Calendar No. 786

108TH CONGRESS *2d Session*	SENATE	REPORT 108–396

PUBLIC BROADCASTING REAUTHORIZATION ACT OF 2004

REPORT

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2645

TOGETHER WITH

ADDITIONAL VIEWS

OCTOBER 8, 2004.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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PUBLIC BROADCASTING REAUTHORIZATION ACT OF 2004

OCTOBER 8, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2645]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2645) to amend the Communications Act of 1934 to authorize appropriations for the Corporation for Public Broadcasting, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 2645 is to reauthorize the Corporation for Public Broadcasting (CPB or "the Corporation") through fiscal year (FY) 2011 so that the private, non-profit corporation may continue to facilitate the growth and development of educational and cultural broadcast programming. The Corporation was last authorized in 1992 for four years. The additional purpose of S. 2645 is to foster the digital transition and the production and acquisition of digital programming (particularly local digital programming), to prevent government funds from inuring to the benefit of non-public broadcasting entities, to ensure that government funds are distributed expeditiously to public broadcasting stations, and to modify certain definitions in recognition of the digital age.

39–010

BACKGROUND AND NEEDS

Public broadcasting dates back to the 1920s, when the first radio stations devoted to instructional and cultural programming went on the air. Today, 356 public television stations and almost 800 public radio stations broadcast over-the-air throughout the 50 States. These non-commercial stations are owned and operated by local entities that, under FCC rules, must either be: (1) a nonprofit educational institution, such as a university or a local school board; (2) a governmental entity other than a school, such as a State agency; or (3) another type of nonprofit educational entity, such as a "community" organization.

In 1965, President Lyndon Johnson authorized the creation of the Carnegie Commission on Educational Television, formed with the sponsorship of the Carnegie Corporation, to study educational television's financial needs. Based on recommendations of the Carnegie Commission, President Johnson proposed and Congress moved expeditiously to enact the Public Broadcasting Act of 1967 (the Act), amending the Communications Act of 1934, to create the CPB.

The CPB is a private, non-profit corporation chartered by the Federal government to facilitate the growth and development of educational and cultural broadcast programming. The Corporation was formed to develop high-quality programming, raise awareness and support for public broadcasting, and perform long-term planning to sustain the financial viability of public broadcasting. Today, the primary function of the CPB is to receive and distribute government funds to stations, develop national programming, and maintain universal access to public broadcasting's educational programs and services. On average, the CPB funds represent only 15 percent of an individual station's operating budget.

The funds the CPB distributes to stations come from an annual congressional appropriation. In 1975, the Public Broadcasting Financing Act authorized advance appropriations and long term financing for the CPB. Appropriations are established two years in advance of the disbursement from the Federal treasury. For example, Congress has already appropriated $400 million for FY 2006 to the CPB. The Corporation has separate accounts for the Digital Fund and the Public Broadcasting Interconnection Fund, which are appropriated on an annual basis. In addition, the Public Telecommunications Facilities Program (PTFP), which is administered by the Department of Commerce, is also appropriated on an annual basis. The Corporation is accountable to Congress for the disbursement of these funds and required to submit to audits.

The Corporation is expressly prohibited from producing or distributing public television programming and from owning public broadcasting stations. Therefore, in 1969, a national public television programming network was created called PBS, the Public Broadcasting Service. PBS is a private, nonprofit program distribution company that is owned and operated by the public television stations. PBS is prohibited from owning public broadcasting stations and from producing programming. Instead, PBS purchases the rights to a variety of programs and aggregates these programs into the national programming service (NPS), which is distributed to its 349 member public television stations.

In 1970, the CPB created National Public Radio (NPR). Unlike CPB and PBS, which are prohibited from producing programming, NPR is a private, not-for-profit organization that produces, acquires, and distributes news and cultural programs to its 770 member public radio stations. NPR produces extended coverage of special events and breaking news and other diverse programming. Another national public radio programmer, Public Radio International (PRI), provides many public radio stations with additional programming options. PRI is an independent, not-for-profit corporation that provides over 400 hours of programming each week to its 744 affiliates nationwide. Individual public television or radio stations also produce programming for themselves and to sell to other stations. Stations are able to generate significant revenues from the distribution of programming.

Public broadcasting stations exercise complete discretion over programming decisions—all licensees are owned and controlled at the local level. This structure is due, in part, to the institutional and financial factors that motivated the founding of each individual public television station. Unlike commercial television stations, which typically involve business-related investment decisions, establishing a public television station entails a local-level commitment to the education and cultural enrichment of viewers. Further, whereas advertising revenues finance commercial television, public television is prohibited from airing advertisements and has always been financed by both public and private sources.

AFFECTED ORGANIZATIONS' COMMENTS

CPB, APTS, NPR, and PBS issued a statement on S. 2645 on July 14, 2004:

> "S. 2645 as reported by the Senate Committee on Commerce, Science and Transportation is a constructive measure extending the authorization for the Corporation for Public Broadcasting (CPB) as well as the digital transition and interconnection satellite fund.
>
> "S. 2645 also extends the authorization for the Public Telecommunications Facilities Program (PTFP) at the Department of Commerce for seven years. For 32 years, this program has been critical for public broadcasting stations in acquiring, maintaining, and replacing analog equipment and will be essential for maintaining digital equipment in the future. We believe it is a prudent policy for the Congress to protect the investment it has already made in the digital transition."

