

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

In the Matter of	)	
	)	
Amendment of the Television Table of	)	
Allotments to Delete Noncommercial	)	<b>MM Docket No. 01-276</b>
Reservation of Channel *16, 482-488 MHz,	)	FIN: 41314
Pittsburgh, Pennsylvania	)	
	)	

**MEMORANDUM OPINION AND ORDER  
AND NOTICE OF PROPOSED RULE MAKING**

**Adopted: September 27, 2001**

**Released: October 11, 2001**

Comment Date: **December 18, 2001**

Reply Comment Date: **January 21, 2002**

By the Commission: Commissioners Abernathy and Martin issuing a joint statement.

1. The Commission has before it for consideration a "Petition to Delete Noncommercial Reservation" filed on January 9, 2001 by WQED Pittsburgh (QED), licensee of noncommercial educational television stations WQED(TV), Channel \*13 and WQEX(TV), Channel \*16, Pittsburgh, Pennsylvania. In its petition, QED requests that the Commission amend Sections 73.606 and 73.622 of the Commission's rules, *see* 47 C.F.R. §§ 73.606 (NTSC channels) and 73.622 (DTV channels), to delete the noncommercial reservation of Channel \*16 and permit QED to sell WQEX(TV) as a commercial television station without opening the channel to competing applications, and use the net proceeds to further WQED(TV)'s noncommercial broadcast operation.<sup>1</sup> The Pittsburgh Citizens for Independent Public Broadcasting (CIPB-Pittsburgh) and the Alliance for Progressive Action (Alliance) jointly filed a "Motion in Opposition to WQED's Request to Exempt Its Petition for Dereservation from Normal Notice and Comment Rulemaking Procedures" on January 18, 2001, and QED filed its response on January 31, 2001.<sup>2</sup> As discussed below, while we deny QED's request that we dereserve Channel \*16 on the basis of the record before us, we hereby commence a rule making proceeding to determine whether modification of the license of WQEX(TV), to specify operation on nonreserved Channel 16, will promote the public interest, convenience and necessity, and also, whether the channel, if dereserved, should be subject to competing applications.

**BACKGROUND**

<sup>1</sup> According to QED, ShootingStar, Inc., a commercial broadcaster, has agreed to pay QED \$20,000,000 to acquire WQEX(TV), contingent upon favorable action on its dereservation request. Given that these parties have not yet filed an assignment application with the Commission, we take no position on the acceptability of any such future application seeking to assign WQEX(TV) to ShootingStar, and our action here should not be taken to suggest otherwise.

<sup>2</sup> The Commission has also received a number of letters from station viewers commenting on QED's proposal.

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2. Sections 73.606(b) and 73.622(b) of the Commission's rules set forth the Television Table of Allotments in which specific channels are allotted to specific communities. Channels designated with an asterisk are reserved for noncommercial educational use and are licensed only to nonprofit educational organizations or municipalities. Channel \*13, Pittsburgh was reserved for noncommercial educational use in 1952, *see Sixth Report and Order* in Docket Nos. 8736, *et al.*, 41 FCC 148, 267-75 (1952), and QED initiated service on Channel \*13 in 1954. In 1958, QED 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) and provide specialized educational service for area businesses and professions. In assigning the second reserved channel, the Commission concluded that:

[A] compelling need has been shown for a second educational television channel in Pittsburgh. The use of Channel 13 for 81-1/2 hours per week averages almost 12 hours daily and from the standpoint of efficient use of the channel compares favorably with regular commercial television broadcast stations. Under these circumstances, the assignment of a second educational TV channel to Pittsburgh cannot be considered prodigal.

*Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Pittsburgh, Pennsylvania)*, 17 RR 1563, 1565 (1958); *see also* 17 RR 1568d (1958)(noncommercial educational reservation changed from Channel 22 to Channel 16). WQEX(TV) commenced operations in 1958, and provided a second noncommercial educational program service to the Pittsburgh community until November 1997, when QED made the decision to simulcast its two Pittsburgh 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 provided, in pertinent part that:

[T]he Federal Communications Commission shall, not later than 30 days after receipt of a petition by WQED, Pittsburgh, determine, without conducting a rulemaking or other proceeding, whether to amend Section 73.606 of Title 47, Code of Federal Regulations, by deleting the asterisk for [Channel 16] in Pittsburgh, Pennsylvania, based on the public interest, the existing common ownership of two non-commercial broadcasting stations in Pittsburgh, the financial distress of the licensee, and the threat to the public of losing or impairing local public broadcasting service in the area: Provided further, That the Federal Communications Commission may solicit such comments as it deems necessary in making this determination: Provided further, That as part of the determination, the Federal Communications Commission shall not be required, notwithstanding any other provision of law, to open the channel to general application, and may determine that the license therefore may be assigned by the licensee, subject to prompt approval of the proposed assignee by the Federal Communications Commission, and that the proceeds of the initial assignment of the license for such channel, or any portion thereof, shall be used solely in furtherance of noncommercial broadcast operations, or for such other purpose as the Federal Communications Commission may determine appropriate.

Pursuant to this legislation, QED filed a dereservation petition on June 24, 1996, requesting that the Commission permit it to assign WQEX(TV) to a commercial entity. In support of its petition, QED argued, *inter alia*, that it was in financial distress and would use the net proceeds of the sale of WQEX(TV) to pay down debt and fund the future operations of WQED(TV). Comments were filed by Alliance and a number of other organizations, broadcasters and viewers; with one exception, the commenters opposed QED's dereservation request.

4. The Commission denied the dereservation request on July 24, 1996, concluding that QED had not made a compelling showing that would support its proposed departure from the Commission's

strongly held policy disfavoring dereservation. *See Deletion of Noncommercial Reservation of Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania*, 11 FCC Rcd 11700 (1996)(*Dereservation Order*). In reaching that conclusion, the Commission relied upon QED's acknowledgment that, while it would have to restructure its operations should dereservation not be approved, it would not go dark if it was unable to sell WQEX(TV) to a commercial broadcaster. The Commission also concluded that QED failed to demonstrate that Pittsburgh no longer needed a second noncommercial channel, and noted that QED had other means to improve its financial condition, including an agreement it had reached with Cornerstone TeleVision, Inc., the licensee of commercial station WPCB-TV, Channel 40, Greensburg, Pennsylvania, whereby QED would assign WQEX(TV) to Cornerstone, a non-profit organization, and Cornerstone would assign WPCB-TV to QED, thereby allowing QED to sell Channel 40 to a commercial buyer.

5. Almost 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, with QED and Cornerstone to share the proceeds of the sale of WPCB-TV to Paxson. The applications were opposed by Alliance and the QED Accountability Project, as well as over 300 viewers. In addition, it was necessary for Cornerstone to amend its application several times to provide further information regarding its qualifications to operate on a reserved channel and its proposed noncommercial educational service. While the Commission denied the petitions to deny and informal objections, and granted the two assignment applications on December 29, 1999, *WQED Pittsburgh*, 15 FCC Rcd 202 (1999), *vacated in part*, 15 FCC Rcd 2534 (2000), *petitions for reconsideration pending*, Cornerstone terminated its agreements with QED and Paxson and the transactions proposed in the assignment applications were not consummated.

#### **QED'S SECOND PETITION TO DELETE NONCOMMERCIAL RESERVATION**

6. In the instant petition filed January 9, 2001, QED again requests that the Commission dereserve Channel \*16 and permit QED to sell WQEX(TV) to a commercial broadcaster. Procedurally, QED argues first, that the Commission should consider the petition pursuant to Public Law 104-134, which "continues to provide a basis for authority to grant the instant petition."<sup>3</sup> In support of this conclusion, QED argues that "it is significant that the factual circumstances that prompted Congress to enact Public Law 104-134, including the financial distress of QED and the common ownership of WQED and WQEX, remain unchanged," and that "Congress clearly intended Public Law 104-134 to have continuing effect so long as QED could benefit from expedited action." QED also contends that the Commission may grant the requested relief pursuant to Section 316 of the Communications Act of 1934, as amended, 47 U.S.C. § 316, which authorizes the Commission to modify a station license if it concludes that such action will promote the public interest, convenience and necessity. In this regard, QED points out that the Commission has relied on Section 316 to amend the FM or TV table of allotments without consideration of competing applications in the contexts of modification of FM licenses to higher class co-channel or adjacent channels,<sup>4</sup> the assignment of new communities of license,<sup>5</sup> and intra-band channel

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<sup>3</sup> In support, QED submits a letter from Senators Arlen Specter and Rick Santorum to the Commission, urging prompt action on QED's petition, "[c]onsistent with the [30-day] provision we included in P.L. 104-134 . . ."

