

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

In the Matter of )  
 )  
Deletion of Noncommercial Reservation )  
of Channel \*16, 482-488 MHz, )  
Pittsburgh, Pennsylvania )

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 24, 1996**

**Released: August 1, 1996**

By the Commission: Commissioner Ness issuing a statement; Commissioner Chong concurring and issuing a statement in which Commissioner Quello joins.

1. The Commission has before it for consideration a "Petition to Delete Noncommercial Reservation" filed on June 24, 1996 by WQED Pittsburgh (WQED or the Company), licensee of noncommercial educational television stations WQED(TV), Channel \*13 and WQEX(TV), Channel \*16, Pittsburgh, Pennsylvania.<sup>1</sup> WQED requests that its Channel \*16 allotment be dereserved in order to permit commercial broadcasting on Channel 16 in Pittsburgh, and that it be permitted to assign WQEX(TV) to a commercial licensee and use the net proceeds to further WQED(TV)'s noncommercial broadcast operation. WQED's petition is filed pursuant to the Department of Justice and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), which provides 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

<sup>1</sup> An asterisk next to a television channel on the Television Table of Allotments indicates that the channel is reserved for noncommercial educational use. WQED is also the licensee of noncommercial educational radio station WQED-FM, Pittsburgh.

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.<sup>2</sup>

2. By Public Notice released June 26, 1996, we afforded interested persons an opportunity to comment on the public interest considerations, as outlined by the statutory guidelines under which we must make our determination, as well as the factual representations contained in the Petition. Comments were filed on July 5, 1996 by The Alliance for Progressive Action and the QED Accountability Project (Alliance),<sup>3</sup> The Association of Local Television Stations, Inc. (ALTV),<sup>4</sup> and Pittsburgh Educational Television, Inc.<sup>5</sup> Comments were also submitted on behalf of Channel 29 Associates, licensee of low power television station WBPA-LP, Channel 29, Pittsburgh, a WB Network affiliate; Choice Olean T.V. Station, Inc., licensee of low power television station W20AB, Olean, New York; the St. Louis Regional Educational and Public Television Commission, licensee of noncommercial educational television station KETC, St. Louis, Missouri; Standfast Broadcasting Corp., licensee of WYDC, Channel 48, Corning, New York; Unicorn Communications, permittee of WNGS, Channel 67, Springville, New York; and Jerry L. Toms. In addition, the Commission received over one hundred letters from viewers, community organizations and government officials commenting on the merits of WQED's petition. WQED and Alliance filed comments on July 9, 1996.<sup>6</sup>

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<sup>2</sup> In the *Sixth Report and Order* adopting the Television Table of Allotments, the Commission stated 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 will then have to file an application for a new license, in competition with any others who may seek the channel." *Sixth Report and Order* in Docket Nos. 8736, *et al.*, 41 FCC 148, 212, n.51 (1952); *see also Amendments to the Television Table of Assignments to Change Noncommercial Educational Reservation*, 59 RR 2d 1445, 1458-59 (1986)(*Intraband Television Channel Exchanges*); *recon. denied*, 3 FCC Rcd 2517 (1988). The cited statutory provisions expressly authorize the Commission to avoid these procedures in acting on WQED's request.

<sup>3</sup> The Alliance states that it is a coalition of approximately 40 public interest organizations in the Greater Pittsburgh area, and that it has sponsored the QED Accountability Project since 1993 as a "watch dog" organization for public television.

<sup>4</sup> ALTV states that it is a nonprofit, incorporated association of broadcast stations unaffiliated with the ABC, CBS or NBC networks.

<sup>5</sup> PET states that it is a newly organized nonprofit corporation formed to apply for Channel \*16 if the frequency becomes available for application. PET also filed a petition to revoke WQEX(TV)'s license on the ground that WQED has admitted that it is no longer financially qualified to be a Commission licensee.

<sup>6</sup> WQED filed a Motion to Strike Alliance's July 9th filing as an unauthorized pleading. In our Public Notice inviting comments, we stated that "interested persons may file comments no later than Friday, July 5, 1996. Responsive comments may be filed no later than Tuesday, July 9, 1996. No further submissions are contemplated." Alliance's July 9th filing was not filed in response to any of the comments filed on July 5th, but merely reiterates arguments made in its earlier comments, and attaches copies of additional letters sent to the Commission opposing WQED's petition. Accordingly, we will grant WQED's motion to strike Alliance's July 9th filing.