LEGISLATIVE HISTORY

On July 13, 2004, Senator McCain introduced S. 2645, a bill to reauthorize the CPB and its programs, and for other purposes. That same day, the Senate Commerce, Science, and Transportation Committee held a hearing to provide oversight of CPB and to examine the state of public broadcasting.

On July 20, 2004 the Committee held an executive session at which S. 2645 was considered. The bill was approved unanimously by voice vote and was ordered reported without amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2645—Public Broadcasting Reauthorization Act of 2004

Summary: S. 2645 would authorize grants to the Corporation for Public Broadcasting (CPB) through 2011. These reauthorizations would extend the Public Broadcasting Fund and public telecommunications facilities grant program through 2011, as well as authorize funding for the transition to digital technology through 2009 and the Satellite Interconnection Fund for 2005. Appropriations of the authorized amounts would result in additional outlays of $350 million in 2005 and $3.1 billion over the 2005–2011 period. Enacting the bill would not affect direct spending or revenues.

S. 2645 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). To the extent that the CPB provides grants to publically owned stations, CBO estimates the bill would provide significant benefits to state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2645 is shown in the following table. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—							
	2004	2005	2006	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION								
Spending for the Corporation for Public Broadcasting Under Current Law:								
Budget Authority [1]	437	390	400	0	0	0	0	0
Estimated Outlays	437	390	400	0	0	0	0	0
Proposed Changes:								
Public Broadcasting Fund:								
Authorization Level	0	0	0	416	432	450	468	487
Estimated Outlays	0	0	0	416	432	450	468	487
Digital Technology:								
Authorization Level	0	50	50	40	30	20	0	0
Estimated Outlays	0	50	50	40	30	20	0	0
Satellite Interconnection Fund:								
Authorization Level	0	250	0	0	0	0	0	0
Estimated Outlays	0	250	0	0	0	0	0	0
Public Telecommunications Facilities Program Grants:								
Authorization Level	0	50	52	54	56	58	61	63
Estimated Outlays	0	50	52	54	56	58	61	63
Total Changes:								
Authorization Level	0	350	102	510	518	528	529	550
Estimated Outlays	0	350	102	510	518	528	529	550
Spending for Public Broadcasting Under S. 2645:								
Estimated Authorization Level [1]	437	740	502	510	518	528	529	550
Estimated Outlays	437	740	502	510	518	528	529	550

[1] The 2004 level is the amount appropriated for that year. The Public Broadcasting Fund also has received appropriations for 2005 and 2006.

Basis of estimate: CBO assumes that the bill would be enacted near the start of fiscal year 2005 and that the authorized amounts will be appropriated for each year.

PUBLIC BROADCASTING FUND

The bill would authorize grants for the Corporation for Public Broadcasting through 2011. Under current law, funding for the CPB has been provided through 2006 by appropriations acts. Funding for the CPB is provided two years in advance of its availability. Thus, the appropriation provided in the 2004 act becomes available in 2006.

S. 2645 would authorize the appropriation of specific amounts for each year from 2007 to 2011, with the levels climbing from $416 million in 2007 to $487 million in 2011. Assuming the appropriation of the authorized amounts, the resulting outlays would be $416 million in 2007, and $2,253 million over the 2007–2011 period.

GRANTS FOR THE TRANSITION TO DIGITAL TECHNOLOGY

S. 2645 would authorize funding to be used to facilitate the transition from analog to digital technology and for the acquisition or production of digital programming. Specifically, the bill would authorize the appropriation of $50 million in 2005 and 2006 and lesser amounts for next three years. Assuming the appropriation of the authorized amounts, CBO estimates those provisions would result in outlays of $50 million in 2005 and $190 million over the 2005–2009 period.

SATELLITE INTERCONNECTION FUND

The bill would authorize the appropriation of $250 million in 2005 for the Satellite Interconnection Fund. If the full amount is not appropriated for that year, the funding authorization would continue in subsequent years until a cumulative total of $250 million has been appropriated. CBO assumes that the full amount is appropriated and spent in 2005.

PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM GRANTS

S. 2645 would reauthorize funding for grants to assist in the planning and construction of public telecommunications facilities, including analog and digital broadcast facilities and equipment. The authorized levels under the bill would gradually rise from $50 million in 2005 to $63 million in 2011. Assuming the authorized amounts are appropriated, outlays would total $50 million in 2005 and $395 million over the 2005–2011 period.

Intergovernmental and private-sector impact: S. 2645 contains no intergovernmental or private-sector mandates as defined in UMRA. To the extent that the CPB provides grants to publically owned stations, CBO estimates the bill would provide significant benefits to state, local, and tribal governments.

Estimate prepared by: Federal Costs: Paul Cullinan; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Crystal Taylor.

Estimate approved by: Peter H. Fontaine; Deputy Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 2645 does not create any new programs, the legislation would have no additional regulatory impact, and will result in no additional reporting requirements.

NUMBER OF PERSONS COVERED

S. 2645 would reauthorize the CPB through Fiscal Year (FY) 2011 and is intended to make certain changes to the Public Broadcasting Act of 1967. The number of persons covered by this legislation should be consistent with current levels of individuals affected.

ECONOMIC IMPACT

S. 2645 would authorize funds to support the development of national programming and maintain universal access for citizens to public broadcasting's educational programs and services.

PRIVACY

S. 2645 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 2645 has minimal or no impact on current paperwork levels.

Section-by-Section Analysis

Section 1. Short title.

This section provides that the act may be cited as "The Public Broadcasting Reauthorization Act of 2004."

Section 2. Authorization of appropriations.