<sup>4</sup> *Amendment of the Commission's Rules Regarding Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 60 RR 2d 114, 119 (1986).

<sup>5</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4872-73 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

swaps between commercial and noncommercial licenses.<sup>6</sup> QED further states that because it “would withdraw the present dereservation petition if competing applications are permitted,” opening the channel to general application would “result in a waste of Commission, public and QED resources, contrary to the public interest.”

7. In support of the dereservation petition, QED acknowledges that the relief it seeks requires the demonstration of compelling circumstances, and submits that a series of unique and exceptional circumstances have led to its current situation in Pittsburgh. According to QED:

Congressional intent to provide relief, as expressed in Public Law 104-134; the unfortunate two and one-half year processing delays imposed on the parties to the [assignment of WQEX(TV) to Cornerstone]; the continuing financial distress of QED brought on by the downturn in the Pittsburgh economy; fundamental changes to the broadcast station landscape; and the fact that grant of this petition will result in the provision of a new commercial broadcast voice to Pittsburgh . . . provide ample public interest justification for the requested relief.

QED also maintains that, because it continues to experience financial distress, it has been forced to make significant cuts in staff and programming,<sup>7</sup> which has affected its ability to produce locally-oriented programming, and that it has no reason to believe that its financial prospects will improve, given “Pittsburgh’s unusually severe economic decline and its negative impact on the continuing viability of the two donor-dependent public television stations in that market.” According to QED, the public interest benefits that would result from dereservation – a more self-sufficient WQED(TV), a timely conversion to DTV, the ability to channel funding towards the operation of one strong station, rather than to two weak ones, and a new commercial television station to serve Pittsburgh – outweigh the Commission’s commitment to the structure of its noncommercial channel allotments scheme.

8. In response, CIPB-Pittsburgh and Alliance contend that Public Law 104-134 has no present operative effect, and that the Commission should dismiss QED’s petition as an attempt to circumvent the notice and comment requirements of the Administrative Procedure Act or an untimely petition for reconsideration of the 1996 *Dereservation Order*. Alternatively, they urge the Commission to treat the dereservation petition as a new petition for a rule making proceeding to amend the TV Table of Allotments and either dismiss it, consistent with the Commission’s prior *Dereservation Order*, or conduct a notice and comment rule making proceeding. In response, QED contends that it did not intend to exclude the public from comment on its dereservation proposal, and that summary dismissal of its petition is unjustified. QED further states that if “the Commission does not act on the Petition within 30 days as required by Public Law 104-134, QED urges the Commission to promptly commence an expedited Section 316 rulemaking proceeding, with notice and an opportunity to comment but without opening the channel to competing applications.”

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<sup>6</sup> *Amendments to the Television Table of Assignments to Change Noncommercial Educational Reservations*, 59 RR 2d 1455 (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) (*Intraband Television Channel Exchanges*).

<sup>7</sup> For example, WQEX(TV) is no longer separately programmed, but instead, simulcasts WQED(TV)’s programming.

## DISCUSSION

9. At the outset, procedurally, we disagree with QED's position that Public Law 104-134, an appropriations bill for fiscal year 1996, continues to provide a basis upon which to consider the instant petition. A federal appropriations act is, by nature, a non-permanent piece of legislation. 31 U.S.C. § 1301(c)(2) (2000). Because appropriations acts are themselves temporary, provisos in such acts also are temporary unless "the language admits of no other reasonable interpretation." *Minis v. United States*, 40 U.S. 423, 445 (1841). See also *United States v. Vulte*, 233 U.S. 509, 515 (1914); 27 Op. Att'y Gen. 108, 112 (1908); 62 Comp. Gen. 54 (1982). The most critical element in determining whether a proviso in an appropriations act is temporary or permanent is whether the proviso contains "words of futurity," such as "hereafter" or "after the date of this act." 41 Op. Att'y Gen. 274, 278-79 (1956); 62 Comp. Gen. 54 (1982). Provisos are construed strictly and ambiguous phrases are generally not found to indicate that the proviso is intended to be permanent. *Id.* Thus, in *Building & Construction Trades Dep't, AFL-CIO v. Martin*, 961 F.2d 269, 273-74 (D.C. Cir.), cert. denied, 506 U.S. 915 (1992), the court rejected the appellant's argument that an appropriations bill rider permanently prohibited the Secretary of Labor from implementing certain regulations to set wages for workers on federal construction projects, explaining:

While appropriation acts are "Acts of Congress" which can substantively change existing law, there is a very strong presumption that they do not . . . and that when they do, the change is only intended for one fiscal year. In fact, a federal appropriations act applies only for the fiscal year in which it is passed, unless it expressly provides otherwise. See 31 U.S.C. § 1301(c)(2)(1991). Accordingly, a provision contained in an appropriations bill operates only in the applicable fiscal year, unless the language clearly indicates that it is intended to be permanent.

The court concluded that because Congress used no words of permanency or futurity, the court could not infer that Congress intended to impose a permanent ban. *Id.* at 274.

10. The WQED proviso does not contain any words of futurity that would suggest that Congress intended it to be permanent. On the contrary, the text of the act and the conference report indicate that the proviso was intended to address the unique circumstances that existed at the time of its passage, not some future dereservation petition that WQED might file if its initial petition was denied. See H.R. Conf. Rep. No. 537, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 412 (1996) ("The conference report includes language to address an issue that appears to present unique circumstances that require immediate attention."). See also 110 Stat. 1321, 1321-188, 1321-269, 1321-296, 1321-300 (1996) (other provisions of same appropriations act use words of futurity not used in the WQED proviso, suggesting that Congress did not intend that the latter be permanent). Accordingly, we conclude that the authority conferred upon us during FY 1996 to act on a petition to dereserve Channel \*16 at Pittsburgh without conducting a rulemaking proceeding lapsed at the end of that fiscal year. Moreover, even if the language in the proviso requiring the Commission to act within 30 days of the filing of WQED's petition could be read to indicate an intent that it extend beyond the term of the appropriation because it does not specify when the petition had to be filed, we believe the proviso clearly would have lapsed once the Commission acted on WQED's 1996 petition. Accordingly, it would not apply to the pending application.

11. The Comptroller General has noted that there are two circumstances in which an appropriations proviso may be interpreted to be permanent even though no words of futurity are used: where the proviso is of a general nature and is unrelated to the subject matter of the statute in which it is included, and where the proviso would be rendered meaningless if it were interpreted as temporary. General Accounting Office, Principles of Federal Appropriations Law, 22-31. Neither of these circumstances is present here. The WQED proviso applies to a specified licensee, describes specific

circumstances, and speaks in the singular of “a petition” and “the determination,” as does its legislative history. Compare 110 Stat. 1321, 1321-49 (referring to “a petition by WQED, Pittsburgh” and “the determination” by the FCC) with 37 Op. Att’y Gen. 166 (1922) (determining that a proviso was intended to be permanent based, in part, on the use of the word “any” in the language “in any reduction of personnel in any branch of service of the United States Government.”) And, as noted above, the conference report on the WQED proviso indicates that it was intended to address the specific, unique circumstances that existed at the time of its passage. See H.R. Conf. Rep. No. 537, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 412 (1996). In addition, although the WQED proviso does not explicitly restrict the use of the Commission’s appropriations, it does require action by the agency being funded by the act, and thus is related to the subject matter of the act. The Comptroller General has found that provisos similarly placing requirements on the agency being funded were related to the subject matter of the appropriation. Comptroller General, B-208705 (1982); B-209583 (1983). Nor would the WQED proviso be rendered meaningless if it were interpreted as temporary; it was given effect when the Commission acted within 30 days on WQED’s 1996 dereservation petition. Accordingly, we disagree with WQED’s argument that Congress intended the WQED proviso to remain in effect permanently.

