Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Television Table of	)	
Allotments to Delete Noncommercial	)	MM Docket No. 01-276
Reservation on Channel *16, 482-488 MHz,	)	Facility ID Number 41314
Pittsburgh, Pennsylvania	)	

REPORT AND ORDER

Adopted: July 11, 2002 **Released: July 18, 2002**

By the Commission: Chairman Powell and Commissioners Abernathy and Martin issuing a joint statement; Commissioner Copps dissenting and issuing a statement.

1. At the request of WQED Pittsburgh (QED), licensee of noncommercial educational television stations WQED(TV), Channel *13, and WQEX(TV), Channel *16, Pittsburgh, Pennsylvania, the Commission has before it a *Memorandum Opinion and Order and Notice of Proposed Rulemaking* (*MO&O/NPRM*),[1] proposing to amend the Television Table of Allotments to remove the reservation for noncommercial educational use of Channel *16.[2] Upon dereservation of the channel, QED states that it intends to sell WQEX(TV) to ShootingStar, Inc., an entity which has agreed to pay QED $20,000,000 to acquire WQEX(TV) as a commercial station. As discussed more fully below, QED intends to use the proceeds from the sale of WQEX(TV) to pay off its debt, convert WQED(TV)'s facilities from analog to digital, make needed repairs to the company's physical plant, and create a permanent local programming endowment. We also have before us comments and reply comments filed by QED and ShootingStar in support of dereservation, and by the Alliance for Progressive Action and Pittsburgh Citizens for Independent Public Broadcasting (Alliance/CIPB) in opposition.[3] For the reasons set forth below, we grant the proposal to dereserve Channel 16 in Pittsburgh.

Procedural Background

2. This is QED's second request that the Commission dereserve Channel *16 to permit its sale as a commercial facility. QED initiated service on reserved Channel *13 in 1954, and in 1958, successfully petitioned the Commission to assign a second reserved channel to Pittsburgh so that it could enlarge the classroom and home instruction service offered on WQED(TV).[4] According to QED, although the original purpose of WQEX(TV) was to broadcast instructional television into classrooms, the advent of new technologies and services, such as the video cassette recorder, the Instructional Television Fixed Service, satellite-delivered "distance learning," and in-school computer networks able to

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[1] 16 FCC Rcd 18164 (2001).

[2] 47 C.F.R. §§ 73.606 (NTSC channels) and 73.622 (DTV channels).

[3] The Commission has also received hundreds of letters and email correspondence from station viewers commenting on QED's proposal.

[4] The Commission initially assigned the reservation to Channel 22, but later moved the reservation to formerly commercial Channel 16 at QED's request. *See Amendment of Section 3.306, Table of Assignments, Television Broadcast Stations (Pittsburgh, Pennsylvania)*, 17 RR 1568d (1958), 17 RR 1563, 1565 (1958).

access the Internet, eliminated the need for full-time classroom instruction by over-the-air broadcast stations.

3. In 1996, Congress passed the Department of Justice and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), which included a provision authorizing, but not requiring, the Commission to dereserve Channel *16, within 30 days of receipt of a petition by QED, without conducting a rulemaking proceeding or opening the channel to general application. QED filed a petition on June 24, 1996, urging the Commission to dereserve Channel *16, and permit its sale as a commercial facility, as a means of alleviating the company's financial distress.[5] In support, QED submitted audited financial statements which showed that the company had an unrestricted net asset deficit of $6.1 million as of June 1, 1995, and that current liabilities exceeded current assets by $9.5 million. In addition, QED owed $6.4 million on its revolving credit line with Mellon Bank, and had been forced to borrow $4.5 million from QED's permanently restricted endowment fund in 1996 to provide working capital and repay a portion of the bank debt. QED also stated that it had $2.9 million in overdue accounts payable, for a total current debt of $14.5 million.

4. In addition to the bank debt and overdue accounts payable reported in the audited financial statements, QED also disclosed that it would use the proceeds of the sale to pay a contingent obligation to Cornerstone TeleVision, Inc., the licensee of WPCB-TV, Channel 40, Greensburg, Pennsylvania, pursuant to a May 1996 agreement between the parties. Under the terms of the agreement as described by QED, Cornerstone, a non-profit organization, would exchange its Channel 40 for Channel *16 and operate on Channel *16 as a noncommercial educational station, thereby allowing QED to sell Channel 40 to a commercial buyer. In consideration for Cornerstone's agreements relating to the exchange, QED agreed to pay Cornerstone $7.5 million upon the closing of an assignment of license of WQEX(TV) to a commercial buyer, which would obviate the need for a channel exchange.[6]

5. In its decision acting on QED's 1996 dereservation petition, the Commission acknowledged that QED was in "severe financial distress," and that special public interest justifications could be presented that would support dereservation. *Deletion of Noncommercial Reservation of Channel *16, Pittsburgh, Pennsylvania*, 11 FCC Rcd 11700 (1996). The Commission concluded, however, that dereservation was not warranted under the circumstances, primarily based on the fact that:

> [D]ereservation is [not] necessary to relieve the financial distress of WQED or to alleviate the threat of losing or impairing local public television in Pittsburgh. Rather, it appears that other options are available to WQED to resolve its financial crisis. A significant factor in this regard is the apparent availability to WQED of substantial financial assistance through an agreement it has reached with Cornerstone, a non-profit organization, which Petitioner asserts would fit our

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[5] When QED filed its first dereservation petition, WQEX(TV) was airing a mixture of PBS programming, some of which duplicated, on different days and time periods, programming also carried on WQED(TV), as well as syndicated entertainment programming such as "Perry Mason," "The Honeymooners," and "Lawrence Welk," without commercials. 1996 Petition to Delete Noncommercial Reservation at 6-7. However, in connection with that proceeding, QED indicated that it anticipated that duplication of the stations' programming would "increase dramatically beginning in the fall, when due to the Corporation for Public Broadcasting's nationwide restructuring of its Community Service Grants, WQED Pittsburgh will receive a single grant for fewer dollars than its current grants (one each for WQED and WQEX.)" As a result, QED anticipated that it would be able to acquire even less separate programming for WQEX(TV), and would be able to take only a single PBS membership for both stations, reducing available air time for separately programming WQEX(TV). 1996 Reply Comments at 17-18.

[6] The agreement also provided that if the parties proceeded with the channel exchange, and QED assigned Channel 40 to a commercial buyer, the net proceeds of the sale would be divided between QED and Cornerstone.

> noncommercial licensing criteria, that would not require us to dereserve Channel *16 or to otherwise reduce the number of noncommercial stations allotted to Pittsburgh.

Id. at 11710. Accordingly, the Commission denied QED's petition, and invited it to file applications for Commission consent to the station assignments contemplated in the Cornerstone agreement.

6. Approximately a year later, QED, Cornerstone and Paxson Pittsburgh License, Inc. (Paxson) filed applications for assignment of WQEX(TV) from QED to Cornerstone, and assignment of WPCB-TV from Cornerstone to Paxson, which were opposed by the Alliance, QED Accountability Project, and hundreds of viewers. Several months after the assignment applications were filed, Alliance filed a separate petition requesting that the Commission institute an early renewal proceeding against QED, based upon QED's announcement that it would begin simulcasting the two stations in November 1997.[7] Although the Commission denied the petitions to deny, informal objections, and petition to institute an early renewal proceeding, and granted the two assignment applications, with conditions, *WQED Pittsburgh*, 15 FCC Rcd 202 (1999), *vacated in part*, 15 FCC Rcd 2534 (2000), Cornerstone terminated its agreements with QED and Paxson and the transactions proposed in the assignment applications were not consummated.

7. QED filed its second dereservation petition a year later, on January 9, 2001, contending that Public Law 104-134 still authorized the Commission to act on a dereservation petition. QED also asserted that there were ample grounds to delete the noncommercial reservations for Channel *16 and its paired DTV channel. In support, QED stated that it still "faces the same basic financial constraints that necessitated its initial dereservation effort in 1996." QED further argued that the decline in local support for Pittsburgh public television and the rise of alternative media sources for educational programming support dereservation. QED also contended that the Commission's earlier decision rejecting the 1996 dereservation petition was not dispositive here, as the Commission's holding "was based in substantial measure on the existence of the Cornerstone alternative plan and in any event acknowledged that, in special circumstances, dereservation would be appropriate."

8. While the Commission disagreed with QED's position that Public Law 104-134, an appropriations bill for fiscal year 1996, continued to provide a basis upon which to consider QED's second dereservation petition, it did conclude that it was procedurally possible to effectuate the proposal through a rulemaking proceeding coupled with a license modification under Section 316 of the Communications Act of 1934, as amended, should the public interest be found to warrant dereservation of Channel *16 and modification of QED's license.[8] Accordingly, the Commission adopted the *MO&O/NPRM* seeking comment on: (1) QED's present financial condition; (2) the likelihood that QED's ability to serve the educational needs of its community will be substantially impaired, absent the sale of WQEX(TV) as a commercial station; (3) the Pittsburgh area's economic ability to continue to support two donor-reliant NCETV stations; (4) whether the Pittsburgh community no longer needs two NCETV stations to meet its educational and cultural needs; (5) whether the need for an additional commercial television channel in Pittsburgh outweighs the need for a second NCETV station; and (6) if the channel is dereserved, whether unique public interest considerations and benefits in the case outweigh the benefits of entertaining competing applications for a new commercial channel in Pittsburgh.