Section 2 would authorize annual funding for the CPB. The Public Broadcasting Reauthorization Act reauthorizes the following pre-established funds: (1) the annual Public Broadcasting Fund; (2) the Digital Fund; and (3) the Satellite Interconnection Fund. In addition, the bill would reauthorize the PTFP, which is managed by NTIA under the Department of Commerce.

A. ANNUAL FUNDING

Congress provides a two-year advance appropriation to the annual funding account (i.e., monies are appropriated in 2004 to be spent in 2006). The annual fund monies are used to cover: (1) CPB administrative costs; (2) system support; (3) Community Service Grants for stations; and (4) programming. Congress advance appropriated $350 million for CPB for FY 2004, $377.9 million for FY 2005, and $400 million for FY 2006. The bill would authorize the following amounts:

- $416 million for FY 2007;
- $432 million for FY 2008;
- $450 million for FY 2009;
- $468 million for FY 2010; and,
- $487 million for FY 2011.

B. THE DIGITAL FUND

Section 2 would also authorize monies for the CPB's digital fund. Congress created the digital fund in 2001 to assist public broadcasters with costs related to the transition to digital broadcasting. Stations submit grant applications to CPB for digital equipment, such as towers, translators, cameras, and studio equipment, that are then reviewed by a panel that includes station representatives and members of the CPB Board. The grants are matched with funds raised by the receiving station.

In 1997 the Corporation estimated that the costs for the government mandated digital transition for television broadcast stations would be at least $1.8 billion, largely for transmission equipment. Under a plan designed by the Corporation and the stations, a majority of these costs would be funded by nonfederal sources, such as by State governments, foundations, and corporations, and approximately $771 million (45 percent) would be funded through Federal funds. Federal funding has provided over $230 million to the CPB to help the digital transition. To date, 248 public television stations, or 70 percent of all public television stations, are on the air with a digital signal (serving markets that cover 87 percent of U.S. households). While there is no government mandate requiring radio stations to convert to digital, approximately 20 public radio stations are currently broadcasting in digital.

Although specific appropriations for the digital transition were made for the Corporation in fiscal years 1999 and 2000—for $15 million and $10 million, respectively—both were contingent on the enactment of an authorization for the Corporation, which did not occur. The Corporation received its first specific digital appropriation for $20 million in FY 2001 after Congress enacted both an appropriation and an authorizing provision for the CPB. A second digital appropriation for $25 million was received for FY 2002. For FY 2003 and 2004, Congress appropriated approximately $50 million for the digital fund.

This bill would authorize the following funding levels for the digital fund anticipating that the digital transition should be complete by FY 2009:

- $50 million for FY 2005;
- $50 million for FY 2006;
- $40 million for FY 2007
- $30 million for FY 2008; and,
- $20 million for FY 2009.

In addition to authorizing funding to equip stations to distribute digital programming, this bill would authorize digital fund monies to be used for the acquisition and production of digital programming, including programming of a national, regional, or local interest. The Committee believes that fostering the production and distribution of compelling digital programming, including in high-definition format, will provide an incentive for consumers to purchase new digital television sets and speed the digital transition. An April report released by the Government Accountability Office (GAO) noted that public television broadcasters believe that the production of digital programming is as critical to the digital transition as is digital equipment. Therefore, the Committee has acted to ensure that stations have funds that may be used for this need.

The GAO's report also found that the Corporation has not always been timely in its distribution of digital appropriations. This legislation also would require that the Corporation to distribute the digital funds "as soon after appropriation as practicable" and "expeditiously." The Committee believes that a practical and expeditious timeframe would be within six months of appropriation. Additionally, the bill would require the Corporation to consult with the stations and their representative organizations (e.g. The Association of Public Television Stations (APTS), NPR, and PBS) regarding the grant criteria and grant amounts for digital funds.

C. THE INTERCONNECTION FUND

Section 2 would authorize appropriators to provide $250 million to support public broadcasting's satellite interconnection and distribution system over the next five years. Congress established a separate fund to finance the interconnection systems for both radio and television public broadcasting services. These systems enable the delivery of programming from the programming distributors (NPR, PBS, and others) to the local radio and television stations. Another potential function of the television interconnection system that has been proposed and is being evaluated by the Department of Homeland Security is using it as the backbone of a new improved national emergency communications system.

The interconnection system provides an efficient and cost-effective mechanism for distributing programming to public television stations nationwide. Interconnection serves as the conduit for distribution of PBS's National Program Service, but also provides stations with a variety of other vital programming options, such as PBS Kids, and PBS You, enabling local stations to serve their audiences with digital multicast content. Beyond direct programming distribution, the interconnection system also provides content in support of public television's educational goals, supporting educational outreach in local communities through distribution of services such as the Ready to Learn Television program, which is funded under the No Child Left Behind Act. Without an interconnection system local stations would face formidable financial and logistical challenges in assembling the breadth and depth of programming needed to serve their local communities.

In 1998, for example, Congress appropriated $48 million for public radio satellite replacement when its existing satellite fell out of orbit. Earlier, in 1989, Congress provided $200 million to replace public broadcasting's satellite interconnection systems and provide for increased service for the future. Of that amount, $150 million was allocated for television and $50 million for radio, which was authorized to be appropriated over several years in order to allow public broadcasting to negotiate long-term satellite leases and obtain the most favorable rates.