## BACKGROUND

3. Section 73.606(b) of the Commission's rules sets 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. See 47 C.F.R. §§ 73.606, 73.621. Channel \*13, Pittsburgh was reserved for noncommercial educational use in 1952 at the request of the Standing Committee of Educators for an Educational Television Station, a consortium of local colleges, universities and school systems, and other area colleges and universities. See *Seventh Report and Order*, 41 FCC at 267-275 (1952). WQED initiated service on Channel \*13 in 1954. In 1958, WQED 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 industries and professions in the Pittsburgh area.<sup>7</sup> 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 *Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Pittsburgh, Pennsylvania)*, 17 RR 1568d (1958) (noncommercial educational reservation changed from Channel 22 to Channel 16).

4. WQED(TV) reaches more than 680,000 households per week, and WQEX(TV) reaches over 400,000 households per week, according to recent Nielsen ratings. In its Petition, WQED states that WQED(TV) currently operates on Channel \*13 for seventeen hours per day, with a full daytime schedule of PBS educational children's programming, followed by "The News Hour with Jim Lehrer" and other PBS and locally-produced adult programming. WQEX(TV) operates on Channel \*16 for sixteen hours per day, and broadcasts a mix of local, PBS, and syndicated programming such as "Perry Mason" and "The Honeymooners," shown without commercials. Over the years WQED has also produced, for its own presentation and for distribution over the PBS network, programs such as "Mister Rogers' Neighborhood," "Once Upon a Classic," "Wonderworks," "Where in the World is Carmen Sandiego," "The Infinite Voyage," and "National Geographic Specials." WQED has also produced such local programming as the "Pittsburgh History Specials;" "The Editors," a public affairs series; "Black Horizons," a minority affairs series; and three prime time, weekly call-in programs, "Health Talk," "Agewise Weekly," and

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<sup>7</sup> The licensee of WQED(TV) and WQEX(TV) has undergone several corporate names changes since acquiring the stations. Its current name is WQED Pittsburgh.

"Cullen/Devlin."

### WQED'S PETITION TO DELETE NONCOMMERCIAL RESERVATION

5. By its petition, WQED requests that the Commission amend Section 73.606 of its rules to delete the noncommercial reservation of Channel \*16, the frequency on which WQEX(TV) operates, thus allowing WQED to assign the license for WQEX(TV) to a commercial broadcaster. WQED proposes to use the proceeds of the sale of WQEX(TV) to relieve its severe financial distress and create an endowment to enable its flagship station, WQED(TV), to implement new local and national programming initiatives and make major fixed asset acquisitions. In support of its petition, WQED states the following.

6. WQED's Current Fiscal Crisis. According to WQED, it is in "financial distress" and "technically insolvent." To document this contention, WQED submits: (1) a June 19, 1996 analysis of the results of operations and financial condition of WQED, prepared by H. Melvin Ming, Executive Vice President and Chief Operating Officer of WQED; (2) audited financial statements for WQED as of and for the years ended June 30, 1993, 1994 and 1995, and an Independent Auditor's Report on Supplementary Information dated June 5, 1996, prepared by KPMG Peat Marwick LLP (KPMG); and (3) a June 19, 1996 analysis entitled "Study of the Financial Condition of WQED Pittsburgh" prepared at Duquesne University (the "Duquesne University Study").

7. WQED is a tax-exempt organization under Section 501(c)(3), and a nonprivate foundation under Section 509(a)(1) of the Internal Revenue Code of 1986. KPMG states that the Company's financial statements are presented in accordance with Statement of Financial Accounting Standards No. 117, "Financial Statements of Not for Profit Organizations," which requires classification of net assets and changes therein according to the existence or absence of donor-imposed restrictions. Revenues are reported as increases in unrestricted net assets, unless use of the related assets is limited by donor-imposed restrictions, and expenses are reported as decreases in unrestricted net assets.<sup>8</sup> According to KPMG, the audited financial statements show that the Company reported net unrestricted operating income or (loss) of \$(3.0) million, \$.1 million and \$(4.8) million and negative cash flow from operations of \$1.2 million, \$.6 million and \$1.5 million for the fiscal years ended June 30, 1995, 1994 and 1993, respectively. These

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<sup>8</sup> "Permanently restricted net assets" are subject to donor-imposed stipulations that they be maintained permanently. Generally, the donors of those assets allow WQED to use the income earned on related investments for general or specific purposes. "Temporarily restricted net assets" are subject to donor-imposed stipulations that may or will be met by actions of the Company and/or the passage of time. Once the temporary restrictions on net assets expire (*i.e.*, the donor-stipulated purposes have been fulfilled and/or the stipulated time period has elapsed), the net assets are reported as reclassified.

losses resulted in an unrestricted net asset deficit of \$6.1 million at June 30, 1995. Current liabilities exceeded current assets by \$9.5 million as of June 30, 1995.<sup>9</sup> According to the financial statements audited by KPMG, WQED had restricted cash and investments of approximately \$6.4 million as of June 30, 1995. Its fixed assets, which consist primarily of WQED's building and broadcasting equipment, had a depreciated value of approximately \$5.7 million as of June 30, 1995.