[7] QED also announced that it was expanding the hours of operation of WQED(TV), to accommodate the addition of the most popular programming that had been aired on WQEX(TV).

[8] Section 316 of the Act provides that "[a]ny station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity . . . ."

Summary of Comments

9. As the Commission observed in connection with QED's first dereservation request, QED is the licensee of highly regarded noncommercial educational television stations in the Pittsburgh market, and has been a recognized leader in the production of educational programming.[9] QED believes, however, that its "unparalleled half-century of service can only continue if the Commission allows QED to unlock the value of WQEX as proposed in the Dereservation Petition [and use] the net proceeds from such a sale [to] retire QED's enormous debt inherited from prior management, endow a local programming fund, and provide essential funding for QED's operations, thereby promoting the public interest by securing the future of community-based public television in Pittsburgh . . . ."[10] QED states that it intends to use the proceeds to pay approximately $9 million in outstanding debt, construct WQED(TV)'s digital facilities and make needed renovations to its physical plant, at a cost of over $5 million, and to establish a permanently restricted programming fund with the remainder of the proceeds. QED also states that the sale of WQEX(TV) will enable it to expand its participation in on-going educational initiatives with PBS and other educational institutions, and to more fully develop the WQED Learning Center, a multi-media initiative intended to promote literacy and disseminate educational programming over the Internet. According to QED, the sale of WQEX(TV) will also ensure that it will be able to take full advantage of the multicasting possibilities of digital technology in the near future, permitting it to offer not only the traditional PBS feed on WQED(DT), but also separate streams of programming focusing on university credit courses, distance learning, statewide workforce development, and programming addressing local and national minority issues and public affairs.

10. The *MO&O/NPRM* identified the two ultimate issues raised by QED's dereservation request – whether, based on the Commission's findings in this proceeding, the circumstances warrant a waiver of the Commission's policy disfavoring dereservation of television channels reserved for noncommercial educational use, and if so, whether the circumstances also warrant a waiver of the requirement that newly dereserved channels be made available for competing applications. In its comments, QED disagrees that its burden in seeking a waiver of the Commission's dereservation policy is substantial, arguing that the policy articulated in the *1996 Dereservation Order* and *MO&O/NPRM* has been relaxed by several recent Commission decisions. For instance, QED claims support from the Commission's decision to "eliminate hundreds of vacant noncommercial NTSC reserved allotments in connection with the transition to DTV," another case involving a change of channel reservations in Buffalo, New York, and the Commission's expressed willingness in its 700 MHz proceeding to approve voluntary band clearing agreements proposing to dereserve existing allotments. QED also argues that a waiver of the requirement that newly dereserved channels be made available for the filing of competing applications is unnecessary because that policy has been reversed by the Buffalo, New York case, other rulemaking proceedings pursuant to the Commission's policy permitting intra-band channel swaps between commercial and noncommercial licensees, as well as the 700 MHz proceeding. Alliance/CIPB disagree.

11. The *MO&O/NPRM* also requested that interested parties provide information on a number of subjects to assist the Commission in making factual findings. The subjects include QED's present financial condition and its impact on QED's ability to serve the educational needs of its community, the Pittsburgh area's ability to continue to support two noncommercial educational television stations, and whether there is a greater need to retain the reservation of the second reserved channel or to allot a new commercial channel.

[9] For example, QED produced the acclaimed *National Geographic Specials*, as well as *The Infinite Voyage*, *WonderWorks*, *Mister Rodgers' Neighborhood* and *Where in the World is Carmen Sandiego?*

[10] QED Comments at 4-5.

12. QED's Present Financial Condition: QED acknowledges that its most recent financial statements indicate an improvement in the company's financial condition since the filing of its first dereservation petition six years ago. Although the company's revenues have declined 26% since 1993, expenses declined by 34%; QED's revolving credit debt to Mellon Bank has been reduced from $7,000,000 in 1996 to $1,675,000 in 2000;[11] total liabilities have declined from $16,911,633 in 1996 to $8,036,899,[12] and unrestricted net assets (the amount QED owes to itself due to earlier draws on its Program Development Seed Fund), declined from $8,891,071 in 1996 to $4,682,981 in 2001. Moreover, between 1997 and 2000, QED was able to generate a surplus of approximately $5.3 million, primarily through the one-time sale of assets.[13]

13. Despite these improvements, and the fact that QED posted a net unrestricted operating gain of $116,000 during the most recent 12 month reporting period – the second consecutive fiscal year in which it was able to report a modest revenue surplus – these improvements and small gains "pale in comparison with the approximately $9 million current debt figure," leading QED to conclude that "the debt inherited from past management remains so enormous that there is only one realistic means by which it can be erased – through the sale of WQEX as a commercial station." In addition, QED faces the expenditure of millions of dollars to convert its transmission, master control and production facilities to a digital format, and to make repairs to its aging office and studio facility. While it has explored other options to increase its revenues, QED states that it does not have adequate funds to produce programming for sale and distribution, as it has in the past, and has also found its ability to raise revenues through corporate underwriting significantly hampered because of its outstanding debt.[14] KPMG LLP, QED's independent auditor, which has included a going concern uncertainty disclosure with each of its reports on QED's financial condition since at least 1996,[15] also concludes that the [s]uccessful, timely completion" of management's plans, including specifically the sale of WQEX(TV) to a commercial interest, is "critical and essential to the improvement of the financial condition of the Company."[16]

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[11] Mellon Bank has agreed to extend the revolving credit agreement through December 31, 2002. According to QED, "the credit line essentially functions to balance working capital needs driven by WQED's operating cycle."

[12] This figure includes the Mellon Bank account, $1.3 million in deferred revenue on uncompleted project and underwriting contracts, the establishment of a $475,000 reserve in connection with pending litigation, and $1.145 million payable to PBS for FY 1999 programming. According to the notes to the most recent financial statements, QED has negotiated a deferred payment plan with PBS and is "currently paying vendors at approximately 120 days."

[13] Part of the surplus is comprised of a one-time gain of $3,310,076 from the sale of QED's WonderWorks Film Library, and a $1,000,000 expiration fee paid by Paxson in connection with the proposed sale of WQEX(TV) to Cornerstone, which basically offset restructuring costs QED incurred since 1996 in connection with its efforts to sell WQEX(TV).

[14] According to QED, several large foundations have refused to contribute money to QED until it is debt free, and other foundations that continue to support QED frequently give smaller amounts than they would if there was no QED debt.

[15] KPMG explains that in preparing financial statements, the going concern concept assumes that, absent information to the contrary, the audited entity will continue to operate for a reasonable period into the future, with no intention or necessity to liquidate or materially curtail its scale of operations. According to KPMG, once it is determined there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, "one must consider management's plan for dealing with the adverse effects of the conditions and events [and] whether it is likely the adverse effects will be mitigated for a reasonable period of time and that such plans can be effectively implemented." Comments of WQED Pittsburgh at Exhibit B.

[16] QED Comments at Exhibit A.

14. Alliance/CIPB argues that QED's financial problems are the result of questionable management decisions, in the late 1980's and early 1990's, to continue investing heavily in national program production when corporate funding and other guaranteed sources of funding had been scaled back, and that QED's prior attempts to dereserve or sell WQEX(TV) demonstrate its intent to serve its own self-interest to the detriment of the public. Moreover, QED's claim of financial distress is much less compelling than in 1996, when the Commission denied QED's first dereservation petition, in part because there was no clear and present threat to the public of losing local public broadcast service, or its impairment. Alliance/CIPB also argue that QED has overstated its financial distress, in that $4.5 million of its alleged debt is owed to QED's Program Development Seed Fund and does not have to be repaid. They assert that QED has also inflated the amount it needs for DTV conversion and future upgrades, and that since all noncommercial licensees face similar challenges in paying for the conversion to digital, the burden of DTV conversion can hardly be viewed as a unique circumstance warranting a break in the Commission's strongly-held policy against dereservation. Alliance/CIPB also maintain that there are several available alternatives to address QED's financial problems, including selling *Pittsburgh Magazine* for as much as $5 million,[17] reducing executive salaries,[18] issuing bonds, filing for bankruptcy, and collecting advertising on ancillary services provided on the stations' excess digital capacity pursuant to *Noncommercial Licensee Ancillary DTV Services Proceeding*.[19]

15. QED disagrees that it has mischaracterized its financial distress. With respect to the $4.5 million it owes to its Program Development Seed Fund, QED acknowledges that the notes to its financial statements indicate that "the Company intends to repay these funds; however, that repayment is ultimately dependent upon the successful implementation" of the sale of WQEX(TV). However, QED explains that before it borrowed from this donor-restricted fund, "certain capital campaign donors were approached who informally agreed to permit the temporary use of a portion of the donated funds for current operating purposes, with the clear understanding that these amounts would be replenished." It further states that "to be deserving of public support in the future, QED must honor its obligations of the past." With respect to Alliance's suggestion that QED sell *Pittsburgh Magazine* as an alternative to dereservation, QED states that while the magazine generates substantial income for QED, it "might bring little on the open market because its circulation numbers are not subscription-based (i.e., the magazine is a QED membership benefit.") Reply Comments at 23. Finally, as to the suggestion that QED file for bankruptcy, QED earlier explained that bankruptcy is not a viable interim option, because "the public confidence necessary to sustain a nonprofit institution dependent on public largesse could never be restored."[20]

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[17] In support, Alliance cites to a 1995 article in the *Pittsburgh Post-Gazette*, reporting that QED's board chair estimated that the magazine could be valued as high as $5 million. Comments at 18.