The bill would take the same comprehensive approach that was taken in 1989 and would authorize funds for the next-generation replacement systems for both television and radio interconnection systems in order to enable public broadcasting to obtain the most favorable terms for their satellite leases. Moreover, this authorization would provide local stations with equipment and technology that would allow them to obtain programming from the national distribution entities (NPR and PBS) as well as from other stations directly without the need for a physical exchange of films, tapes, DVDs, etc. The new interconnection system is expected to result in greater efficiency, flexibility in program scheduling and significant cost savings.

Public television broadcasters estimate they need $177 million to support the interconnection system over the next six years and public radio broadcasters estimate they need $70 million. For FY 2004, Congress appropriated $10 million for these systems.

The Committee notes that approximately $12 million of the total cost is to provide for C-band "backyard" satellite television service, which has come to serve an increasingly small population nationwide as direct broadcast satellite (DBS) service has become more popular. From a high of 2.3 million registered backyard dish owners in 1996, the registered C-band subscriber base has declined precipitously. In the past year alone, the C-band subscriber base has declined nearly 30 percent, dropping to 323,013 subscribers as of July, 2004. At this rate of decline, the home C-band dish market will virtually vanish by 2006.

At the same time, the DBS subscriber base has grown to over 23 million users. Through continuing negotiations with DirecTV and EchoStar, the two primary satellite television service providers, C-band customers are able to receive a PBS national program feed. If these trends continue, the Committee recommends that the statutory requirement that C-band service be provided by the interconnection system be eliminated, in light of its significant cost and diminishing benefit.

D. PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM GRANTS (PTFP)

Managed by the Department of Commerce, the PTFP provides matching grants on a competitive basis to public broadcasting stations to assist in the planning, acquisition, installation, and modernization of public telecommunications facilities. PTFP funding continues to be critical to the Federally-mandated transition from analog to digital technology for the public television stations, especially for those broadcasters who are located in, or who serve, largely rural areas. Specifically, the Communications Act provides these grants to "extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means." The program may provide up to 100 percent of the funds necessary for the planning of a public telecommunications facility, but the maximum amount of a grant for the construction of a public telecommunication facility is 75 percent of the eligible project costs. The Committee notes that PTFP helps to attract non-Federal dollars to public broadcasting by requiring stations to seek matching funds from other sources to satisfy grant application requirements.

PTFP plays an essential role in developing and maintaining the infrastructure to deliver a new generation of expanded programming and other services tailored to meet local needs. Also, it continues to ensure uninterrupted universal service to communities served by public broadcasters whose facilities have been damaged or destroyed by weather and other disasters. For instance, WNET in New York City applied for and received emergency funds to replace transmission equipment that was destroyed by the September 11, 2001, terrorist attack on the World Trade Center.

Congress provided the PTFP fund with approximately $44 million in both FY 2002 and 2003 with approximately $36 million of that amount going toward digital equipment. In FY 2004, Congress provided only $22 million to the PTFP fund, but the most recent appropriations bill provides $50 million for PTFP. The Public Broadcasting Reauthorization Act of 2004 would provide the following for PTFP:

- $50 million for FY 2005;
- $52 million for FY 2006;
- $54.08 million for FY 2007
- $56.24 million for FY 2008;
- $58.49 million for FY 2009;
- $60.82 million for FY 2010; and,
- $63.25 million for FY 2011.

This section would also authorize these funds to be used to improve not only analog broadcast facilities and equipment but also digital broadcast facilities and equipment. As the Nation moves toward all digital broadcasting, PTFP grants should be used to assist local stations to improve their digital broadcasting facilities.

Section 3. Recoupment of funds by Corporation.

This section would clarify and expand the Corporation's authority and discretion under section 396(k)(13) of the Communications Act of 1934 to recover funds granted to the licensee of a public broadcasting station that ceases to provide public telecommunications services. The Committee added this language to address the sales and transfers of local public broadcasting stations to entities that will not continue to offer public broadcasting services and where the proceeds of such transactions will be used for purposes other than public broadcasting. Funds from the Corporation represent an investment by the American public in public broadcasting stations and services. Therefore, the Committee does not believe that entities should retain Corporation funds or reap a windfall when they no longer offer public broadcasting services.

The language in the bill would clarify that the Corporation cannot release funds to a station unless the station licensee agrees, upon acceptance of a grant, that if it ceases to be eligible for Corporation support it will return any unexpended grant funds.

In addition, the legislation permits the Corporation to recover funds it has provided to a station for equipment or facilities grants for 5 years prior to a sale or transfer that results in a cessation of public broadcasting service by that station. A station licensee must agree, upon acceptance of a grant, that if it ceases to be eligible for Corporation grant support it will return a share of the value of such facilities or equipment that is proportional to the Corporation's contribution to purchase such facilities and equipment.

Section 4. Redefinition of public telecommunications services to include new technologies.

This section would modify the definition of "public telecommunications services" to update and broaden the definition to include the use of new technologies available to public broadcasters such as datacasting and webcasting. When the current definition was adopted, the primary means for broadcasters to deliver content was through over-the-air television or radio broadcasting. Digital technology allows a station to transmit data including video, audio, and graphics to personal computers or servers. This technology, known as datacasting, uses spectrum to transmit data to specific addresses using inexpensive equipment including a tuner card and a small antenna. Two major datacasting applications used by local public television stations include transmitting digital content to local schools, colleges, and universities, and partnering with State and local public safety agencies to provide secure, encrypted emergency communications.

