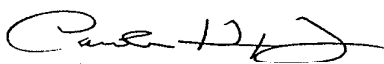




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Carole F. Huxley 

**COMMITTEE:** Full Board

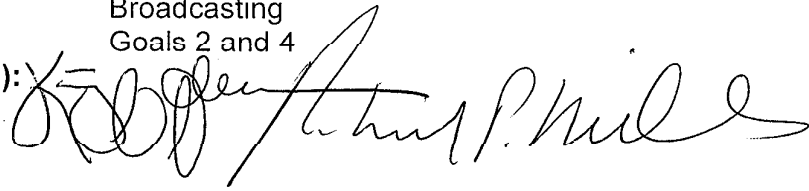
**TITLE OF ITEM:** Amendment of Part 179 of the Regulations of the Commissioner of Education – Apportionment of Funds to Educational Broadcast Councils

**DATE OF SUBMISSION:** February 24, 2003

**PROPOSED HANDLING:** Approval

**RATIONALE FOR ITEM:** Approval of proposed regulations regarding Public Broadcasting

**STRATEGIC GOAL:** Goals 2 and 4

**AUTHORIZATION(S):** 

**SUMMARY:**

Attached is a proposed amendment to Part 179 of the Regulations of the Commissioner of Education. Additional supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

The purpose of the proposed amendment is to:

- modify the methodology for determining how the annual appropriation for public television is apportioned among New York's nine funded public television stations;
- specify the reporting requirements to remain eligible to receive public funding; and
- update language from "instructional" services to "educational telecommunications" services to reflect current trends and practices in public broadcasting in New York State.

The nine public television stations have voted unanimously to support the recommended changes in the regulations. The primary reasons for the changes are that they: a) eliminate the provision which decreased or increased a station's share of matching funds based on its membership performance relative to other stations; b) provide the stations with a more predictable budget; and c) replace the language to accommodate the new technologies (e.g. internet and digital television).

A Notice of Proposed Rule Making was published in the State Register on December 31, 2002. The proposed amendment was discussed at the February Regents Meeting.

RECOMMENDATION: It is recommended that the Board of Regents take the following action:

VOTED: That Part 179 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 17, 2003.

Attachments

## **Recommended Changes to Regents Regulations Pertaining to Educational Broadcast Councils**

### **Distribution of Aid**

- Each council will receive a percentage of the total aid available based on a five-year average of aid received.
- The council owning WNET and WLIW will receive 55% of television aid in 2003-04; 53% in 2004-05; and 50% thereafter.
- Radio aid distribution will remain unchanged.
- 20% of State funding must be allocated directly to educational services excluding indirect costs.
- If two councils consolidate, the new council will receive the percentage that the two councils previously received.

### **Reports**

Reports required include:

- annual certified audit
- annual budget
- annual SED financial report
- annual education budget
- annual activities report
- quarterly financial reports
- quarterly education reports

### **Educational Telecommunications Committees**

- Changes description of services from instructional television for classroom/school use to telecommunications services for lifelong learners in service areas.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207 and 236

Part 179 of the Regulations of the Commissioner of Education is amended, effective April 17, 2003, as follows:

PART 179 APPORTIONMENT OF FUNDS TO EDUCATIONAL BROADCAST COUNCILS  
[AND ASSOCIATIONS]

Section 179.1 Definitions.

As used in this Part:

(a) Council means a Regents-chartered public television or public television and radio corporation designated by the department to provide a major broadcast station and production studio facilities in the municipalities of Binghamton, Buffalo, New York City, Plainview, Rochester, Schenectady, Syracuse, Watertown, Plattsburgh and any other municipality the commissioner may designate. Unless otherwise indicated, councils will be identified in this Part by the call letters of their primary broadcast television station as of June 1, 2002.

[(b) Association means a Regents-chartered broadcasting corporation designated by the department to provide a broadcast station with limited studio production capability as approved by the commissioner.]

[(c)] (b) Local educational agencies means public school districts, private schools, charter schools and boards of cooperative educational services.

[(d)] (c) Public radio corporation means a Regents-chartered group designated by the department to provide radio broadcast services within the State of New York.

[(e)] (d) Public radio station means a nonprofit and noncommercial radio station as defined under section 236(4)(f) of the Education Law.

Section 179.2 Amount of operating aid to councils.

The commissioner shall make a specific allocation of funds to each council. The amount of operating aid to each council shall not exceed the actual expenditures by each council for approved operating purposes as reported in the last available annual audit. [If, during the initial year of operation, a council operates a station for less than 12 months, the expenditures shall be computed on a 12-month basis, and aid shall not exceed such expenditures for a 12-month period.] Funds shall be apportioned to each council within the limitation set forth above and the limit of the appropriation therefor, and in accordance with the following [formula]:

(a) Base amount. The base amount to be allocated to each operating council shall be determined annually by the commissioner based on the amount of funds appropriated by the Legislature.