12. We do agree, however, that procedurally, it may be possible to effectuate QED’s proposal through a rulemaking proceeding coupled with a license modification under Section 316 of the Communications Act, should the public interest be found to warrant dereservation of Channel \*16 and modification of QED’s license. The Commission has repeatedly utilized rulemaking procedures to amend the table of allotments, and Section 316 to modify a station’s license to conform to the change in allotment, where those actions have been found to serve the public interest, convenience and necessity. See, e.g., *Amendment of Section 73.606(b), Buffalo, New York*, 14 FCC Rcd 11856 (1999), *aff’d*, 16 FCC Rcd 4013 (2000); *Intraband Television Channel Exchanges*, 59 RR 2d at 1461-62. We acknowledge that the *Sixth Report and Order* adopting the Television Table of Allotments contemplated that a non-commercial educational station operating on a reserved channel, which seeks to operate on a commercial basis, “would by appropriate rule making proceedings be required to petition for a change in the character of the channel assignment involved. It [would] then have to file an application for a new license, in competition with any others who may seek the channel.” 41 FCC at 212, n.51; see also *Intraband Television Channel Exchanges*, 59 RR 2d at 1458. However, the Commission may, in a rulemaking proceeding, limit potential applicants’ ability to apply for the channels if, in the Commission’s judgment, such action will promote the public interest, convenience and necessity. *Storer Broadcasting v. FCC*, 351 U.S. 192 (1956); *Malrite of New York, Inc.*, FCC 84-338, released July 31, 1984. Assuming we decide dereservation is in the public interest, we seek comment on whether unique public interest considerations and benefits in this case outweigh the benefits of entertaining competing applications for a new commercial station in Pittsburgh, thus warranting a waiver of the uncodified rule set forth in the *Sixth Report and Order*, requiring that newly dereserved channels be made available for such applications.

13. In the instant petition, QED once again advances a number of public interest considerations which arguably might favor dereservation of Channel \*16. According to QED, while its financial condition has improved somewhat since 1996, it still carries over \$9 million in current indebtedness, and its unrestricted revenues have dropped by more than half in the last ten years, from \$38.3 million in 1991 to \$18.2 million in 2000. In addition, QED has been forced to reduce its workforce from 188 employees in 1993 to 98 employees in 2000, and to simulcast its two stations. QED also contends that economic and population declines have left the Pittsburgh area unable to continue to support two donor-supported noncommercial educational stations,<sup>8</sup> and that a second reserved channel is no longer necessary

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<sup>8</sup> According to QED, beginning in the 1960’s, a significant number of major corporate donors headquartered in Pittsburgh either went out of business or were absorbed by other companies, and thus, no longer contribute to (continued....)

to the community, given the expanded opportunities for educational programming through future DTV multicasting on WQED(TV), and the availability of alternative programming and information delivery systems, including cable, direct broadcast satellite (DBS) and the Internet, which were not in existence when QED commenced operations, but now provide substantial educational content to schools and households. According to QED, the sale of WQEX(TV) to ShootingStar would result in important public interest benefits, including securing the future of public television in Pittsburgh, by permitting QED to use the proceeds of the sale of WQEX(TV) to eliminate its debt, effect a timely conversion to DTV, and endow the production of new local programming in the future. Moreover, QED contends that replacing WQEX(TV), which presently simulcasts programming aired on WQED(TV), with a new commercial station will provide new programming and enhance marketplace competition.

14. The Commission has recognized that “[i]n light of public television’s unique service, . . . a significant factor in its public interest determination will be the extent to which a noncommercial channel exchange proposal affects a station’s ability to continue to serve the viewing public.” *Intra-band Television Channel Exchanges*, 59 RR 2d at 1464a. In view of the contentions set forth in QED’s petition regarding its continuing ability to operate two noncommercial educational stations, and the substantial decrease in the base of financial support available to QED from its community of license and surrounding areas, we hereby initiate a rulemaking proceeding to determine whether the public interest will be better served by dereservation of Channel \*16, and application of the proceeds of the sale of WQEX(TV) to QED’s noncommercial educational operations on Channel 13. We specifically seek comment on QED’s present financial condition and the likelihood that QED’s ability to serve the educational needs of its community, as required by Section 73.621 of the rules, will be substantially impaired, absent a sale of WQEX(TV) as a commercial station. With respect to QED’s assertion that Pittsburgh and its environs have experienced a severe economic decline, we seek comment on the area’s economic ability to continue to adequately support two donor-reliant noncommercial educational television stations, as it has done for more than 40 years. We also seek comment on QED’s contention that the Pittsburgh community no longer needs two educational stations, and also, whether the need for an additional commercial television channel in Pittsburgh outweighs the need for a second noncommercial educational television station.

15. Accordingly, in view of the foregoing, the Petition to Delete Noncommercial Reservation filed by WQED Pittsburgh IS GRANTED to the extent indicated herein, and IS OTHERWISE DENIED.