[18] According to Alliance/CIPB, in 1998, the top nine QED executives were paid 25 percent more than the average compensation paid to executives of the Philadelphia NCETV station, and more than 70 percent greater than the average compensation paid to public television executives in St. Louis, Missouri, the 22nd ranked DMA. They state that if QED reduced its salaries to an amount comparable to the St. Louis market, it would save $1.3 million a year. In response, QED asserts that these proposed salary reductions would unfairly penalize the present officers who have worked to correct prior management's mistakes, and that QED's salaries are on par with those paid to public broadcasting officials in other comparably sized markets such as Miami, Florida, Portland, Oregon and Hartford, Connecticut. According to QED, to the extent the QED salaries may be higher than those of other public television stations, "any nominal difference can be attributed to the fact that QED executives manage a multi-media enterprise comprised of television, radio, magazine and Internet operations." Finally, QED asserts that even if it did reduce these salaries by some 30 percent to match the St. Louis levels, the savings to QED would be approximately $560,000, not the $1.3 million estimated by Alliance/CIPB. Reply at 25.

[19] *Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, 16 FCC Rcd 19042 (2001).

[20] 1996 Petition at 9.

16. Likelihood of Substantial Impairment of QED's Ability to Serve Pittsburgh's Educational Needs. According to QED, its steadily declining revenues and its outstanding debt have greatly reduced its ability to produce local programming to meet the needs of its community, and has required it to postpone development of a number of programming initiatives. With respect to programming it currently produces, QED states that its financial condition makes their continuation uncertain, and also fails to allow for needed production enhancements and promotion. QED's budget deficit has also forced the company to drastically reduce its workforce, from 188 employees in 1993 to 98 employees in 2000, which significantly impairs QED's ability to serve the Pittsburgh community, in terms of both programming and community involvement. In addition, QED faces a shortfall of millions of dollars to complete digital conversion and make facility improvements, exacerbating its financial distress.

17. Alliance/CIPB agrees that service has been impaired because the stations are now being simulcast, but disagrees that simulcasting is financially necessary, arguing that "QED is holding the channel hostage in an attempt to exploit a public trust for profit" and to influence a favorable decision on its dereservation request. They also assert that simulcasting the stations has not saved money, because the Pennsylvania Public Television Network ceased providing its $425,000 annual grant for WQEX(TV) shortly thereafter, so that simulcasting "appears to be aimed at making the public forget about Channel *16 as a programming source so as to reduce the amount of outcry over its sale." Moreover, because there is no clear and present threat that the stations will go off the air, Alliance/CIPB argues that, consistent with the Commission's 1996 decision, dereservation is not warranted. Alliance/CIPB concludes that simulcasting disserves the public interest, and argues that the Commission should make the channel available to other noncommercial educational organizations, since "one or more entities would be certain to apply."

18. In response, QED argues that the "no clear and present threat" finding made by the Commission in 1996 was based upon the totality of circumstances, and not just the level of QED's debt. Indeed, one of the most significant circumstances was the existence of the Cornerstone agreement as an alternative to dereservation. Moreover, QED asserts that the Commission's finding was made before QED's financial distress "forced reluctant management to simulcast programming on Channels *13 and *16, and to postpone several local programming initiatives." Not only has QED's financial condition drastically impaired service, it will continue to do so, in the opinion of QED's auditors, absent the "[s]uccessful, timely completion" of management's plans, including specifically the sale of WQEX(TV) to a commercial interest, which is "critical and essential to the improvement of the financial condition of the Company."

19. Pittsburgh's Economic Ability to Support Two Donor-Reliant NCETV Stations. QED states that "Pittsburgh's decline over the past forty years as a center of industry, commerce and population is unique in its severity, and has fundamentally (and permanently) altered the ability of the city and its surrounding areas to support both WQED and WQEX." According to QED, Pittsburgh's economic decline began in the 1960's when its economy shifted from one centered on heavy industry to one based on services and technology, leaving Pittsburgh with an outdated industrial base, a reduced labor force, and no "export-oriented" businesses to spur growth in the region. In the aftermath, numerous corporations which were headquartered in Pittsburgh either went out of business or were absorbed by other companies,[21] and the population of Pittsburgh plummeted by 50 percent, from 676,806 in 1950 to just

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[21] QED states that for many years, Pittsburgh was home to the third-largest concentration of Fortune 500 headquarters in the country, after New York and Chicago, and that U.S. Steel and Gulf Oil were the third and eighth largest corporations in the country when WQED(TV) began operations. Today, U.S. Steel successor USX ranks 51st, while Gulf Oil is no longer in existence. According to QED, other major corporations that went out of business or left Pittsburgh include Westinghouse Electric, Rockwell International, National Steel, Crucible Steel, Jones & Laughlin Steel, Pittsburgh Steel, Koppers Company, Allegheny Ludlum Industries, Dravo Corporation, Cyclops Corporation, Copperwell Corporation, and the Pennsylvania Railroad.

336,882 in 1999. QED claims that the mass exodus of corporations and citizens has led to a substantial decrease in the base of financial support available to QED, and that the loss of financial support from Gulf Oil and the Westinghouse Foundation was especially critical since those companies underwrote the National Geographic programming produced by QED. While the Pittsburgh region has taken some initial steps towards diversifying its economy, QED believes it unlikely that the region will ever regain its former stature as a business center, and results of the 2000 Census indicate that out of the top 42 metropolitan areas, only the Pittsburgh metropolitan area population continues to decline, to 2,358,695 in 2000 from 2,394,811 in 1990, despite an overall 13.2 percent population increase in the United States and a 3.4 percent increase in the Commonwealth of Pennsylvania. QED also states that in the top 130 metro areas, only six showed a population decline, and that four of those areas -- Dayton, Ohio, Syracuse, New York, Scranton, Pennsylvania, and Youngstown, Ohio -- do not support two public television stations. In the fifth market, Buffalo, New York, the Commission approved a change in the reservations for noncommercial educational use to permit the licensee of those stations to retain the more powerful commercial channel, and sell its station that was on the reserved channel for financial reasons.

20. Alliance/CIPB submit an economic assessment from Paul R. Flora, an economic analyst and professor, who opines that the Pittsburgh economy has actually diversified and improved, and thus, continues to be able to support two NCETV stations. Flora acknowledges that while the population and number of corporate headquarters has declined, [22] total personal income and area corporate revenues, when adjusted for inflation, have actually increased, providing greater financial resources for funding donor-dependent stations. Alliance/CIPB also point out that at least 61 of the 210 ranked DMAs have two or more noncommercial stations, and 49 of those are in markets with a lower DMA ranking than Pittsburgh.

21. In response, QED argues that even if area wages have risen over the past twenty years, "that does not mean that the average Pittsburgh citizen today is in any position financially to help support WQEX."[23] QED states that the 2000 Census Supplementary Survey shows only 8.43 percent of households in the Pittsburgh region had incomes of $100,000 or more in 2000, compared to the national average of 12.13 percent, and that this difference is significant because higher-income households traditionally support public television in greater numbers than lower-income households. Moreover, the median household income in the Pittsburgh area ($37,220) lags behind the U.S. median ($41,349), as does the median value of owner-occupied homes ($85,596 for the Pittsburgh region versus $120, 496 for the nation). Finally, QED points to the record number of bankruptcies filed in western Pennsylvania during 2001 (more than 15,000), an increase of almost 18 percent over the number of filings in 2000, which, QED contends, strongly suggests that many area citizens simply lack the wherewithal to help support two noncommercial public television stations.

[22] While the number of corporate headquarters has shrunk since 1960, Alliance/CIPB point out that Pittsburgh still ranks ninth among cities with Fortune 500 corporate headquarters, and that the total corporate revenue of these corporations headquartered in Pittsburgh, adjusted for inflation, is much greater than the corporate revenue in 1960. Alliance/CIPB also complain that QED has not shown that it has used its best efforts to get further funding from these corporations. In response, QED claims the because non-profit entities raise more money where potential funds are widely dispersed among funding sources than when they are concentrated in the hands of a few, successful fundraising requires a large, diverse pool of potential donors, and a drop in the number of corporations headquartered in Pittsburgh translated directly into a drop in contributions. However, "QED continues to make every effort possible to tap into the corporate funding sources that remain." Reply Comments at 30.

[23] QED argues that Flora overstates the case when he says that Pittsburgh workers are better off today, citing to a report in the Pittsburgh Economic Quarterly, published by the University of Pittsburgh, that wage growth in the region was last among the 25 largest metropolitan areas from 1999-2000, and that when adjusted for inflation, actually decreased by one percent over that time period. QED also points out that it was recently reported that the Alliance's Executive Director stated that some 311,000 Allegheny County residents (nearly 25 percent of the population) "are unable to afford food, housing, health care and other basic needs."