The Committee finds that new technologies such as datacasting have enormous potential for providing valuable new public services to communities. It is the Committee's intent that public telecommunications entities should continue to serve their communities using "all appropriate available telecommunications distribution technologies" as prescribed in the findings of the Act (47 U.S.C. (396 (a)(9)).

Section 5. Local content, programming, and services.

Although the Corporation does not currently provide or have explicit authority to make grants for the production of local television programming, CPB funding can indirectly support local programming productions through two sources: (1) Community Service Grants, which may be used at the discretion of television licensees to produce their own programming, and (2) grants made by the Corporation to the Independent Television Service and the National Center for Outreach, both of which fund some local productions. Local television stations produce their own programming to complement programming from PBS and to meet the needs of their local communities. The cost of producing local programming, however, is often a major impediment toward television licensees doing so. In the GAO's April 2004 survey, 79 percent of the public television licensees indicated that the amount of local programming they currently produce is not sufficient to meet local community needs. Moreover, 85 television licensees stated that they do not have adequate funds to create local programming or that they would produce more local programming if they could obtain additional sources of funding. Several licensees stated that they have had to ignore local issues and turn away programming opportunities because they lacked the financial resources.

The Committee acknowledges that the locally owned and controlled public broadcasting stations are models of local service in their communities. Local public broadcasting stations control their own programming content and schedules and tailor them to the interests of their communities. The Committee supports and emphasizes this service by including language in section five that would provide explicit authority for the CPB to provide community service grants to stations to support local production of programming that serves the needs and audience interests of their local communities.

In 1992, this Committee amended the Act to add the declaration of purpose which expressed a congressional intent that public broadcasting is not just television and radio programs but rather "that public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs." (47 U.S.C. 396(a)(8)). The Committee builds upon this finding by directing the Corporation to consider local service while developing criteria for the community service grants and by encouraging the Corporation to continue its efforts with stations to sustain local services which can include educational, outreach, civic and cultural activities, and content, as well as workplace training, public safety, and other initiatives that benefit the public. At the same time, the Committee recognizes that national aggregation of programming funds through PBS's NPS and through NPR, PRI, and other national producers of programming for public television and radio, makes possible much of the stations' schedules. The aggregation of funds for children's programming, news and public affairs, and other cultural and educational programming helps to build local underwriting and membership support. Such programming is often produced by local member stations and reflects the interests of the local community.

In addition, the Committee recognizes the importance of the work of the National Minority Public Broadcasting Consortia (Minority Consortia), which helps develop, acquire, and distribute public television programming to serve the needs of African American, Asian American, Latino, Native American, Pacific Islander, and many other viewers. As many communities in the Nation welcome more and more citizens of diverse ethnic backgrounds, the local public television stations should strive to meet these viewers' needs. Despite increased appropriations to CPB, the funding for the Minority Consortia has remained relatively flat. With an increased focus on programming to meet local communities needs and increased reauthorization funding levels, the Committee encourages the CPB to review the funding and resources provided to the Minority Consortia and to increase such funding and resources if necessary.

ADDITIONAL VIEWS OF SENATOR MCCAIN AND SENATOR HOLLINGS

During the Committee's consideration of S. 2645, it was the Committee's intent to adopt an amendment offered by Senators McCain and Hollings to increase the authorization amounts and make other changes to the underlying bill. Due to the invocation of a Senate rule, the consideration of amendments to this bill was prevented. It is our expectation and hope, however, that this amendment will be agreed to and accepted as this legislation receives further consideration before the full Senate.

The amendment would authorize the CPB's annual funding account at the following levels:

- $428 million for FY 2007;
- $458 million for FY 2008;
- $490 million for FY 2009;
- $524 million for FY 2010; and
- $560 million for FY 2011.

The amendment would authorize the Department of Commerce's PTFP program at the following levels:

- $50,000,000 for FY 2005;
- $53,500,000 for FY 2006;
- $57,240,000 for FY 2007;
- $61,240,000 for FY 2008;
- $64,200,000 for FY 2009;

- $68,480,000 for FY 2010; and
- $73,270,000 for FY 2011.

The amendment would also add an additional section to the bill relating to representatives, organizations, affinity groups, and rural communities.

Under current law, a nine-person Board of Directors governs CPB, sets policy, and establishes programming priorities. Only five members of the board at any time may be from one political party. The President appoints each member, who, after confirmation by the Senate, serves a six-year term. By statute, Board members must be United States citizens who are "eminent in such fields as education, cultural and civic affairs, or the arts, including radio and television". (47 U.S.C. 396(c)(2)) Additionally, at least two members of the Board must be persons representing public broadcasting licensees.

The additional section would amend the law to clarify that at least one of the nine-member CPB Board should be selected from among individuals who represent the licensees and permittees of public television stations, and that at least one additional CPB Board member should be selected from among individuals who represent the licensees and permittees of public radio stations. Although the President has full discretion in selecting his nominees to the CPB Board, the President is urged to give consideration to the suggestions made by the licensees and permittees. Additionally, the Committee encourages the President to select board members who represent the diverse geography of licensees and permittees—rural, urban, non-contiguous States, territories, and Native American reservations.

In addition, to ensure that CPB's funding priorities are responsive to the needs of local stations and the communities they serve, this section would amend various portions of the law to require consultation with public radio and television licensees and representatives designated by their national organizations when allocating money from CPB's national programming fund, its digital fund, the fund for Community Service Grants, and the Interconnection Fund. Organizations like APTS, PBS, and NPR are member service organizations that represent the vast majority of local stations. They have elected boards that are representative of the diversity of types of local stations and can play a constructive role in assisting CPB with developing policies and procedures that will enhance localism and service to communities.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE III—PROVISIONS RELATING TO RADIO

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

Subpart A—Assistance for Public Telecommunications Facilities

SEC. 391. AUTHORIZATION OF APPROPRIATIONS.

