

PENDING LEGISLATION AND OTHER PROPOSALS DEALING WITH
THE INDEPENDENT TELEVISION MAKERS

by Henry Goldberg

Although the assigned topic is pending legislation and other proposals dealing with independent television makers, there are provisions in existing legislation -- particularly the Public Telecommunications Financing Act of 1978 -- that are at least equally important.

In the legislative hearings leading to passage of the 1978 Act, independent television producers convinced the Congress that legislation was needed to assure independent producers access to Corporation for Public Broadcasting (CPB) program monies and to the interconnection system used to distribute programs to public television stations. For example, the Senate Report on the 1978 Financing Act states that:

The hearing record is replete with criticisms that public broadcasting is not open to the work of independent producers. Because the Committee does not believe it is possible to legislate creativity, the Committee resisted the notion of a specific set aside for independent producers of national programming. However, small producers deserve a more open marketplace for their product. It must be an important goal of public broadcasting to foster and support American talent and creativity.

Senate Report, p. 18. The Senate Report also notes that PBS' "combination of powers":

promotes a "closed system" in which independent producers may encounter substantial difficulties in securing the purchase or support of their programs, or national distribution of their programs, or both unless they offer their program through a PBS member station.

Senate Report, p. 21. Similarly, the House Report states that:

The problem [engendered by the "program funding bureaucracy"] is somewhat worse for the independent producer. Because the stations are the "backbone" of the system, and because they are "starved" for funds, there are few incentives for the system to pay for out-of-house production of programming. For this reason, independent producers have argued that they have been almost entirely excluded from public funding. This, despite the fact that they may be able to provide a better product at lower cost.

House Report, p. 33.

These Congressional concerns underlie the 1978 legislation, but also serve as the rationale for various pending proposals. The existing law and the pending proposals are outlined briefly below.

I. Public Telecommunications Financing Act of 1978.

A. CPB program funds.

The law authorizes CPB to make grants or contracts with independent producers and production entities for the production or acquisition of programs (§ 396(g)(2)(B)), and specifically directs that "a significant portion" of its funds be used for program production and, of those funds, "a substantial amount shall be reserved for distribution to independent producers and production entities . . .". (Section 396 (k)(3)(B)(i).) •

In explaining this provision, the House-Senate Conference Report states that:

In agreeing to the term "substantial amount" for independent producers, it is the conferees' intention to recognize the important contribution independent producers can make in innovative and creative new programming. By "independent producer" the conferees have in mind producers not affiliated with any public telecommunications entity and especially the smaller independent organizations and individuals who, while talented, may not yet have received national recognition. The talents of these producers have not been adequately utilized in the past. While setting aside a specific percentage of funds for this purpose would have removed discretion in the administration of the Corporation's funds, the conferees' fully expect the Corporation to take the necessary steps to increase the level of participation previously available to these smaller independent producers.

House-Senate Conference Report, p. 30.

B. Station program funds.

While the House subcommittee deleted earlier provisions that would have required stations to direct a "substantial amount" of their program funds to independent producers, the House Report makes clear that:

Even though this legislation does not require the stations to devote a substantial amount of their programming funds to independent producers, the committee strongly encourages the public broadcasting stations to provide them the fullest possible access consistent with their independent broadcasting judgment.

House Report, p. 13.

C. Access to interconnection system.

The 1978 Act provides that, if there is channel capacity of the public broadcasting satellite interconnection system remaining after usage by public telecommunications entities, such 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 telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities.

47 U.S.C. § 396(h)(2). The House Report explains that:
This provision is intended primarily to insure that entities other than public TV and radio stations (such entities include independent producers, university-based production centers, et cetera) will have access to unused capacity on the satellite interconnection systems' for public television and radio for the purpose of transmitting programming and related material directly to the stations.

House Report, p. 25.