22. With respect to Alliance/CIPB's assertion that almost 50 markets smaller than Pittsburgh apparently are able to support two or more noncommercial educational stations, QED asserts that this comparison ignores the fact that most of these noncommercial stations are not operated by community licensees, but instead are held by state networks and universities, which, QED claims, is "a significant fact because major costs of operating such stations are borne by the state or university itself." In contrast, "QED does not have that luxury, and must instead rely heavily on the businesses, foundations and citizens of Pittsburgh to fund its operations."

23. Pittsburgh's Continued Need for Two NCETV Stations. QED argues that Pittsburgh no longer needs two NCETV stations in light of the wealth of alternative sources of educational programming which were not available nearly half a century ago when the second channel was reserved at Pittsburgh. While at one time broadcast television was the only means to disseminate educational programming to the classroom and home, numerous alternatives now exist, including in-school computer networks with access to both CD-ROMS and the Internet, the Instructional Television Fixed Service (ITFS), satellite delivered "distance learning," VCRs and DVDs, cable television, Direct Broadcast Satellite (DBS), the Multichannel Multipoint Distribution Service, and computer software. QED also states that Pittsburgh schools participate in programs incorporating other media sources, such as The AT&T Learning Network and Cable in the Classroom (CIC). QED describes CIC as a cable industry initiative that provides schools with free access to educational television programs by means of a free cable hookup and free continuing cable television service from national program networks such as the Discovery Channel, the History Channel and CNN. In addition, QED contends that it has embraced technologies that can more efficiently and effectively fulfill its educational mission than its continued operation of WQEX(TV), and that when it inaugurates both digital operations on WQED and its Learning Center, it will be able to fully serve the educational and cultural needs of the Pittsburgh area without reliance on a second reserved television station. QED also concludes that any public interest value in retaining the reserved allotment is limited by the fact that QED's financial condition forces it to simulcast the two stations, while in contrast, the dereservation and sale of WQEX(TV) will result in a more self-sufficient QED, which can make substantially enhanced locally-oriented noncommercial educational programming available to the Pittsburgh market on WQED(DT).

24. Alliance/CIPB argue that Pittsburgh still needs two stations, in that the newer technologies cited by QED are not universally available, nor are they free of charge or commercial-free, as is NCETV programming. They also argue that these new technologies offer little, if any, locally originated or oriented content, and that QED's stated reliance on DTV technology to increase educational service to the public is misplaced, since most consumers do not have access to DTV equipment and "the digital transition has stalled." Moreover, they claim that public opinion strongly favors retaining a second NCETV channel, as evidenced by the hundreds of letters written by viewers opposing the loss of WQEX(TV) and calling for the return of its former programming, which they characterize as more diverse than the programming now aired. Alliance/CIPB also assert that almost three-fifths of Americans have access to two or more public television channels because of significant overlap of station signals in two markets, but that Pittsburgh is not served by any educational stations other than WQED(TV) and WQEX(TV). Finally, Alliance/CIPB cite to a study commissioned by PBS in 1989 on the effect of a second noncommercial station on the first such station in the market,[24] which, they claim, found that secondary stations' program schedules were "more diverse," their managers "more responsive to local audience needs," and their overall operations "more faithful to the vision of service to local communities through diverse program offerings . . . ."

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[24] According to Alliance/CIPB, PBS commissioned this study in response to complaints from large market stations that secondary stations pay less for industry programming, fragment the public television audience, and siphon off subscriber dollars.

25. In response, QED argues that Alliance/CIPB would have the Commission ignore the revolutionary technological and marketplace changes wrought by the near-universal availability of cable, DBS, the Internet, videotapes, and other sources of educational programming, and that it is the existence of all of these sources collectively which renders unnecessary a second noncommercial educational television station in Pittsburgh.[25] QED also submits letters and email correspondence from a number of elected officials,[26] educators,[27] cultural organizations, business leaders,[28] entities involved in public broadcasting,[29] and viewers, supporting dereservation and the sale of WQEX(TV) as the best means of ensuring the continuing broadcast of high quality educational programming to meet the needs of Pittsburgh. Finally, QED disputes the allegations that QED "has shown no interest in . . . local program service programming on Channel *13," and describes in detail programming it produces and airs which it believes is "directly and broadly respond to local interest and concerns, such as *On Q* (a nightly magazine show), *Black Horizons*, *AgeWise*, and the Pittsburgh History series."[30]

26. <u>Whether the Need for an Additional Commercial Channel Outweighs the Need for a Second NCETV Station</u>. Pittsburgh is the 21st largest DMA, and has three commercial VHF and four commercial UHF allotments, while most comparably–sized and many smaller DMAs have more commercial allotments. According to QED, the need for an additional commercial voice in Pittsburgh is also reflected in the recent agreements between Paxson, AT&T Broadband, and Adelphia, to distribute Pax TV network programming via cable, because there is no available commercial channel for Paxson to acquire or affiliate with. QED also asserts that the sale of WQEX(TV) to ShootingStar will foster local and female ownership of broadcast facilities, consistent with the Commission's long-established goals of enhancing competition and diversity in the broadcast marketplace.

27. Alliance/CIPB again assert that public opinion favors maintaining the current reservations in Pittsburgh, and also argue that the fact that the proposed assignee, ShootStar, is controlled by Diane Sutter, an experienced broadcaster and former resident of Pittsburgh, is irrelevant to the issue of whether dereservation of Channel *16 is in the public interest. Alliance/CIPB maintain that even if the Commission dereserves the channel, there is no guarantee that ShootingStar would acquire the license, and that while QED touts the benefits of local ownership, neither QED's or ShootingStar's comments indicate that Ms. Sutter will move back to Pittsburgh after a thirteen year absence. Alliance/CIPB also

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[25] ShootingStar also states that since a second channel was reserved in 1958, "the development of educational broadcasting has taken a markedly different course than was originally envisioned [i.e., classroom instruction], in tandem with the sweeping and permanent changes that have taken place in the electronic media landscape." According to ShootingStar, "the role of the non-commercial licensee has changed as well, from being primarily a conduit for expanding the availability of instruction to being a primary source of educational program production and funding."

[26] These include both U.S. Senators from Pennsylvania, four members of the U.S. House of Representatives representing southwestern Pennsylvania, several members of the Pennsylvania Senate and House of Representatives, the Chief Executive of Allegheny County, and the Washington County Commissioners.

[27] These include Carlow College, the Greater Pittsburgh Literacy Council, Duquesne University, the Community College of Allegheny County, and the Pittsburgh Public Schools.

[28] QED submits letters from officials with the local African American Chamber of Commerce, the Allegheny County Labor Council, AT&T Broadband, the Pittsburgh Pirates, Highmark Blue Cross Blue Shield, Kennametal, Inc., DHR International, and Sargent Electric Company.

[29] The Corporation for Public Broadcasting the Pennsylvania Public Television Network Commission, The Children's Television Workshop, and the Association of Public Television Stations all support dereservation and the sale of WQEX(TV).

[30] Reply Comments at Exhibit C.

speculate that because Ms. Sutter "has a history of turning broadcast licenses into successful investment vehicles," she will likely sell the station for a quick profit.[31]

28. In its reply comments, ShootingStar asserts that dereservation of Channel *16 will not only provide QED with a "badly needed infusion of cash to support its primary mission of providing quality public broadcasting," dereservation carries with it the additional benefit of providing another allotment for commercial operation in Pittsburgh, where such channels are in short supply relative to the size of the market. According to ShootingStar, when the Commission reserved spectrum for educational use, the outlets for broadcast television programming numbered just a few, and station operators endeavored to capture the largest audience by gearing programs to the widest possible segment of the mainstream, in order to gain advertiser support. ShootingStar further states that "[i]t was in this environment that the reservation of spectrum for specific categories of programming made the most sense." However, as the overall number of commercial television stations, as well as cable and satellite television channels, have increased, "the major broadcast networks have increasingly targeted programming to different demographic groups, including women, minorities and families with children," and viewers in a market where the number of allotted commercial channels is relatively small, may be deprived of some of the diversity that television now offers.[32]

Discussion

29. Before considering whether to grant a waiver of the Commission's policy disfavoring dereservation of noncommercial educational stations,[33] we first must address QED's contention that this policy has been reversed by several recent Commission decisions in the ongoing DTV and 700 MHz proceedings. QED is wrong. Our policy, which is based on our continued recognition of the value of noncommercial educational television service, remains intact. In the DTV proceeding, the Commission initially stated that it intended to protect vacant spectrum reserved for NCETV use, and anticipated that "only as a last resort will we delete a reserved channel . . . ."[34] Later, in adopting the Table of Allotments for DTV, the Commission deleted all existing vacant NTSC allotments, but "replace[d] existing vacant noncommercial NTSC allotments with new noncommercial reserved DTV allotments where feasible."[35] The Commission also stated that "[a]fter the transition, we also will consider establishing additional noncommercial reserved allotments on recovered spectrum for those existing vacant noncommercial allotments that cannot be replaced at this time." *Id.* Although this adopted approach required a balancing of the Commission's goals of advancing DTV service with protecting available spectrum for educational use, it did not signal a relaxation of Commission policy disfavoring dereservation and did not result in the dereservation of any channels occupied by NCE stations.