[47 U.S.C. 391]

There are authorized to be appropriated **[**$42,000,000 for each of the fiscal years 1992, 1993, and 1994,**]** *$50,000,000 for fiscal year 2005, $52,000,000 for fiscal year 2006, $54,008,000 for fiscal year 2007, $56,240,000 for fiscal year 2008, $58,490,000 for fiscal year 2009, $60,820,000 for fiscal year 2010, and $63,250,000 for fiscal year 2011,* to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications **[**facilities**]** *facilities, including analog and digital broadcast facilities and equipment,* 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.

Subpart D—Corporation for Public Broadcasting

SEC. 396. DECLARATION OF POLICY.

[47 U.S.C. 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, which will constitute an expression of diversity and excellence, and which will constitute a source of alter-

native telecommunications services for all the citizens of the Nation;

(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;

(7) 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;

(8) public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs;

(9) it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies; and

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

Corporation Established

(b) There is authorized to be established a nonprofit corporation, to be known as the "Corporation for Public Broadcasting", which will not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

Board of Directors

(c)(1) The Corporation for Public Broadcasting shall have a Board of Directors (hereinafter in this section referred to as the "Board"), consisting of 9 members appointed by the President, by and with the advice and consent of the Senate. No more than 5 members of the Board appointed by the President may be members of the same political party.

(2) The 9 members of the Board appointed by the President (A) shall be selected from among citizens of the United States (not regular full-time employees of the United States) who are eminent in such fields as education, cultural and civic affairs, or the arts, including radio and television; and (B) shall be selected so as to provide as nearly as practicable a broad representation of various regions of the Nation, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Corporation.

(3) Of the members of the Board appointed by the President under paragraph (1), one member shall be selected from among individuals who represent the licensees and permittees of public television stations, and one member shall be selected from among individuals who represent the licensees and permittees of public radio stations.

(4) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act.

(5) The term of office of each member of the Board appointed by the President shall be 6 years, except as provided in section 5(c) of the Public Telecommunications Act of 1992. Any member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be eligible to serve in excess of 2 consecutive full terms.

(6) Any vacancy in the Board shall not affect its power, but shall be filled in the manner consistent with this Act.

(7) Members of the Board shall attend not less than 50 percent of all duly convened meetings of the Board in any calendar year. A member who fails to meet the requirement of the preceding sentence shall forfeit membership and the President shall appoint a new member to fill such vacancy not later then 30 days after such vacancy is determined by the Chairman of the Board.

Election of Chairman and Vice Chairman; Compensation

(d)(1) Members of the Board shall annually elect one of their members to be Chairman and elect one or more of their members as a Vice Chairman or Vice Chairmen.

(2) The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this subpart, be entitled to receive compensation at the rate of $150 per day, including traveltime. No Board member shall receive compensation of more than $10,000 in any fiscal year. While away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

Officers and Employees

(e)(1) The Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. 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. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation, other than the Chairman or a Vice Chairman, may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation.

Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the Board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers shall serve at the pleasure of the Board.

(2) Except as provided in the second sentence of subsection (c)(1) of this section, no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

Nonprofit and Nonpolitical Nature of the Corporation

(f)(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(3) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

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 judgement with respect to any 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;

(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—

(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).

(5) 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

(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 telecommunciations 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.

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 May of each year. The report shall include—

(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;

(C) a listing of each organization that receives a grant from the Corporation to produce programming, the name of the producer of any programming produced under each such grant, the title or description of any program so produced, and the amount of each such grant;

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

(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.

Right to Repeal, Alter, or Amend

(j) The right to repeal, alter, or amend this section at any time is expressly reserved.

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.

[(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.

[(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993, 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 $265,000,000 for fiscal year 1992, $285,000,000 for fiscal year 1993, $310,000,000 for fiscal year 1994, $375,000,000 for fiscal year 1995, and $425,000,000 for fiscal year 1996.

[(D) In addition to any amounts authorized under any other provision of this or any other Act to be appropriated to the Fund, $20,000,000 are hereby authorized to be appropriated to the Fund (notwithstanding any other provision of this subsection) specifically for transition from the use of analog to digital technology for the provision of public broadcasting services for fiscal year 2001.

[(E) Funds appropriated under this subsection shall remain available until expended.

[(F) In recognition of the importance of educational programs and services, and the expansion of public radio services, to unserved and underserved audiences, the Corporation, after consultation with the system of public telecommunications entities, shall prepare and submit to the Congress an annual report for each of the fiscal years 1994, 1995, and 1996 on the Corporation's activities and expenditures relating to those programs and services.]

(B) There is authorized to be appropriated to the Fund, for each of the fiscal years 2007, 2008, 2009, 2010, and 2011, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the second fiscal year preceding each such fiscal year, except that the amount so appropriated shall not exceed—

(i) $416,000,000 for fiscal year 2007;

(ii) $432,000,000 for fiscal year 2008;

(iii) $450,000,000 for fiscal year 2009;

(iv) $468,000,000 for fiscal year 2010; and

(v) $487,000,000 for fiscal year 2011.