(b) Matching provisions. The remaining amount of the appropriation shall be apportioned according to each council's eligibility, to be determined by adding the amounts of revenues received by each council from local sources for approved operating purposes in the second fiscal year preceding the grant as described below.

(1) Adjusted nontax revenues. Each council shall be eligible to receive State aid equal to the total amount of money given to such council without restriction by individuals, businesses and foundations through memberships, donations, legacies, grants and the net income from special events to raise operating funds, up to a maximum of \$20,000 from each donor. Net income shall mean the gross dollars received by a council or association as a direct result of the special event, less expenses directly attributable to the special event in excess of normal station operating costs. Councils may also be eligible to receive State aid in an amount equal to each

restricted or designated purpose grant of \$20,000 or less which is given by a foundation, business or other source, provided that the department consents prior to the receipt of such grant.

(2) Local tax source revenues. Each council shall be eligible for State aid equal to 50 percent of the amount of each unrestricted grant for operating purposes which it receives from municipal corporations.

(c) Exceptions. In any year in which funds cannot be apportioned to each council in the amount for which such council is eligible in accordance with the provisions of subdivisions (a) and (b) of this section, within the limit of the appropriation for such purpose, each council shall receive the base amount as provided by subdivision (a) of this section and, from the remainder of such appropriation, an amount in the same proportion that the total amount of money received by such council, by any of the means set forth in subdivision (b) of this section, is to the total amount of funds received by all of the councils by such means.

(d) Limitation. No single council or association shall receive a total sum of more than 40 percent of the appropriation for ETV council grants available in any year.

(e) (a) Allocation. The allocation to each council shall be based upon: (1) five-year historical funding percentages; (2) consideration of need as a result of changing technology or the provision of new services; (3) emergencies or other exceptional circumstances affecting basic transmission or studio operations and/or state or federal requirements.

(b) Consolidation. (1) In the event the consolidation of two or more councils results in a single council serving the entire metropolitan New York City area and Long Island with broadcast service, it shall receive no more than 55% of the total monies available for public television in the first full year of operations; no more than 53% of the total monies available for public television in the second year of operations; and no more than 50% of the total monies

available for public television in the third year of operations. Each year thereafter, that council shall receive no more than 50% of the total monies available for public television.

(2) In the event that two or more councils shall consolidate into one council in a manner other than paragraph (1) above pursuant to an order of consolidation granted by the Board of Regents, [the sum of the base amounts that would have been separately apportioned to each constituent council, had such consolidation not occurred, shall be apportioned to the consolidated council for each of the two fiscal years immediately following the fiscal year in which such consolidation occurs. During] during the fiscal year in which such consolidation occurs, the consolidated council shall receive the sum of the full [base amounts and matching amounts] amount that each constituent council was apportioned at the start of such fiscal year. In subsequent years, the historical funding percentages of both councils shall be considered as well as the provisions of subdivision (1) of this section in the determination of the council's allocation.

Section 179.3 Schedule of payments.

(a) Each council [association] and public radio station shall be paid according to the following procedure:

(1) Reports required.

(i) Each council shall submit the following reports:

(a) An annual budget prior to the start of each fiscal year.

(b) An educational services budget prior to the start of each fiscal year.

(c) A certified audit within five months of the close of the fiscal year.

(d) An annual activities report within two months of the close of the fiscal year.

(e) A quarterly financial report within 30 days of the end of the quarter.

(f) The Education Department financial report within five months of the close of the fiscal year.

(g) A quarterly education report within one month of the close of the quarter.

(ii) Each radio station shall submit the following reports:

(a) An annual budget prior to the start of each fiscal year.

(b) A certified audit within five months of the close of the fiscal year.

(c) An annual activities report within two months of the close of the fiscal year.

(d) A quarterly financial report within 30 days of the end of the quarter.

(e) The Education Department financial report within five months of the close of the fiscal year. [Each council and public radio station shall submit, within five months of the close of its fiscal year, an annual audit certified by a public accountant and an annual activities report in a form acceptable to the commissioner. Each council and public radio station shall provide the commissioner with a quarterly report of operating expenses and general revenues, and a report of television and/or radio programming, unless additional and more frequent reports shall be required. Such reports shall be submitted on or before the last day of the month succeeding each quarter of a council's or public radio station's fiscal year. ]

(iii) The commissioner may require additional and more frequent reports.