16. Interested parties may file comments on or before December 18, 2001 and reply comments on or before January 21, 2002. An original and four copies of each filing must be sent to the Commission’s Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on QED’s counsel, as follows:

(Continued from previous page) \_\_\_\_\_  
QED. QED further states that “the population of [Pittsburgh] has plummeted by *fifty percent*” since 1950, and that as a television market, Pittsburgh has declined from the 10<sup>th</sup> ranked ADI in the nation in 1969, to the 20<sup>th</sup> ranked ADI today. QED also asserts that the fact that no other noncommercial entity has made a bona fide offer to purchase WQEX(TV) during the past five years, “suggests that operating Channel \*16 under the current economic climate is too daunting a task to take on.”

**Federal Communications Commission**

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17. Pursuant to Section 1.1206 of the Commission's rules, we designate this proceeding as permit-but-disclose for *ex parte* purposes. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.

18. Interested parties may view the Petition to Delete Noncommercial Reservation filed by QED on January 9, 2001 at <http://www.fcc.gov/mmb/vsd/WQEDpetition.pdf> and at the WQEX(TV) main studio. The full text of the document, and comments and reply comments filed in this proceeding, are available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, TTY (202) 418-2555, or [bcline@fcc.gov](mailto:bcline@fcc.gov). The Petition to Delete, as well as comments and reply comments filed in this proceeding, may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 Twelfth Street, S.W., Room CY-B-402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via email at [qualexint@aol.com](mailto:qualexint@aol.com).

19. This document is available in alternative formats (computer diskettes, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Miller at (202) 418-7426, TTY (202) 418-7365, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

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

21. For further information concerning this proceeding, contact Joyce L. Bernstein, Video Services Division, Mass Media Bureau at (202) 418-1600 or [jbernste@fcc.gov](mailto:jbernste@fcc.gov).

**ORDERING CLAUSE**

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2(a), 4(I), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(I), 303, 307 and 309, the Notice of Proposed Rulemaking is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**Joint Statement of Commissioners Kathleen Abernathy and Kevin Martin**

*In re: Deletion of Noncommercial Reservation of Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania*

We support today's decision to initiate a rulemaking proceeding to determine if dereservation of Channel \*16 and application of the proceeds of the sale of WQEX(TV) to noncommercial educational operations of WQED Pittsburgh ("QED") on Channel 13 serves the public interest. We write separately, however, to emphasize the need for a quick and a clear resolution of this matter. We firmly believe that the parties need answers that are both explicit and timely in order to perform in the marketplace. The public also deserves the same level of service.

QED already has suffered greatly due to this agency's initial delay, prior misguided decisions and subsequent reversal. QED first petitioned the Commission in 1996 to dereserve Channel \*16, intending to sell the station and use the proceeds to fund its original noncommercial educational television station, Channel \*13. The Commission denied the request in part because QED had disclosed that it had negotiated a "back-up" plan: if QED's application were denied, QED would transfer Channel \*16 as a noncommercial station to Cornerstone TeleVision, Inc. ("Cornerstone"), a non-profit organization.<sup>1</sup> Accordingly, in mid-1997, QED made a new filing, requesting to transfer control of Channel \*16. The Commission finally approved the transaction on December 30, 1999—only to simultaneously undermine the deal with ill-conceived, stringent "guidelines" regarding religious programming on noncommercial educational television stations.<sup>2</sup> Although the FCC reversed course and vacated those guidelines within weeks, it was too late for QED. Faced with uncertainty and vacillation and a four-year delay, QED's potential purchaser backed out.

QED now has returned to the Commission, petitioning for relief from essentially the same predicament in which it found itself five years ago. While we deny QED's request to dereserve Channel \*16 on the basis of the record already before us, we do initiate a rulemaking that will enable us to gather a full record and make an informed decision on the merits. This petition presents difficult legal issues, but we believe that a rulemaking proceeding is the appropriate and most prudent course of action at this time. Noncommercial stations play a vital role in our communities and dereservation of such channels raise important public interest concerns. We look forward to working with our colleagues to bring about a clear and prompt resolution of this matter.

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<sup>1</sup> *Deletion of Noncommercial Reservation of Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania*, 11 FCC Rcd 11700 (1996).

<sup>2</sup> *WQED Pittsburgh*, 15 FCC Rcd 202 (1999), *vacated in part*, 15 FCC Rcd 2534 (2000).