30. Nor did the Commission reverse its policy disfavoring dereservation when it adopted voluntary band-clearing mechanisms to facilitate the clearing of the 740-806 MHz band, in order to allow for the introduction of new wireless services and to promote the early transition of analog television

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[31] Alliance/CIPB also point out that QED's agreement with ShootingStar provides that in the event of a subsequent sale of WQEX(TV) or transfer of control of ShootingStar, QED will be entitled to a portion of the sale proceeds from WQEX(TV), up to $10 million.

[32] ShootingStar also devotes a significant portion of its reply comments criticizing a plan apparently advertised by Pittsburgh Educational Television (PET), to acquire and operate Channel *16 as a second noncommercial educational television station. PET, however, did not file comments in this proceeding, and there is no request now before us that we permit PET to acquire WQEX(TV).

[33] *See 1996 Dereservation Order*, 11 FCC Rcd at 11707-11710.

[34] *Second Report and Order/Further Notice of Proposed Rulemaking*, 7 FCC Rcd 3340, 3350 (1992).

[35] *Sixth Report and Order*, 12 FCC Rcd 14588, 14639 (1997).

licensees to digital television service.[36] To the contrary, the Commission's conclusion that voluntary band-clearing agreements that would result in the loss of a community's sole service on a reserved channel would not qualify for a presumption favoring grant clearly reflects our intent to protect and preserve existing noncommercial educational service by carefully weighing the public interest effects of dereservation proposal even in the context of band clearing. Thus, we emphasize here that our policy disfavoring dereservation of reserved noncommercial educational channels has not changed, and that only under compelling circumstances will we consider deviation from this policy.

31. When analyzing a request for a waiver of Commission rules or policies, agency rules are presumed valid, and "an applicant for waiver faces a high hurdle even at the starting gate."[37] A rule or policy may be waived where the particular facts make strict compliance inconsistent with the public interest.[38] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[39] Waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule or policy, and such deviation would better serve the public interest than strict adherence to the general rule.[40]

32. The record shows that QED remains in severe financial distress. Although QED's financial condition has improved somewhat since 1996, through reduction of its outstanding debt from $14.5 million to approximately $9 million, much of this improvement was the result of a series of cost-saving measures, including reducing employment at the station by almost half, and drastic cuts in existing programming and new programming initiatives.[41] The remainder of the improvement in QED's financial condition resulted from the liquidation of available assets, when QED sold its *WonderWorks* library and an unneeded warehouse in 1998, and it does not appear from the record that any additional significant measures remain to be taken,[42] or that there are sufficient additional assets remaining to be sold, other than WQEX(TV).[43] Moreover, after having taken all of these measures, QED's revenues still barely

[36] The Balanced Budget Act of 1997, 47 U.S.C. § 337(a), mandates that the Commission reallocate the 746-806 MHz band for new wireless services. However, because Congress also protected incumbent broadcast use in the band until the close of the DTV transition, 47 U.S.C. § 337(d), the Commission concluded that the public interest would be served by permitting incumbent broadcast licensees to move out of the band prior to the conclusion of the DTV transition period, in order to expedite the full commercial and public safety use of the 700 MHz spectrum specified in Section 337 of the Act, in the event that the broadcaster's proposal would not have an undue adverse effect on the public's overall receipt of broadcast service. *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules; Carriage of the Transmissions of Digital Television Broadcast Stations; Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 (2000); *Third Report and Order*, 16 FCC Rcd 2703 (2001); and *Order on Reconsideration of the Third Report and Order,* 16 FCC Rcd 21633 (2001), *petition for reconsideration pending.*

[37] *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972).

[38] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[39] *WAIT Radio*, 897 F.2d at 1157.

[40] *Northeast Cellular*, 897 F.2d at 1266.

[41] Total expenses were reduced from a high of $38,265,000 in fiscal year 1991 to $18,377,244 for fiscal year 2001, which resulted in a decline of programming production and distribution revenue from $24,624.000 to $4,915,963 during that period.

[42] Alliance contends that if QED reduced the salaries of its top nine executives by 25%, it would save $1.3 million a year. Comments at 19. We are not persuaded that QED's executive salaries are exc essive, and we agree with QED that reducing these salaries would not materially improve its financial condition.

[43] With respect to the suggestion that QED sell *Pittsburgh Magazine* as an alternative to dereservation, even if QED were able to sell the magazine for $5 million, as Alliance/CIPB suggest, this amount would not be sufficient to alleviate QED's financial difficulties. It would be inappropriate to discount QED's substantial showing of financial

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exceeded its expenses during the past two years, indicating that in the foreseeable future, QED can expect little, if any, excess revenue from operations to apply towards debt reduction or conversion of its stations to DTV. In its reply, Alliance/CIPB argue that QED has failed to explore raising additional revenues through commercial, ancillary use of its excess capacity. However, the amount of income a noncommercial educational station may raise in the future through the sale of excess digital capacity is uncertain.

33. We disagree with Alliance/CIPB that QED has inflated the amount of its debt or otherwise misrepresented its financial condition. With respect to the argument that at least half of QED's debt should not be considered because it is a debt owed to QED's Program Development Seed Fund, QED states that the funds donated were subject to donor-imposed stipulations that they be maintained permanently by QED. Although QED obtained some donors' consent to borrow from the fund for working capital, QED represents that permission was conditioned upon QED's pledge to replenish the fund. Under the circumstances, we agree with QED that the $4.5 million figure is a *bona fide* debt that should be repaid at some time. With respect to Alliance/CIPB's claim that QED has also exaggerated the amount of money it will need to convert to DTV and make repairs to its aging facilities, we find that QED was fully forthcoming regarding the availability of federal and state grants to meet these costs, but that even with this assistance, it will still have a shortfall of several million dollars to meet its anticipated construction costs.

34. While QED remains in financial distress, as in 1996, it does not assert that it is in immediate danger of going dark. However, unlike the circumstances present in 1996, QED now has no comparable alternative to dereservation to resolve its severe financial difficulties. In denying the earlier dereservation request, the Commission found the existence of QED's agreement with Cornerstone to be "a significant factor" in its decision, because unlike dereservation, the channel exchange allegedly "would fit our noncommercial licensing criteria."[44] As noted in the *MO&O/NPRM*, while QED sought to implement the agreement, Cornerstone ultimately terminated the agreements and the transactions proposed in the assignment applications never were consummated. Now that implementation of the Cornerstone agreement no longer is a viable option, we attach great significance to the fact that both QED's present management and KPMG - the two entities arguably most familiar with QED's financial difficulties - have concluded, that after six years of extensive changes in the stations' operations and the sale of other available assets, the sale of WQEX(TV) continues to remain crucial to the improvement of QED's financial condition.

35. We find that QED has shown on this record that it is in sufficient financial distress that it has diminished ability to provide service to the people of Pittsburgh. Further, we conclude that the record shows this financial distress is likely to continue into the future and hamper QED's DTV transition. Although Alliance/CIPB argue that QED's decision to simulcast the two stations in 1997 resulted in an impairment in educational service, they assert that QED's decision was not based upon financial considerations, but was instead intended to bolster QED's argument that a second reserved channel was not needed. The record shows, however, that at the time QED made the decision to simulcast, it had a working capital deficit of almost $9 million, its expenses exceeded it revenues by nearly $6 million for the previous two years, and WQEX(TV) was no longer eligible for a grant from the Corporation for Public Broadcasting. Under the circumstances, we cannot agree that QED's decision to simulcast in 1997, and to continue simulcasting to the present, was merely strategic rather than the direct result of its financial distress. Moreover, the deep reductions in QED's work force and funds available for program

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distress on such a speculative notion. Moreover, for the five years ending 2001, the magazine has generated profits in excess of $2.5 million, and thus, is an important source of ongoing income to QED.

[44] 11 FCC Rcd at 11710. *See also* 11 FCC Rcd at 11715 (concurring statements of Commissioners Chong and Quello).

production and distribution, from over $10 million in 1996 to just $3.8 million in 2001, have clearly affected QED's ability to serve the educational needs of the Pittsburgh region. Although QED has continued to produce and air programming that directly responds to local interests and concerns – programming which earned QED nine regional Emmy nominations and four awards in 2000 – it believes that its ability to continue to do so is very much in doubt, and that without a significant infusion of money, QED "will become a mere passive retransmitter of others programmatic initiatives."[45]

36. It is apparent that QED's financial condition has also impaired its ability to convert to DTV, produce educational programming to be aired on its digital facilities, and to otherwise take full advantage of the enhanced services which digital facilities may provide. In a February 9, 2001, letter supporting the dereservation and sale of WQEX(TV), the Pennsylvania Public Television Network Commission (PPTN), the agency with oversight of NCETV stations licensed in Pennsylvania, states that QED "is lagging behind other Pennsylvania stations in converting to digital," explaining that:

> The reason: financial problems. Although PPTN has been the conduit for some Pennsylvania tax dollars for station conversion to digital television, WQED needs another seven million dollars to fulfill its FCC-mandated conversion obligation. A financially stronger WQED will enable it to invest in programming and other new technologies which will benefit not only western Pennsylvania but the entire state because WQED is interconnected to the Pennsylvania Network. . . . It is imperative that WQED have the financial capacity to broadcast digitally at the same time as the other Pennsylvania public stations so that Pennsylvanians can receive the benefit of important content and valuable new service.

QED Reply Comments at Exhibit A.

