue?

A. No -- there is an absolute prohibition against using the station for anything but educational purposes.

Q. When can an applicant secure more than 50% of the proposed cost of the project?

A. When the applicant has constructed one or more educational TV stations, an extra credit will be given, not to exceed 25% of the reasonable cost of the existing facilities. If this extra allowance is made, the total award made by the Health, Education and Welfare Department cannot exceed 75% of the new project. (Sec. 392(e)).

Q. What can be purchased with the Federal funds?

A. Section 394(2) provides that: The term "construction", as applied to educational television broadcasting facilities, means the acquisition and installation of transmission apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, and video-recording equipment) necessary for television broadcasting, including apparatus which may incidentally be used for transmitting closed circuit television programs, but does not include the construction or repair of structures to house such apparatus.

Q. Are cameras included in the list of eligible items?

A. This is questionable, since they are not specifically enumerated.

Q. Does this provision -- Section 394(2) -- mean that only eligible items can be bought with the matching funds of the applicant?

A. No, it is the clear intent of the legislation that the applicant submit his project -- showing the total cost of eligible and non-eligible items. The Federal grant can cover the eligible ones, and the matching funds can cover non-eligible or eligible items whether equipment, building or other construction.

Q. Can microwave equipment be purchased with the Federal funds?

A. Yes, if not more than 15% of the grant is used for the acquisition and installation.

Q. Can closed circuit operations qualify for Federal grants?

A. Yes, Sec. 394(2) includes "apparatus which may incidentally be used for transmitting closed circuit television programs."

Q. Can two or more states join together in making an application for a grant?

A. Yes. In this case, some segregation must be made of the cost in each state so that the total of \$1,000,000 per state can be maintained. However, the Conference Report clearly points out that expenditures from inter-city stations shall be incidental to the main purpose of station activation.

Q. What happens if several qualified applicants apply from a state and their combined projects exceed \$1,000,000?

A. H.E.W. will then decide how much each will receive, or which applicants will be rejected. In that case, if there is a State plan presented, the applicants coming within the provisions of the State plan should be favored. Section 392(c) specifically provides that: In order to assure proper coordination of construction of educational television broadcasting facilities within each State which has established a State educational television agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

Q. Will the grant be paid out at the time the award is made?

A. Not necessarily. It may be paid in installments as the construction progresses; it can be made as an advance or a reimbursement.

Q. Must an applicant have an FCC construction permit before a grant is made by the Health, Education and Welfare Department?

A. No. However, it appears that there will be close coordination between the FCC and HEW to facilitate the purposes of the Act. In fact, Section 395 provides that: The Federal Communications Commission is authorized to provide such assistance in carrying out the provisions of this part as may be requested by the Secretary. The Secretary shall provide for consultation and close cooperation with the Federal Communications Commission in the administration of his functions under this part which are of interest to or affect the functions of the Commission.

Q. Can the HEW control the programs which the station proposes to broadcast or the curriculum of the school using these facilities?

A. No -- Section 397 specifically prevents such action and provides that: Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television broadcasting or over the curriculum, program of instruction, or personnel of any educational institution, school system, or educational broadcasting station or system.

Q. Will the FCC require program information?

A. Yes. No changes are made in the basic provisions of the Communications Act as it relates to the licensing of educational television stations.

Q. How soon can I apply for a grant to the HEW?

A. The Secretary of the Health, Education and Welfare Department is now preparing rules and regulations required to carry out the provisions of the law. It is anticipated that they will be complete by fall, and that applications will be received at that time.

Q. How much money is now available for Federal grants?

A. None...since the legislation adopted is not an appropriations bill, but enabling legislation. It is anticipated that an appropriations bill providing some funds will be passed before Congress recesses in 1962. If less than \$32,000,000 (the limit provided in the Bill) is appropriated, grants to individual states may be reduced proportionately. For example, if \$16 million is appropriated, there may be a limit of \$500,000 per state until the remaining \$16 million is passed.

Q. Why did Congress place a limit of \$32 million, when there are 50 states, District of Columbia and Puerto Rico, all eligible to receive \$1 million each?

A. It is unlikely that all eligibles will apply for their full amount. If this assumption is wrong, the earliest states to apply will probably benefit.

Q. Is there a time limit within which an application must be made for a grant?

A. Yes. Applications will not be received after July 1, 1968.

PART IV, TITLE III OF THE COMMUNICATIONS ACT

SEC. 390. The purpose of this part is to assist (through matching grants) in the construction of educational television broadcasting facilities.