(C) In addition to any amounts authorized under any other provision of this or any other Act, there are authorized to be appropriated to the Fund, (notwithstanding any other provision of this subsection) specifically for transition from the use of analog to digital technology for the provision of public telecommunications services and for the acquisition or production of digital programming of local, regional, and national interest—

(i) $50,000,000 for fiscal year 2005;

(ii) $50,000,000 for fiscal year 2006;

(iii) $40,000,000 for fiscal year 2007;

(iv) $30,000,000 for fiscal year 2008; and

(v) $20,000,000 for fiscal year 2009.

(D) Funds appropriated under this subsection shall remain available until expended and shall be disbursed by the Secretary of the Treasury for obligation and expenditure as soon after appropriation as practicable. The Corporation shall distribute funds authorized by subparagraph (C) and allocated to public broadcast stations under this subsection as expeditiously as practicable when made available by the Secretary of the Treasury, and in a manner that is determined, in consultation with public radio and television licensees or permittees and their designated representatives.

(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 fiscal year basis.

(3)(A)(i) The Corporation shall establish an annual budget for use in allocating amounts from the Fund. Of the amounts appropriated into the Fund available for allocation for any fiscal year—

(I) $10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;

(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English or for assistance in the provision of affordable training programs for employees at public broadcast stations, and if the available funding level permits, for projects and activities that will enhance public broadcasting;

(III) 75 percent of the remainder (after allocations are made under subclause (I) and subclause (II)) shall be allocated in accordance with clause (ii);

(IV) 25 percent of such remainder shall be allocated in accordance with clause (iii).

(ii) Of the amounts allocated under clause (i)(III) for any fiscal year—

(I) 75 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations pursuant to paragraph (6)(B); and

(II) 25 percent of such amounts shall be available for distribution under subparagraph (B)(i), and in accordance with any plan implemented under paragraph (6)(A), for national public television programming.

(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.

(iv)(I) From the amount provided pursuant to clause (i)(II), the Corporation shall defray an amount equal to 50 percent of the total costs of interconnection facilities and operations to facilitate the availability of public television and radio programs among public broadcasts stations.

(II) Of the amounts received as the result of any contract, lease agreement, or any other arrangement under which the Corporation directly or indirectly makes available interconnection facilities, 50 percent of such amounts shall be distributed to the licensees and permittees of public television stations and public radio stations. The Corporation shall not have any authority to establish any requirements, guidelines, or limitations with respect to the use of such amounts by such licensees and permittees.

(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

(II) 25 percent shall be available for distribution for the purposes referred to in clause (ii)(II) and (III).

(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interest of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunications entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.

(ii) All funds available for distribution 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)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligation to expand the diversity and innovativeness of programming available to public broadcasting.

(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service, including carriage and viewing information for programs produced or acquired with funds provided pursuant to subclause (I). At the end of fiscal years 1992, 1993, 1994, and 1995, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.

(VI) The Corporation shall not contract to provide funds to any such independent production service, unless that service agrees to comply with public inspection requirements established by the Corporation within 3 months after the date of enactment of this subclause. Under such requirements the service shall maintain at its offices a public file, updated regularly, containing information relating to the service's award of funds for the production of programming. The information shall be available for public inspection and copying for at least 3 years and shall be of the same kind as the information required to be maintained by the Corporation under subsection (l)(4)(B).

(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.

(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).

(6)(A) The Corporation shall conduct a study and prepare a plan in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this Act with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.

(B) The Corporation shall make a basic grant from the portion reserved for television stations under paragraph (3)(A)(ii)(I) to each licensee and permittee of a public television station that is on the air. The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available. The balance of the portion reserved for television stations and the total portion reserved for radio stations under paragraph (3)(A)(iii)(I) shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria (which the Corporation shall review periodically in consultation with public radio and television licensees or permittees, or their designated representatives) 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.

(7) The funds distributed pursuant to paragraph (3)(A)(ii)(I) and (iii)(I) may be used at the discretion of the recipient for purposes related primarily ⟦to the production or acquisition of programming.⟧ *to the support of content, programming, and services, especially those that serve the needs and interests of the recipient's local community.*

(8)(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a state, a political or special purpose subdivision of a state or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are reasonably representative of the diverse needs and interests of the communities served by such station.

(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.

(D) In the case of any public broadcast station (other than any station which is owned and operated by a state, a political or special purpose subdivision of a State, or a public agency) 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 (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

(9) 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 in excess of reasonable compensation as determined pursuant to Section 4958 of the Internal Revenue Code for services that the officer or employee renders to organization,[1] and unless further assurances are provided to the Corporation that no officer or employee of such an entity will be loaned money by that entity on an interest-free basis.

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

[(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be approriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

[(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.]

(B) There are authorized to be appropriated to the Satellite Interconnection Fund $250,000,000 for fiscal year 2005. If the amount appropriated to the Satellite Interconnection Fund for fiscal year 2005 is less than $250,000,000, the amount by which that sum exceeds the amount appropriated is authorized to be appropriated for fiscal years 2006 through 2008 until the full $250,000,000 has been

[1] Section 701 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105–277, 112 Stat. 2681–389) amended "section 396(k)(9) of Title 47", which is not a codified title, rather than section 396(k)(9) of the Communications Act of 1934. The amendment refers to the "Internal Revenue Code" rather than the Internal Revenue Code of 1986. The amendment is effected in this report, but the reference to the Internal Revenue Code is not corrected.

appropriated to the Fund. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 2005 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

(ii) shall not be used for the 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.

