

MEMORANDUM

T0: Terry Clifford Station Resource Group
FROM: John Crigler Garvey Schubert & Barer
DATE: October 2003
RE: Community Advisory Boards Requirements for CPB Stations

This memo outlines the requirements of the Communications Act concerning Community Advisory Boards.

A. What is a Community Advisory Board?

A Community Advisory Board (or CAB) is a board established to review the programming and significant policy decisions of a CPB-funded public broadcast station, and to advise the station on how it serves the educational and cultural needs of its coverage area. A CAB may *not* exercise control over the daily management or operation of the station.

B. Who must have a CAB?

In order to receive funds from CPB, public broadcast stations must have a CAB, *unless* the station is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency. Section 397(16) of the Communications Act defines a “State” to include the District of Columbia, and American Trusts and Territories. Thus, such licensees as states, cities, or counties, or state-created entities such as boards of regents, are *not required* to establish a CAB, although they are encouraged to do so.

The CAB statutory requirements are the result of a Congressional compromise. The Senate version of the Omnibus Budget Reconciliation Act of 1981 (S.720) deleted the CAB requirements for all public broadcast stations. The House version retained the requirement for all stations (HR 3238). The resulting act adopted the House version, but limited the requirement to so-called “community licensees,” that is licensees not owned and operated by a State, its subdivisions or a public agency.

C. How is a CAB chosen?

The Communications Act leaves to the discretion of the broadcast station such matters as the size of the CAB, the criteria by which CAB members are selected, and the decision as to whether the CAB will undertake any duties in addition to the advisory duties assigned to it by the Communications Act. The Communications Act provides only that a CAB, distinct from the governing board of the licensee, be established; that the CAB meet regularly; that CAB members regularly attend the meetings; and that the CAB be “reasonably representative of the diverse needs and interests of the communities served” by the station.

D. Are CAB Meetings Required to be “Open”?

Yes. Any CPB-funded broadcast station, and “any advisory body of any such organization,” must hold “open meetings preceded by reasonable notice to the public.” A “meeting” is an event at which a quorum is present, at which “deliberations” take place, and at which the deliberations result in some sort of action (the “joint conduct or disposition of the governing or advisory body’s business”). This definition of “meeting” allows board retreats or social functions which are not required to be open to the public. Meetings otherwise required to be open may also be closed to consider a variety of matters where a public meeting could cause financial or legal injury. These include personnel matters, proprietary information, matters requiring the confidential advice of counsel, commercial or financial information obtained on a privileged or confidential basis, and the purchase of property of service.

E. Comment.

Because CAB and open meeting requirements are general in nature, CPB-funded stations are given a great deal of latitude in deciding how to satisfy these requirements. The principal limitation is that the station’s approach must be reasonable. For example, the open meeting requirement requires that “all persons” be allowed to attend an open meeting. CPB recognizes that limitations of physical space may make it impractical to satisfy this requirement literally, and therefore allows reasonable solutions to the problem, such as choosing meeting spaces that will accommodate substantially more people than the CAB members themselves or, if there is an overflow, of using some method of random selection to determine who will be allowed to attend. Although, if there is

an overflow, meetings must be open unless they address a matter appropriate for a closed session, CPB also recognizes that emergency situations may arise. In such circumstances it may be necessary to meet by phone, without prior notice to the public.

The principle of reasonableness is sometimes the only guidance a station has. For example, CABs are required to meet at “regular intervals.” A common sense interpretation of that requirement is more often than once a year, but less than once a week. Within these limitations, a station could probably justify monthly or quarterly meetings. Similarly, although there are no specific requirements as to the size of a CAB, it plainly seems unreasonable to establish a CAB with only one or two members.

F. Consequences of violating CAB requirements.

The Communications Act provides that “funds may not be distributed” to public broadcast stations that do not comply with CAB requirements. The consequences of violating CAB requirements may thus be loss of all CPB funding -- at least until the violation is cured.

G. Implementation of the Requirements.

Section 396(k)(8) of the Communications Act sets forth the requirements concerning a CAB, but leaves implementation of these requirements largely to the discretion of CPB-funded stations.