



WASHINGTON REPORT

NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS

SPECIAL

June 3, 1963

DUPONT CIRCLE BUILDING
Washington 6, D. C.

The following analysis has been prepared by Cohn and Marks, Washington, D. C., general counsel of the NAEB, of the newly released Rules and Regulations of the Department of Health, Education, and Welfare relating to applications for Federal assistance for educational television station construction. This analysis is intended solely as a brief summary of the relevant portions of the Rules, copies of which can be secured by writing to the Department of Health, Education, and Welfare.

The Rules and Regulations embody the principal requirements of Public Law 87-447 which was signed by the President on May 1, 1962. The Rules outline the procedure to be followed in applying for Federal assistance. Specific sections of interest to applicants are as follows:

Section 60.4 Application for Federal Financial Assistance --

An application must be filed with the Secretary and contain detailed information on the project with justification and exhibits as the Secretary may deem necessary. Forms will be prescribed by the Department.

Section 60.5 Federal Communications Commission Authorization --

Where the project requires an FCC authorization, the applicant must submit to HEW a copy of the application filed with the Federal Communications Commission.

Section 60.6 Service of Applications --

Each applicant must serve a copy of his application on the Federal Communications Commission, the State educational television agency, if any, in his State and in any State in which Grade B service or better would be received from the applicant's proposal.

Section 60.8 Comments on Applications --

The Secretary will publish notice in the Federal Register of applications submitted and afford an opportunity for comments to interested persons within 30 days from the date of publication. The applicant may reply to comments within 15 days thereafter.

Section 60.9 Assurances Required --

This section is a very significant one and is, therefore, reprinted in its entirety as follows:

No project will be approved unless the applicant has given assurances acceptable to the Secretary:

(a) That the applicant's organic or corporate powers include the authority to construct and operate noncommercial educational television broadcast facilities, and to receive Federal funds for such construction;

(b) That the transmission apparatus to be acquired and installed under the project will be owned by the applicant;

(c) That the operation of the noncommercial educational television broadcast facilities will be under the control of the applicant or a person qualified under section 60, 3(e) to be an applicant;

(d) That sufficient funds will be available when needed:

(1) To meet the non-Federal share of the costs of the project;

(2) To acquire all land and to construct and install all facilities, structures and equipment, in addition to the transmission apparatus included in the project, necessary to place the proposed noncommercial educational television broadcast facilities in operation; and

(3) To operate and maintain the noncommercial educational television broadcast facilities;

(e) That the applicant will promptly complete the project and place the noncommercial educational television broadcast facilities in operation;

(f) That any transmission apparatus acquired or installed with Federal financial assistance under this Part will be used only for educational purposes;

(g) That the applicant has or will have title to the site or premises on which the transmission apparatus specified in the project application will be installed, or the right to construct, maintain and operate on and to remove from such site or premises such transmission apparatus for a period of not less than ten years after completion of the project;

(h) That adequate methods of obtaining a competitive basis for the acquisition and installation of transmission apparatus included in the project will be employed either by appropriate public advertising or by circularizing three or more competitive vendors, and that the award of the contract will be made to the lowest responsible and acceptable bidder.

(i) That there will be no discrimination against any individual or organization on account of race, creed, color, or national origin of an individual, in determining community participation in the activities of the educational television station.

Section 60.10 Operation on Reserved Channel --

A project will be approved only where the transmission apparatus proposed will be used in the operation of a non-commercial educational television broadcast station on a

channel reserved for noncommercial educational use, as of the date of the application unless, prior to May 1, 1962, the Commission had accepted for filing an application for educational use on an unreserved channel.

Section 60.11 Interconnection Apparatus --

No more than 15 percent of the Federal funds requested 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 noncommercial educational television broadcast stations.

Section 60.12 Priorities --

Applications will be considered in the order in which they are accepted for filing; however, the Secretary may institute priorities as he desires, and establish temporary limitations on the maximum amount of Federal grants in each of the several States to promote equitable distribution of such funds throughout the United States.

Section 60.13 Criteria for Action on Applications --

This is a very significant section and is reprinted in its entirety as follows:

In order to achieve (1) prompt and effective use of all remaining available television channels reserved by the Commission for non-commercial educational use; (2) equitable geographical distribution of noncommercial educational television broadcast facilities throughout the States; and (3) provision of noncommercial educational television broadcast facilities which will serve the greatest number of persons and serve them in as many areas as possible, and which are adaptable to the broadcast educational uses, the Secretary, in determining whether to approve an application for a Federal grant, in whole or

in part, and the amount of such grant, or whether to defer consideration of such an application, and in light of the funds available, will take into consideration all facts and information relevant to that application, as applied to the following factors (not listed in any order of priority):

(a) Whether the project will result in the activation of a new noncommercial educational television broadcast station;

(b) The area and population which will receive a new noncommercial educational television broadcast service as a result of the project;

(c) The hours during which the noncommercial educational television broadcast station will operate;

(d) The general and special educational and cultural needs of the area for noncommercial educational television broadcast service as well as the need for local outlets for the origination of noncommercial educational television broadcast programs; the extent to which those needs are being or will be met by existing or proposed noncommercial educational television broadcast stations; and the extent to which the project is necessary to meet those needs;

(e) The extent to which the project will contribute to meeting the needs for noncommercial educational television broadcasting in the State;

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

(g) The extent to which any proposed interconnection of noncommercial educational television broadcast stations is necessary to provide new or improved noncommercial educational television broadcast service;

(h) The cost of the project and of the various components thereof in relation to the objectives to be achieved.

(i) The extent to which the various items of transmission apparatus proposed are necessary to, and capable of achieving the objectives of the project;

(j) How quickly the applicant can be expected to complete the project;

(k) The provisions of any relevant Statewide or regional noncommercial educational television broadcast plans.

Section 60.14 Amount of Federal Grant --

Federal funds may not exceed 50 percent of the amount required for transmission apparatus for the project, and will be subject to the various exclusions and qualifications of the Act.

Section 60.17 Conditions to Federal Grant --

All Federal grants shall be subject to the conditions required by the Act and shall require the applicant to provide insurance, qualified engineering supervision, inspection by the Comptroller General and other U.S. representatives of books, records and equipment.

Section 60.18 Payment of Federal Grant --

Fifty percent of the total amount of the grant will be paid upon approval and the remainder when the project is concluded and certified as completed.

Section 60.19 Fiscal Report and Records --

Fiscal and related records must be maintained and kept for three years after the close of the project or until the applicant is notified of a final audit. Inventories shall be maintained for ten years and the equipment must be marked to assure accurate and easy identification.

Section 60.20 Status Reports --

For a period of ten years the applicant must make an annual status report certifying that it continues to own the equipment purchased and that they are devoted to the purposes originally contemplated.

Section 60.21 Change in Eligibility or Use --

If within ten years of completion of the project the applicant ceases to be eligible for a grant or abandons the use of the equipment, the applicant shall repay to the United States a portion of the funds received.

Scanned from the National Association of Educational Broadcasters Records
at the Wisconsin Historical Society as part of
"Unlocking the Airwaves: Revitalizing an Early Public and Educational Radio Collection."



A collaboration among the Maryland Institute for Technology in the Humanities,
University of Wisconsin-Madison Department of Communication Arts,
and Wisconsin Historical Society.

Supported by a Humanities Collections and Reference Resources grant from
the National Endowment for the Humanities



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