37. In the event it is permitted to sell WQEX(TV) as a commercial station, QED pledges that it will use the proceeds of the sale not only to eliminate its outstanding debt, but also to fund a permanently restricted trust to support programming initiatives, and to construct WQED(DT) and digital studio facilities. QED also represents that it will then multicast WQED(DT) to offer not only a PBS feed, but also three other separate streams of programming, including educational programming as well as programming addressing local and national minority issues and public affairs. Thus, we conclude that dereserving Channel *16 will allow QED to upgrade WQED(TV) to digital service and to improve broadcast service to the public. Although Alliance/CIPB assert that the Commission should give no weight to QED's proposed future operation of WQED(TV) because such proposals are not binding, we note that in adopting Section 1.420(h) of the rules, the Commission stated that "a public station requesting approval of a proposed [channel] exchange agreement is expected to assure the Commission, in the course of the rule making proceeding, that the proceeds will be devoted to activities related to the operation of the noncommercial licensee."[46] While QED's petition was not filed pursuant to our Intra-band Exchange policy, it has made the same commitment – to use the proceeds of any sale of WQEX(TV) to support the operations of WQED(TV)/WQED(DT) – and the Commission relies upon QED's commitment here, as it relies on similar commitments made in connection with intra-band rulemaking proceedings.

38. Given QED's continuing financial distress, we also sought comment on the Pittsburgh region's economic ability to adequately support two donor-reliant noncommercial educational television stations. It is undisputed that the Pittsburgh area economy suffered a severe downturn during the 1980's, and that QED failed to adequately respond at first to this downturn by reducing expenses. These events resulted in the severe financial distress which led Congress, in 1996, to direct the Commission to act on QED's initial dereservation petition within 30 days without opening the channel to competing

[45] QED Comments at 2.

[46] *Intraband Television Channel Exchanges*, 59 RR 2d at 1464.

applications. Although the region's economy is recovering, the results of the 2000 Census indicate that the population of the Pittsburgh region continues to decline, despite an overall 13.2 percent population increase in the United States and a 3.4 percent increase in Pennsylvania, and that the region's median household income lags some 9 percent behind the U.S. median household income. Moreover, as QED points out, even if Alliance/CIPB is correct that over the past twenty years, area wages have risen when adjusted for inflation, that has not resolved QED's financial situation. The audited financial statements submitted by QED show that contributions from viewers have declined significantly over the past several years, strongly indicating that the region is no longer able, or willing, to support two noncommercial educational television stations.[47] For fiscal year 1994, viewers contributed $6,715,658 to QED, compared to $5,483,898 for fiscal year 2001, or a decline of 20 percent. Corporate and other underwriting also declined 30 percent, from $1,300,526 in 1994 to $914,584 for 2001.

39. Many of the local commenters supporting dereservation agree that the Pittsburgh region can no longer support two donor-reliant noncommercial educational television stations. Several members of the Commonwealth House of Representatives state that "the current economic climate makes it impossible for WQED Pittsburgh to continue to operate its two noncommercial stations at the same time," an opinion seconded by the Dean of the Duquesne University Graduate School of Business, the President of the African American Chamber of Commerce, the Executive Director of the Greater Pittsburgh Literacy Council, and the President of Kennametal. Similarly, the Executive Vice President and Managing Director of the Pittsburgh Symphony Orchestra states that "[w]here once the Pittsburgh community could afford two donor-supported stations, economic realities make this impossible today," while the Sr. Vice President of Highmark Blue Cross Blue Shield attributes QED's fiscal woes as "due in part to the shrinking of the corporate donor base in Pittsburgh." While Alliance/CIPB assert that QED's inability to raise sufficient funds is the result of its being "out of touch with the community," we have no reason to believe that QED is not using its best efforts to solicit contributions.

40. We also find that the record does not indicate that a second reserved channel continues to be necessary for meeting the educational and instructional needs of the Pittsburgh educational community. The Commission originally allotted a second channel at Pittsburgh largely for the broadcasting of instructional programming into classrooms, a programming service no longer necessary given the use of ITFS, the CIC program available to Pittsburgh schools, computers, and other technologies and services which have evolved since 1958. Moreover, as a result of its financial condition, QED has been simulcasting the two stations since 1997. Alliance/CIPB's comments present no information demonstrating that the needs of Pittsburgh's educational community are going unmet by the two stations,[48] nor do they present any factors justifying the continued need for the simulcasting of WQEX(TV). Our conclusion also relies upon the fact that, upon consummation of the sale of WQEX(TV) to a commercial buyer, QED will now have the resources to complete its conversion of WQED(TV) from analog to digital, and be able through multicasting to provide multiple streams of educational and instructional programming. In short, we find that QED has demonstrated that it will better serve the Pittsburgh community if it is one strong NCE station with sufficient financial resources to

[47] In connection with its 1996 petition, QED accounted for the drop in contributions to the availability of cable television, in that "competition from cable TV has made fundraising more difficult for WQED by providing some alternative sources of children's and educational programming."

[48] In 1996, WQEX(TV) was programmed primarily to duplicate educational programming carried on WQED(TV) at different hours, and to offer entertainment programming. While some viewers complain about the loss of programming carried on WQEX(TV), according to QED, most of the locally produced programming that was carried on WQEX(TV) was shifted to WQED(TV) when simulcasting began and WQED(TV) expanded its daily hours of operation. And while WQEX(TV) no longer offers the availability of an alternative time schedule of PBS programming as it did prior to simulcasting, the widespread use of video cassette recorders in television households provides a substitute to such a service.

construct digital facilities and produce educational programming than it would be if it continues to have two under-funded and struggling stations.

41. With respect to our conclusion that the continued use of the second channel is no longer necessary to meet the broader educational and cultural needs of the overall Pittsburgh community, we do not agree with QED that dereservation is warranted solely because of the proliferation of alternative program distribution sources, such as cable, DBS and the Internet. As Alliance/CIPB point out, not all of these sources, such as cable and broadband, are geographically available to all of the television households in the market. Moreover, many television households that would benefit from educational programming either cannot, or do not, subscribe to cable, DBS or broadband services. Rather, our conclusion is based on balancing the needs and abilities of QED, given its financial condition and the community from which it derives its support, to continue to operate two donor-reliant noncommercial educational stations. QED has demonstrated that upon the sale of WQEX(TV) and initiation of service on WQED(DT), it will be able to substantially increase the amount of over-the-air educational programming offered at no direct cost to the community. Thus, it will significantly improve the availability of programming. Moreover, in reaching our conclusion that Pittsburgh no longer needs a second reserved channel, and that Pittsburgh's population and economy are no longer able to support two donor-reliant noncommercial educational stations, we attach great significance to the views of QED's present Board of Directors and management, which have struggled over the past several years to keep the company in operation and serve the educational and cultural needs of its community, as well as the PPTN and the Corporation for Public Broadcasting, which have provided funding for the station and are familiar with the funding challenges faced by public television stations. We are also greatly influenced by the region's elected federal, state and local officials', educators', and business leaders' support for QED's dereservation request, since they are most aware of the economic and educational issues in the region.[49] In addition, while Alliance/CIPB assert that the community needs and can support a second noncommercial reserved channel, it does not attempt to rebut the conclusion of QED's auditors, that the sale of WQEX(TV) is "critical and essential to the improvement of the financial condition" of QED, nor does it offer any real alternative to dereservation. We also find it significant that no educator or non-profit organization expressed any interest in this proceeding to take over the operation of WQEX(TV), or offered concrete suggestions on how a licensee might successfully operate a second noncommercial educational station in Pittsburgh, given QED's financial struggles over the past six years.

42. Dereserving the channel will not cause a reduction in public television's coverage area in western Pennsylvania, since the City Grade, Grade A and Grade B contours of WQEX(TV) are entirely encompassed within those of WQED(TV), indicating that all persons who receive WQEX(TV) also receive the WQED(TV) signal.[50] Thus, every viewer in WQEX(TV)'s coverage area will continue to receive educational service from WQED(TV).

43. It also appears that the Pittsburgh market would benefit from the additional of another commercial channel. With only seven commercial channels, Pittsburgh has fewer commercial outlets than comparable DMAs. For example, Indianapolis, Indiana, the 26th ranked DMA, has 13 commercial channels; Orlando-Daytona Beach-Melbourne, Florida (21st ranked DMA) has 12; Raleigh-Durham, North Carolina (29th ranked DMA) has 10; Sacramento-Stockton-Modesto and Hartford-New Haven (19th and 27th ranked DMAs) each have 9; and Portland, Oregon (23rd ranked DMA), Charlotte, North Carolina

[49] United States Senators Specter and Santorum, who sponsored the legislation in 1996 which authorized the Commission to dereserve Channel *16 without conducting a rulemaking proceeding or opening the channel for competing applications, continue to believe that the sale of WQEX(TV) is critical "to shore up WQED and thereby assure the future of public broadcasting in western Pennsylvania."

[50] 1996 Petition at Exhibit 1.