11. NTIA Proposed Regulations.

The 1978 Financing Act also made changes in the Public Telecommunications Facilities Program (PTFP), which has been in existence since 1962 as a grant program supporting the construction of public broadcast facilities. The 1978 Act broadens the PTFP to make non-broadcast entities eligible for grants and to provide financial support for planning and for construction of non-broadcast facilities. Moreover, the Act shifts the administration of the PTFP from HEW to the National Telecommunications and Information Administration (NTIA), in the Department of Commerce.

Under regulations recently proposed by NTIA, non-profit tax-exempt production centers, such as media art centers, would be eligible for federal grant monies for planning, construction of facilities, and acquisition or lease of equipment. NTIA, however, has stated that an entity that is "exclusively a production center" and does not possess "the means of electronic distribution" of program services will not be eligible for grants. (44 Fed. Reg. 13262, 13263 (1979).) At this point, it is not clear how NTIA will interpret this requirement.

III. Carnegie Commission on the Future of Public Broadcasting.

The second Carnegie Commission, like the Congress, heard testimony from independent television producers to the effect that the present public broadcasting system is not sufficiently open to their programs. While not dealing specifically with this problem, the overall Carnegie proposal places great stress on the need to direct the bulk of federal monies in public broadcasting toward programming activities at the national and local levels.

Under the Carnegie proposal, a Public Telecommunications Trust would replace CPB. A Program Services Endowment would be established by federal statute as a "highly insulated, semi-autonomous" division of the Public Telecommunications Trust to be governed by a 15-member board appointed by the trustees of the Trust. The Carnegie Commission stated that the Endowment's funding activities should include support of "pilots, research production centers inside and outside the system for radio and television, individual program grants, national competitions and subsidies for existing programs." ("A Public Trust: The Report of the Carnegie Commission on the Future of Public Broadcasting," p. 164 (Bantam Books, April, 1979)).

Specifically, the Carnegie Commission referred to "complaints by independent producers about lack of access and attention." The Report states that the goal of bringing new talent into the broadcasting system:

requires the creation of formats balanced

between the differing needs of producers and stations. The Endowment might finance a Center for Independent Television, whose job would be to develop broadcast formats that can take advantage of the range of talent among independent producers. This Center would develop contacts with the full range of independents, and provide a WATS telephone number for easy communication. The Center's mission would include the establishment of fair selection procedures, financing, support in understanding the system, rights negotiations, and a variety of related services for and communications with independent producers in both radio and television.

Carnegie Report, pp. 168-69.

IV. H.R. 3333 -- House Communications Act "Rewrite."

The most comprehensive proposal to change the public broadcasting system, including that system's relationships with independent producers, is contained in H.R. 3333 -- the Communications Act "Rewrite" in the House of Representatives'. Title VI of the bill would create an Endowment for Program Development in place of CPB. The proposed legislation stresses Federal support for program production rather than "for station operating support and facilities construction. The Endowment would be funded under a permanent annual authorization equalling \$1.50 multiplied by the number of U.S. residents for the year. Governed by a nine-member board, three of whom to be Presidentially-appointed, the Endowment would have among its principal purposes the responsibility "to diversify the sources from which educational, informational, and cultural television and radio programs and services may be obtained for dissemination to the public." (Section 641 (a) (3).) The Endowment is authorized to provide financial assistance, in the form of grants and contracts, to:

Program production entities, including broadcast stations, national, regional and other systems of broadcast stations, independent producers and independent production entities, and others providing electronic mass media services. (Section 642(1).)

As required of CPB under the 1978 Financing Act, the Endowment is directed to reserve a "substantial amount" of its program funds "for distribution to independent producers and production entities for the production of programs," and to use panels of experts to evaluate program proposals. (Sections 643(c)(1) & (3).)

In a departure from both existing law and earlier "rewrite"

proposals, in referring to programming, the bill does not use the term "noncommercial" programs, recognizing that program distribution, rather than content, determines what is noncommercial. This recognition is related to another provision of H.R. 3333, which states that programs funded by the Endowment are available for commercial distribution following a one-year period during which public broadcasting stations have exclusive access to the programs (Section 644). After the year, the program rights revert to the producer, who may make the program available to any one, although the Endowment can negotiate to receive a percentage of the sub-

sequent revenues.