(2) Payment schedule. State payments in any fiscal year to any council or public radio station pursuant to the provisions of this Part shall be made according to the following schedule:

On or before:

July 15 -- 60 percent of the grant amount

October 15 -- 30 percent of the grant amount

June 1 -- 10 percent of the grant amount



(b) Payment shall be made following the department's acceptance of all reports due the department at the time of payment.

Section 179.4 ETV council services.

(a) Educational services. Councils will provide educational telecommunications and outreach services for New York State citizens [instructional television broadcast service for regional school use]. The NYSED Office of Educational Television and Public Broadcasting shall oversee standards for regional telecommunications councils receiving annual State grants.

(1) Area [school] representation. Each council with [and] the local educational agencies in its coverage area will [mutually] develop an educational telecommunications service [instructional television service] committee, as described in section 179.5 of this Part, to represent educational interests and needs. The cooperating parties will mutually determine their respective operating responsibilities and procedures to fulfill educational responsibilities for their service areas [instructional broadcast service needs of area schools. Agreements shall be filed with the commissioner]. A list of educational [ITV] service committee officers and their addresses shall be [similarly] filed with the commissioner.

(2) Educational telecommunications services as required by the Commissioner will be provided at no charge except when such charges are specifically approved by the Commissioner. All schools in New York State may utilize telecommunications programming [instructional television broadcasts] and other related services, to meet the Commissioner's requirements at no cost to the schools unless such charges are specifically approved by the Commissioner.

(3) Joint Educational Telecommunications Service Committee [instructional television and service committee/ETV council] reports required. A quarterly report which indicates the working and cooperative relationship of the area educational telecommunications [instructional

television] service committee and the council shall be filed with the Commissioner. The report shall clearly indicate progress toward mutually agreed-upon plans to strengthen [instructional television] services in the coverage area and all activities as required for completion of the report form. This report shall be prepared and approved by the parties and filed with the commissioner 30 [15] days following the close of each fiscal quarter.

(b) General services.

(1) Cultural, informational and educational telecommunications and outreach services [programming]. Councils shall provide other general services to the citizens of New York State in the form of cultural, informational and educational telecommunications services [educational programming] with the remaining balance of the grant to each council.

[(2) Productions available to New York State. Councils shall make available without charge to all New York public television stations, and to the department for subsequent redistribution to all educational institutions in New York State, programs produced in whole or in part by the councils, provided the contractual rights thereto shall permit. Councils shall make every effort to secure these rights for New York State. Councils and their co-producers may retain all out-of-New-York-State program rights. When parts of a program are supplied by a non-tax-exempt production agency or media materials library, and will be a substantial part of a program under this section, the council shall notify the commissioner, who may waive the provision of department acquisition and redistribution for specified programs in the interest of greater State benefit.]

Section 179.5 Educational Telecommunications [Instructional television] service committee.

(a) Purpose. An educational telecommunications [instructional television] service committee shall be formed by each of the councils in each of the several regions of the State. The

geographical boundaries of each region shall be defined by the commissioner, based on State needs and on advice from the council in each region. Each committee shall mutually develop an educational [instructional television broadcast] service with the regional council [whose broadcast signal serves that region]. The committee(s) shall represent public and private schools and other educational organizations [all public and nonpublic schools] within that region, in order to meet the educational needs of learners [students attending those schools].

(b) Organization. Representatives from educational organizations must reflect the diversity and proportional representation of the region. Participating representatives shall elect the officers of the committee(s) and shall enact bylaws necessary for the operation of the committee(s). Each committee shall submit to the commissioner a plan for the committee to develop the lifelong learning goals/objectives and services of the council. Actions taken by the committee(s) shall be filed in the quarterly report to the commissioner. [The commissioner shall designate a district superintendent of schools in each region who shall act as a temporary chairman to convene representatives from all public and nonpublic schools of the region for the purpose of organizing an instructional television service committee. He shall encourage the full participation of all schools in the functions of the instructional television service committee and in the instructional services of the council. He shall encourage the development of a full and mutually cooperative relationship among all participating schools, boards of cooperative educational services and the councils. Participating representatives shall elect the officers of the committee and shall enact bylaws necessary for the operation of the committee, which shall include a provision for the designation of an executive committee not to exceed seven members and shall define the powers of that executive committee.] There shall be a permanent seat on the

executive committee for a district superintendent appointed by the commissioner. [Actions taken by the committee shall be filed in a report to the commissioner. ]

(c) Functions of the educational telecommunications [instructional television] service committee. The regional educational telecommunications [instructional television] service committee shall mutually plan the following with the regional educational [television] council management:

(1) Needs identification. The committee shall identify educational service [instructional television] needs of the region [participating schools].