(28th ranked DMA) and Kansas City, Missouri (30th ranked DMA) each have 8 commercial channels.[51] In dereserving Channel *16, Pittsburgh will gain an additional commercial voice, adding to the diversity of programming in the community.[52]

44. In sum, we believe all of these circumstances, taken together, support the requested waiver. We disagree with Alliance/CIPB that our earlier decisions denying requests to dereserve Channel *9 at Ogden, Utah mandate the same result here. With respect to the Ogden dereservation request,[53] the licensee requested partial dereservation to permit commercial operation when the station was not being used for in-school training. In refusing that request, the Commission noted that the licensee had not yet sought the assistance of the Corporation for Public Broadcasting or made other reasonable efforts to alleviate its financial problems. That is, as when QED first sought dereservation, there were options other than dereservation available to the Ogden licensee.[54] Later, after the station had gone dark, a second request for partial dereservation was made based on the failure of both noncommercial educational stations licensed to Ogden.[55] The Commission again denied dereservation, finding that there were good prospects for the resumption of educational service on Channel *9 because of population increases and revenue growth in the surrounding county and substantial increases in both federal assistance and noninstitutional support to public broadcasting;[56] factors which are not present here. Moreover, much has changed in the television market since 1979, when the Commission made that decision. For example, as noted above, QED faces significant challenges to convert to DTV.

45. We do not believe that our decision here to dereserve a channel being operated by a noncommercial educational licensee would, in the words of Alliance/CIPB, "trigger a flood of other dereservation petitions by other noncommercial broadcasters." Our decision here is based on a set of unique facts. Through a combination of economic upheaval and population declines in Pittsburgh, and poor management choices, QED's financial condition deteriorated so dramatically in the 1990's that Congress found it necessary to enact legislation in 1996 in an attempt to alleviate this financial distress. QED's auditors now have opined that it is questionable whether QED can continue absent the sale of its second channel.[57] Moreover, besides Pittsburgh, only four other markets have two noncommercial educational stations operating on reserved channels and licensed to the same entity. With respect to any dereservation requests the Commission may receive in the future, we wish to reiterate, as stated above, that under only compelling circumstances will we consider deviation from our policy disfavoring dereservation of noncommercial educational channels.

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[51] Of comparably sized DMAs, only Baltimore, Maryland (24th ranked DMA) has fewer allotted commercial channels than Pittsburgh. St. Louis, Missouri (22nd ranked DMA) and San Diego, California (25th ranked DMA) also have only 7 commercial channels. While QED points out that DMAs such as Denver, Colorado and Salt Lake City, Utah, have almost twice as many commercial channels allotted as Pittsburgh, those DMAs are much larger geographically and, in the case of Salt Lake City, encompasses the entire state.

[52] In reaching our decision here, we give no consideration to QED's present proposal to sell a dereserved WQEX(TV) to ShootingStar, a company controlled by a female native of Pittsburgh; a variety of reasons exist why QED may ultimately sell the station to another entity. Moreover, the ownership structure of a proposed future owner of WQEX(TV) is not pertinent to our decision whether to change a channel allotment in Pittsburgh.

[53] *Amendment of Section 73.606, Table of Assignments, Television Broadcast Stations (Ogden, Utah*), 26 FCC 2d 142 (1970), *recon. denied*, 28 FCC 2d 705 (1971).

[54] The Commission's decision was also based on the fact that commercial operation on this VHF channel would seriously impact UHF development in the market and cause substantial disruption to existing translator services.

[55] *Amendment of Section 73.606, Table of Assignments, Television Broadcast Stations (Ogden, Utah)*, 45 RR 2d 768 (1979). At that time, Ogden received a Grade B signal or better from stations licensed to Salt Lake City, Utah.

[56] *Id*. at 769-73.

[57] QED Comments at Exhibit A.

46. Because we conclude that dereservation is in the public interest, we now turn to the issue of whether unique public interest considerations in this case warrant waiver of the uncodified rule requiring that newly dereserved channels be made available for competing applications.[58] Rather than address the waiver issue directly, QED instead argues that the policy articulated in the *Sixth Report and Order* effectively has been overturned,[59] or abandoned.[60] QED asserts that these decisions not to accept competing applications were based on the fact that the channels involved were occupied and the proponents would have withdrawn their proposals if subjected to competing applications, and argues that because it would also withdraw its petition under those circumstances, it is entitled to the same consideration. However, in each of the instances cited by QED, no educational reservations were eliminated. Rather, the cases cited by QED involved the exchange of channels or the exchange of a reservation from one channel to another. None of the cited decisions stands for the proposition that the Commission has, more generally, altered or abandoned its policy of opening newly dereserved channels for competing applications.

47. In this case, however, we conclude that the same public interest considerations that warrant dereservation of Channel 16 in Pittsburgh also warrant a waiver of the uncodified rule. The public interest benefits of dereservation -- alleviating QED's financial distress, and ensuring the prompt conversion of WQED(TV) to digital operations and QED's continued ability to provide noncommercial educational programming to meet the local needs of the Pittsburgh market in the future -- will not be realized unless the Commission waives the uncodified rule requiring that newly dereserved channels be opened to competing applications so that QED can sell WQEX(TV) as a commercial station.[61] Therefore, in light of our findings regarding the public interest benefits of dereservation in this case, we waive the rule requiring that the dereserved channel be opened to competing applications.[62] As set forth above,

[58] When the Commission amended the television Table of Allotments to reserve channels for noncommercial educational use, it indicated that if a noncommercial educational television station operating on a reserved channel sought to operate on a commercial basis, as WQED does here, it would be required to petition for a change in the character of the channel assignment and to "file an application for a new license, in competition with any others who may seek the channel." *Sixth Report and Order*, 41 FCC 148, 212 n.51 (1951).

[59] QED Comments at 35-37, citing *Amendments to the Television Table of Assignments to Change Noncommercial Educational Reservations*, 59 RR 2d 1455, 1461 (1986), *recon. denied*, 3 FCC Rcd 2517 (1988), *aff'd sub nom., Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405 (D.C. Cir. 1991)(*Intra-band Channel Exchanges*) (reserved and non-reserved channels may be exchanged without opening either to competing applications); *Amendment of Section 73.606(b), Buffalo, New York*, 14 FCC Rcd 11856 (1999), *aff'd*, 16 FCC Rcd 4013 (2000) (reservation moved from one channel in the market to another without solicitation of competing applications).

[60] QED Reply Comments at 36, citing *Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules* 15 FCC Rcd 20845 (2000) (*700 MHz MO&O and FNPRM*), *Third Report and Order*, 16 FCC Rcd 2703 (2001) (adopting a rebuttable presumption in favor of voluntary relocation agreements in the 700 MHz band and noting that channels that were dereserved in the process would not be subject to "counterproposals" from other parties).

[61] QED states that it would withdraw its dereservation request if the channel were opened to competing applications. *See* QED Comments at 34; Reply Comments at 35. In this regard, the situation here is analogous to that of licensees seeking to voluntarily exchange channels pursuant to the Commission's intra-band channel swapping policy. At the time the Commission adopted Section 1.420(h) of the rules, it recognized that it needed to create a process whereby commercial and noncommercial educational licensees could voluntarily exchange channels without being subject to competing applications, since the initiating parties proposing the intra-band exchange would withdraw their request if competing applications were allowed, thereby resulting in a waste of Commission, public and licensee resources.

[62] Since we are simply modifying the existing QED license, and not subjecting it to competing applications pursuant to the uncodified rule, Section 309(j), which requires competitive bidding on where mutually exclusive applications are accepted, is inapplicable. *See* 47 U.S.C. § 309(j)(1) (competitive bidding required only where mutually exclusive applications for an initial license are filed.) *See also Intra-band Channel Exchanges*, 59 RR 2d at 1463

(continued....)

QED's financial condition, the changing economy of the Pittsburgh area, and the expansion in the number of outlets for educational programming which will result from digital conversion lead us to conclude that QED should be permitted to assign the station license as proposed to improve its financial condition and enhance the programming service that it delivers to its community of license. We note that this is not the situation where a licensee acquires a reserved channel and seeks dereservation within a short period of time, perhaps suggesting an attempt to manipulate the Commission's system of reservation for educational use. In this case, QED has operated WQEX(TV) for over forty years. Only after it became apparent that a second station could no longer be supported did QED seek to dereserve and sell its second station in order to ameliorate its financial woes and ensure its continued operations on WQED(TV). As such, waiver in this case in no way undermines our prior and continuing policy of opening newly dereserved channels for competing applications.

48. With respect to Alliance/CIPB's remaining arguments, we are unpersuaded that dereservation is either inconsistent with Congressional intent or contrary to our authority under Section 316 of the Act. While Alliance/CIPB claim that permitting the sale of WQEX(TV) as a commercial station is inconsistent with the Commission's mandate to promote competition, our action today – to dereserve Channel *16 and permit its sale as a commercial station – increases the number of voices in the market to the same extent as would our dereserving and using competitive bidding, with the added public interest benefits of ensuring that QED, an entity which, in the past, has been reliant on Federal and State financial assistance, will have sufficient resources to provide enhanced services to meet the unique educational needs of the Pittsburgh region, and enabling prompt deployment of digital service to viewers.[63]

49. Finally, Alliance/CIPB assert that the Commission has never used Section 316 to facilitate the complete removal of a noncommercial educational reservation, instead using Section 316 in the context of channel exchanges that do not result in the loss of a noncommercial educational channel. We recognize that in the past, in making changes to the reservations in the television Table of Allotments, we have considered as important the fact that there would be no change in the overall number of reserved channel. However, Section 316 in no way prohibits the Commission from dereserving a noncommercial educational allotment, but rather, authorizes the Commission to modify a station license or permit "if, in the judgment of the Commission such action will promote the public interest, convenience and necessity . . . ." As discussed herein, we conclude, after careful consideration of the record before us, that the unique circumstances presented here warrant the dereservation of Channel *16 and the modification of the license for WQEX(TV) to specify that it is authorized on a commercial channel. This action does not remove or add any channel and no technical changes are involved. This modification merely removes the reservation for noncommercial educational use from the channel used for station WQEX(TV), both in the Television Table of Allotments and in the DTV Table of Allotments.