SEC. 391. There are authorized to be appropriated for the fiscal year ending June 30, 1963, and each of the four succeeding fiscal years such sums, not exceeding \$32,000,000 in the aggregate, as may be necessary to carry out the purposes of section 390. Sums appropriated pursuant to this section shall remain available for payment of grants for projects for which applications, approved under section 392, have been submitted under such section prior to July 1, 1968.

SEC. 392. (a) For each project for the construction of educational television broadcasting 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 by regulation require, including the total cost of such project, and the amount of the Federal grant requested for such project, and providing assurance satisfactory to the Secretary -

(1) that the applicant is (A) an agency or officer responsible for the supervision of public elementary or secondary education or public higher education within that State, or within a political subdivision thereof, (B) the State educational television agency, (C) a college or university deriving its support in whole or in part from tax revenues, or (D) a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage educational television broadcasting and is eligible to receive a license from the Federal Communications Commission for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the Commission in effect on April 12, 1962;

(2) that the operation of such educational television broadcasting facilities will be under the control of the applicant or a person qualified under paragraph (1) to be such an applicant;

(3) that necessary funds to construct, operate, and maintain such educational television broadcasting facilities will be available when needed; and

(4) that such television broadcasting facilities will be used only for educational purposes.

(b) The total amount of grants under this part for the construction of educational television broadcasting facilities to be situated in any State shall not exceed \$1,000,000.

(c) In order to assure proper coordination of construction of educational television broadcasting facilities within each State which has established a State educational television agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

(d) The Secretary shall base his determinations of whether to approve applications for grants under this section and the amount of such grants on criteria set forth in regulations and designed to achieve (1) prompt and effective use of all educational television channels remaining available, (2) equitable geographical distribution of educational television broadcasting facilities throughout the states, and (3) provision of educational television broadcasting facilities which will serve the greatest number of persons and serve them in as many areas as possible, and which are adaptable to the broadest educational uses.

(e) Upon approving any application under this section with respect to any project, the Secretary shall make a grant to the applicant in the amount determined by him, but not exceeding (1) 50 per centum of the amount which he determines to be the reasonable and necessary cost of such project, plus (2) 25 per centum of the amount which he determines to be the reasonable and necessary cost of any educational television broadcasting facilities owned by the applicant on the date on which it files such application; except that (A) the total amount of any grant made under this section with respect to any project may not exceed 75 per centum of the amount determined by the Secretary to be the reasonable and necessary cost of such project; and (B) not more than 15 per centum of any such grant may be used for the acquisition and installation of microwave equipment, boosters, translators, and repeaters which are to be used to connect two or more broadcasting stations. The Secretary shall pay such amount, in advance or by way of reimbursement, and in such installments consistent with construction progress, as he may determine.

(f) If, within ten years after completion of any project for construction of educational television broadcasting 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, officer, institution, foundation, corporation, or association described in subsection (a) (1), or

(2) such facilities cease to be used for educational television purposes (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation so to do), 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 then value (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) of such facilities, as the amount of the Federal participation bore to the cost of construction of such facilities.

SEC. 393. (a) Each recipient of assistance under this part shall keep such records as may be reasonably necessary to enable the Secretary to carry out his

functions under this part, 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, 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.

(b) 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 the recipient that are pertinent to assistance received under this part.

SEC. 394. For the purposes of this part -

(1) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

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

(3) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(4) The term "State educational television agency" means (A) a board or commission established by State law for the purpose of promoting educational television within a State, (B) a board or commission appointed by the Governor of a State for such purpose if such appointment is not inconsistent with State law, or (C) a State officer or agency responsible for the supervision of public elementary or secondary education or public higher education within the State which has been designated by the Governor to assume responsibility for the promotion of educational television; and, in the case of the District of Columbia, the term "Governor" means the Board of Commissioners of the District of Columbia.

(5) 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.

SEC. 395. The Federal Communications Commission is authorized to provide such assistance in carrying out the provisions of this part as may be requested by the Secretary. The Secretary shall provide for consultation and close cooperation with the Federal Communications Commission in the administration of his functions under this part which are of interest to or affect the functions of the Commission.

SEC. 396. The Secretary is authorized to make such rules and regulations as may be necessary to carry out this part, including regulations relating to the order of priority in approving applications for projects under section 392 or to determining the amounts of grants for such projects.

SEC. 397. Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under this Act; or (2) to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television broadcasting or over the curriculum, program of instruction, or personnel of any educational institution, school system, or educational broadcasting station or system.

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