(2) Program implementation [selection and scheduling]. The committee shall then identify the programs and services provided by the council, [which can be selected and scheduled from available library sources or through the production of new programs by the regional council and/or other cooperating production agencies.]

(3) Program/service evaluation. The committee(s) shall develop the requirements for a systematized evaluation of the use and effectiveness of the programs and services [programs broadcast] provided. Such evaluation shall be responsive to local, regional and State needs.

(4) Service evaluation. The committee(s) shall develop the requirements for a systemized evaluation of the use and effectiveness of the services to participating agencies. Such evaluation shall be responsive to local, regional and State needs.

(5) Communicate program concerns with other regions. The committee(s) shall determine the means to exchange program concerns and collaboration with other New York councils, regional educational telecommunications committees and the State Education Department [instructional television]. Such concerns and collaboration shall include [instructional television] production plans, program exchanges and the transmission of

educational programming [instructional programs] over the general broadcast or regional/statewide portals and platforms [New York network] in order to achieve common goals.

(d) Data collections shall be the responsibility of the individual councils in collaboration with their representative agencies. [BOCES provision of data collection service. The information required from participating schools, as provided by paragraphs (1) and (3) of subdivision (c) of this section, shall be gathered through existing data-gathering services presently in use by the region's board of cooperative educational services or by other agreed-upon means.]

Section 179.6 Capital grant aid.

[ L. 1978, ch. 53] Grants will be made by the commissioner to councils and public radio stations, within the limits of appropriations, for approved capital expenses: towers, antennas, transmitters, video and audio recorders, cameras, including related switching and control equipment. Such grants shall not exceed 50 percent of the [replacement] cost of approved equipment purchases. Eligibility to receive grants, and the amounts thereof, shall be determined by the commissioner in accordance with the criteria and schedule of payments in this section.

(a) Application for grants. A council or public radio station may apply for a capital grant [in each fiscal year for which the council or public radio station has submitted an application for a Federal capital grant under the Public Telecommunications Facilities Program, and] in years for which capital grant funds are appropriated by the Legislature. [In emergency situations, the commissioner may waive the requirement that a council or public radio station previously file application for a Federal grant. Applications shall be submitted on or before the 30th day of November in the year for which funds are appropriated.] Applications shall be made on forms

supplied by the commissioner, and shall set forth the information required by the commissioner to determine the need for a grant.

(b) Competitive nature of grants.

(i) Grants will be considered in order of the greatest need in accordance with the [priorities set forth below.] following criteria:

(1) the need for equipment to comply with FCC standards and regulations;

(2) the capacity to make accessible to the residents of the region educational services equal to those provided to other regions of the State by public broadcasting stations;

(3) replacement of equipment in which irreparable damage exists;

(4) equipment needed to provide cost savings to the station; and

(5) equipment that two or more stations will use in collaboration for greater fiscal efficiencies and programmatic effectiveness.

(ii) The commissioner, in examining the applications for grants, will seek to provide for the widest possible distribution of grants consistent with the availability of funds and purposes of the grant program.

[(1) Grants shall first be made at any time in which funds are available for capital projects of an emergency nature, in which existing equipment has suffered irreparable damage preventing basic transmission, control or studio operations;

(2) grants shall next be awarded for highly critical capital projects in which irreparable damage exists but for which alternate means can be employed to maintain basic operations;

(3) grants shall next be awarded for projects of an urgent nature in which a council's existing equipment has exceeded its useful life expectancy, as established by this subdivision, by two or more years; and

(4) grants shall then be awarded for the replacement of equipment which has met or exceeded the following useful life expectancies:

Equipment	Useful life
Tower	20 years
Antennas, transmitter	10 years
Recorders, cameras, control equipment	6 years]

(iii) The commissioner shall also consider each applicant's readiness and ability to provide the balance of funds required to complete the proposed project, and the applicant's need relative to other proposed projects necessary for the maintenance and advancement of the highest professional [broadcast] standards [, and the recency of previous Federal or State grants and resulting equipment purchases] for television and/or radio stations.

(c) Schedules. [Applications will be evaluated in December of each fiscal year in which capital funds are available following the announcement of Federal capital grants made to councils during the calendar year, except that in the fiscal year 1978-79 evaluations of applications will be completed by February 12th. The announcement of grant awards will be made no later than January 31st of the fiscal year, except that in fiscal year 1978-79 awards will be announced no later than February 12, 1979.] Payments shall be made according to the following schedule:

50% of grant amount : Upon receipt and approval by the commissioner of the equipment purchase contract between the vendor and the council or public radio station.

50% of grant amount: Upon acceptance of equipment as fully operational by the council or public radio station and inspection by the commissioner's designee to insure contract compliance.

Section 179.7 . . .

Section 179.8 . . .