(...continued from previous page)
(finding that opening swapped channels to third parties was not required under *Ashbacker* and would not be viable since the channels were already occupied and neither of the potential exchange partners would likely pursue an exchange if the channel were opened to competing applications.)

[63] Alliance/CIPB also claim that permitting the sale of WQEX(TV) could lead to unjust enrichment "as ShootingStar would be free to sell the 'bargain' license for a profit." Alliance/CIPB do not set forth any information, however, to support this assertion that QED's agreement with ShootingStar contemplates the sale of the commercial station at anything other than the value which would result from arms-length negotiations between two parties.

Ordering Clauses

50. Accordingly, the Commission finds that it would serve the public interest to grant the proposal to dereserve Channel *16 at Pittsburgh and to amend Section 73.606 as follows:

Community	Channel No.
Pittsburgh, Pennsylvania	2, 4, 11, *13, 16, 22, 53.

51. The Commission further finds that unique public interest considerations and benefits support a waiver of the policy set forth in the *Sixth Report and Order* requiring that newly dereserved channels be made available for competing applications.

52. We also make the respective amendment to the DTV Table of Allotments, Section 73.622(b) of the Commission's rules, to dereserve Channel 16's paired DTV Channel *26 as follows:

Community	Channel No.
Pittsburgh, Pennsylvania	25, 26, *38, 42, 43, 48, 51

53. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send by Certified Mail, Return Receipt Requested, a copy of this Report and Order to the following:

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54. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of WQED Pittsburgh for station WQEX(TV) IS MODIFIED to specify operation on Channel 16 in lieu of Channel *16.

55. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

56. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceeds to amend the TV and DTV Table of Allotments, Sections 73.606 and 73.622(b). *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

57. For further information concerning this proceeding contact Joyce L. Bernstein, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

JOINT STATEMENT OF CHAIRMAN MICHAEL K. POWELL, COMMISSIONER KATHLEEN Q. ABERNATHY AND COMMISSIONER KEVIN J. MARTIN

*Re: Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, Report and Order, MM Docket No. 01-276.*

We support today's decision to dereserve Channel 16 in Pittsburgh. We write separately to emphasize two points. First, removing the reservation of a channel for noncommercial educational (NCE) use is not a step the Commission should ever take lightly. As the item notes, dereservation is warranted only in compelling circumstances. Second, the license for a newly dereserved channel generally should be open to competing applications and allocated through competitive bidding. Dereservation dramatically increases the monetary value of the license, and that value should accrue to the taxpayer. Therefore, compelling circumstances also are necessary to justify a waiver of our uncodified rule that a dereserved channel must be opened to competing applications.

QED presents such a unique and compelling situation. QED is the licensee of two NCE television stations in Pittsburgh. For almost a decade, QED has suffered severe financial distress that has hindered its ability to develop local programming for either of its stations, delayed the stations' transition to digital, prevented the entity from making important upgrades to its facilities, and required QED to operate its stations with a reduced staff. Due to these factors and the changing Pittsburgh economy, QED has had difficulty attracting the very contributions and grants that would help the entity improve its situation. Some of these difficulties were exacerbated by bureaucratic delay and inconsistent regulatory decisions from this agency, including the issuance of ill-conceived "guidelines" regarding religious programming on NCE stations that effectively prevented QED from resolving its financial concerns in a manner that would have enabled Pittsburgh to maintain two NCE channels.[1]

We are confident that the action taken today will serve to strengthen public television and increase educational and public affairs programming throughout Pennsylvania. QED has demonstrated that if it is able to sell one of its licenses as a commercial station, the proceeds will enable QED to pay off its debts, fund its transition to digital, and provide a dramatically superior service on its remaining NCE channel. QED has committed to use these new capabilities to provide three new streams of programming that will address local and national minority issues as well as public affairs, significantly enhancing the services QED can offer the citizens of Pittsburgh.

As a result of these unique circumstances, we believe that the public interest is best served if the Commission dereserves Channel 16 and permits QED to assign the modified license without first opening the license to competing applications. We note that the Corporation for Public Broadcasting, the Pennsylvania Public Television Network Commission, the Children's Television Workshop, and the Association of Public Television Stations have urged the Commission to take this action, believing it to be in the best interest of public broadcasting.[2] John W. Thompson, Pittsburgh Superintendent of Schools stated in support, "By converting WQEX and allowing its sale to a commercial broadcaster, television viewers in Pittsburgh will have more viewing choices than before and a stronger WQED which will better

[1] *See WQED Pittsburgh*, 15 FCC Rcd 202 (1999), *vacated in part*, 15 FCC Rcd 2534 (2000). Although the Commission ultimately reversed itself and vacated these "guidelines", QED's potential purchaser was no longer interested in pursuing the transaction.

[2] *See* note 29 of the attached Order.

meet the needs of the entire community.[3] We agree. While the taxpayers and prior contributors to QED will not share in the monetary gain that the Commission is permitting QED to realize, great value *will* accrue to the community of Pittsburgh through the noncommercial, educational, digital services it will receive from a rejuvenated QED.

[3] Letter from John W. Thompson, Pittsburgh Superintendent of Schools, to Michael K. Powell, Chairman, Federal Communications Commission (Jan. 24, 2001).

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

*In the Matter of Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania*

This item goes to basic principles concerning the stewardship of the public's airwaves. It would set a potentially far-reaching and dangerous authorization to transfer spectrum specifically allotted for purposes of non-commercial television to a commercial station. It would do so without subjecting the new commercial allotment to competing applications. And it would misdirect funds from the disposition of public spectrum to a specific station owner rather than returning these funds to the people of the United States.

I do not believe that the petitioner has made a showing sufficient to justify the extraordinary action of dereserving WQEX(TV) in Pittsburgh, Pennsylvania. In this matter, and the related proceedings that have been before the Commission for the last six years, the petitioner makes a case that it cannot operate two non-commercial television stations in Pittsburgh. Indeed, petitioner has relegated WQEX to merely a vehicle for simulcasting WQED programming. Whether or not this argument supports the petitioner's position, the programming result does not well serve the citizens of Pittsburgh nor does it advance the public interest. A strong case can be made that utilizing this spectrum for the benefit of the community may very well be better accomplished by an entity other than WQED.

Since this is spectrum specifically reserved for non-commercial educational television, we must first make it available to potential non-commercial entities that may be interested in it. The record reflects that close to 50 markets smaller than Pittsburgh support two or more non-commercial educational stations. The petitioner does not refute that, but instead asserts that in those markets the stations are operated by "state networks or universities." Yet the record does not demonstrate a sustained attempt to sell WQEX to a state entity, a university, or any other non-commercial, educational entity which would be eligible to operate the station. Granting an unprecedented waiver of our policy against dereservation when others may well be able to utilize this non-commercial spectrum for the benefit of the community cannot be justified. At this point, we simply do not know what the Pittsburgh market will support or who may have an interest in utilizing this spectrum in fresh and innovating ways. Absent such knowledge, it is too early to throw in the towel.

Dereservation would, petitioner argues, allow it to sell the station to a commercial entity, receive the resulting revenues from the sale of WQEX, and pour these dollars into its remaining station. While directing profits from the disposition of this spectrum to WQED may sound appealing as a way to strengthen a fine station, that is not the system envisioned in our controlling telecommunications statute or our rules. Short-circuiting the processes established by law may strike some as a quick and efficient way to enhance WQED's financial position, but we must remember that the spectrum at issue is the public's spectrum and not the public television ***station's*** spectrum. When another use of the public spectrum is contemplated, said spectrum must be restored to the public and subjected to the procedures established by our rules for its disposition. Let us also be mindful that we have a Corporation for Public Broadcasting through which public monies are provided for public broadcasting.

Petitioner argues that a previous decision by the Commission regarding the transfer of reservation from one channel to another and the subsequent sale of the dereserved channel is precedential here. I disagree. As noted in the *Report and Order* in that matter[1], the transfer did not change the total number of stations in the market reserved for non-commercial educational use. In addition, that licensee held a reserved and a non-reserved television station license and could have sold the non-reserved station without a transfer of reservation. By transferring the reservation, the older, more established non-commercial, educational station was preserved on the channel by which its viewers knew it. The decision in that matter also preserved the *status quo* in terms of the number of reserved stations in the market, and ensured that the long established station in the market would continue to operate non-commercially.

In point of fact, the proposed transfer is not so different from the process set in motion for the private reassignment of spectrum on Channels 60-69 by a previous Commission, the only difference here being that we are enriching not a private television station, but a public television station. The result would be even worse in this case because there are fewer public television stations than private television stations, and those public television stations are the jewels of our nation's broadcast system.

With this decision we not only facilitate the sale of one of these jewels; we do so in a way that is contrary to statute and contrary to the public interest.

[1] *In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Buffalo, New York), 14 FCC Rcd 11856 (1999)*