(11)(A) Funds may not be distributed pursuant to this subsection for any fiscal year to the licensee or permittee of any public broadcast station if such licensee or permittee—

(i) fails to certify to the Corporation that such licensee or permittee complies with the Commission's regulations concerning equal employment opportunity as published under section 73.2080 of title 47, Code of Federal Regulations, or any successor regulations thereto; or

(ii) fails to submit to the Corporation the report required by subparagraph (B) for the preceding calendar year.

(B) A licensee or permittee of any public broadcast station with more than five full-time employees to file annually with the Corporation a statistical report, consistent with reports required by Commission regulation, identifying by race and sex the number of employees in each of the following full-time and part-time job categories:

(i) Officials and managers.

(ii) Professionals.

(iii) Technicians.

(iv) Semiskilled operatives.

(v) Skilled craft persons.

(vi) Clerical and office personnel.

(vii) Unskilled operatives.

(viii) Service workers.

(C) In addition, such report shall state the number of job openings occurring during the course of the year. Where the job openings were filled in accordance with the regulations described in subparagraph (A)(i), the report shall so certify, and where the job openings were not filled in accordance with such regulations, the report shall contain a statement providing reasons therefor. The statistical report shall be available to the public at the central office and at every location where more than five full-time employees are regularly assigned to work.

(12) Funds may not be distributed under this subsection to any public broadcasting entity that directly or indirectly—

(A) rents contributor or donor names (or other personally identifiable information) to or from, or exchanges such names or information with, any Federal, State, or local candidate, political party, or political committee; or

(B) discloses contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless—

(i) such entity clearly and conspicuously discloses to the contributor or donor that such information may be disclosed to such third party;

(ii) the contributor or donor is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(iii) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.

(13) Funds may not be distributed pursuant to this section to any public broadcast station unless it agrees that, upon request by the Corporation, at such time as it ceases to provide public telecommunications services or transfers or assigns its broadcast license or permit to an entity that will not provide public telecommunications services (as defined in section 397(14) of this Act), it will—

(A) return any or all unexpended funds for all grants made by the Corporation; and

(B) with respect to grants made by the Corporation during the prior 5 years for the purchase or construction of public telecommunications facilities, return an amount that is no more than an amount bearing the same ratio to the current value of such facilities at the time of cessation of public telecommunications service as the ratio that the Corporation's contribution bore to the total cost of purchasing or constructing such facilities.

Records and Audit

(*l*)(1)(A) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that such requirements shall not preclude shared auditing arrangements between any public telecommunications entity and its licensee where such licensee is a public or private institution. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons.

(B) The report of each such independent audit shall be included in the annual report required by subsection (i) of this section. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent author's opinion of those statements.

(2)(A) The financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers and property of the Corporation shall remain in possession and custody of the Corporation.

(B) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

(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 entites. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities.

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

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

(ii)(I) to undergo a biennial 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; or

(II) to submit a financial statement in lieu of the audit required by subclause (I) if the Corporation determines that the cost burden of such audit on such entity is excessive in light of the financial condition of such entity; and

(iii) to furnish biennually to the Corporation a copy of the audit report required pursuant to the 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, that 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 projects 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 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.

(4)(A) The Corporation shall maintain the information described in subparagraphs (B), (C), and (D) at its offices for public inspection and copying for at least 3 years, according to such reasonable guidelines as the Corporation may issue. This public file shall be updated regularly. This paragraph shall be effective upon its enactment and shall apply to all grants awarded after January 1, 1993.

(B) Subsequent to any award of funds by the Corporation for the production or acquisition of national broadcasting programming pursuant to subsection (k)(3)(A) (ii)(II) or (iii)(II), the Corporation shall make available for public inspection the following:

(i) Grant and solicitation guidelines for proposals for such programming.

(ii) The reasons for selecting the proposal for which the award was made.

(iii) Information on each program for which the award was made, including the names of the awardee and producer (and if the awardee or producer is a corporation or partnership, the principals of such corporation or partnership), the monetary amount of the award, and the title and description of the program (and of each program in a series of programs).

(iv) A report based on the final audit findings resulting from any audit of the award by the Corporation or the Comptroller General.

(v) Reports which the Corporation shall require to be provided by the awardee relating to national public broadcasting programming funded, produced, or acquired by the awardee with such funds. Such reports shall include, where applicable, the information described in clauses (i), (ii), and (iii), but shall exclude proprietary, confidential, or privileged information.

(C) The Corporation shall make available for public inspection the final report required by the Corporation on an annual basis from each recipient of funds under subsection (k)(3)(A)(iii)(III), excluding proprietary, confidential, or privileged information.

(D) The Corporation shall make available for public inspection an annual list of national programs distributed by public broadcasting entities that receive funds under subsection (k)(3)(A) (ii)(III) or (iii)(II) and are engaged primarily in the national distribution of public television or radio programs. Such list shall include the names of the programs (or program series), producers, and providers of funding.

(m)(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities. Such assessment shall address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report shall address programming (including that which is produced by minority producers), training, minority employment, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation. Such report shall include a summary of the statistical reports received by the Corporation pursuant to subsection (k)(11), and a comparison of the information contained in those reports with the information submitted by the Corporation in the previous year's annual report.

(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.

Subpart E—General

SEC. 397. DEFINITIONS.

[47 U.S.C. 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 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 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, 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.⟧

(14) The term "public telecommunications services" means noncommercial educational and cultural—

(A) radio and television programming or other content; and

(B) instructional or informational material (including data) transmitted electronically.

(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.

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