8. WQED states that it has a revolving credit facility with Mellon Bank, which is secured by all of the assets of the Company. According to WQED, the borrowing agreement imposes certain covenants which restrict capital expenditures and additional borrowings, and require the Company to maintain specified minimum amounts of net assets at the Bank and unrestricted net revenue on a quarterly basis. The audited financial statements report that WQED had an outstanding bank debt balance of \$6.4 million at June 30, 1995. Unaudited schedules report that the bank debt totalled \$8.75 million for the nine months ending March 31, 1996 and debt service for the same period was \$630,000. WQED further states that it is indebted to its permanently restricted endowment fund in the amount of \$2.2 million for funds borrowed in fiscal 1993 to provide working capital, and \$2.3 million for funds borrowed in April 1996 to repay a portion of the bank debt then due and payable. WQED also states that it has \$2.9 million in overdue accounts payable, for a total current debt of \$14.5 million.

9. WQED asked a Duquesne University team of professors and graduate students to analyze WQED's financial condition and explore various options to improve its financial condition. The Duquesne University study concludes that WQED's financial crisis is the result of accumulated financial deficits over a number of years, and that the Company is now "technically insolvent and continues to operate only with the tolerance of its creditors." The study further concludes that WQED's financial crisis is not capable of self-correction, and that without an immediate, major infusion of cash, "WQED Pittsburgh faces the very real possibility of closing its doors." After analyzing several possible options for raising the large amount of cash required by WQED at this time, the Duquesne University study concludes that the only solution to WQED's current insolvency crisis is the conversion of Channel \*16 into a commercial license, which would give the Company either the capacity to sell the license and use the proceeds to retire its debt, or use the asset as collateral for a long-term loan.

10. Public Interest Considerations. WQED asserts that dereservation of Channel \*16 would be in the public interest because without the sale of WQEX(TV), WQED will be forced to drastically curtail or eliminate production of both local and national programming. In addition, the infusion of capital from the sale of WQEX(TV) will allow management time to implement plans to secure WQED's long term survival and allow it to make the transition to digital television broadcasting and produce more issue-oriented community programming. WQED also asserts that the commercial sale of WQEX(TV) will dissolve an existing duopoly - WQED(TV)

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<sup>9</sup> Unaudited schedules submitted by WQED show an unrestricted operating loss of \$1.48 million for the nine months ending March 31, 1996, and that current liabilities exceed current assets by \$10.7 million as of that date.

and WQEX(TV) - in the Pittsburgh market, and add a new commercial voice. In this regard, WQED states that Pittsburgh has fewer commercial allocations than comparably sized markets, and that as a commercial channel, Channel 16 would be available for a WB Network affiliation. Moreover, according to WQED, there will be no reduction in the amount of locally-produced, issue-responsive programming in Pittsburgh because WQED(TV) will expand its hours of operation from seventeen to twenty-four hours, in order to continue local programming presently broadcast on WQEX(TV). WQED further claims it no longer needs WQEX(TV) to provide an additional distribution outlet for classroom instructional programming, the original purpose for which the second channel was obtained, and that there is widespread public support for its proposal to dereserve and sell WQEX(TV).<sup>10</sup> Finally, WQED asserts that its proposal is consistent with Congress' desire that public broadcasting become more self-sufficient and spectrum efficient.

11. Proposed Use of the Sale Proceeds. Upon dereservation of Channel \*16, WQED proposes to sell WQEX(TV) to an unidentified commercial broadcaster, and use the proceeds to pay down its financial liabilities. Any remaining proceeds would be placed in a permanently restricted endowment, the income from which would be utilized to fund (i) current and new local and national programming initiatives, and (ii) major fixed assets acquisitions, including acquisitions necessary to permit WQED(TV)'s conversion to digital broadcasting. The Company states that representatives of its Board of Directors and the WQED Pittsburgh Community Advisory Board will sit on the Board of the endowment trust, which will engage its own financial advisors and accountants. WQED intends that management's discretion to withdraw earnings from the permanently restricted fund will be limited.

12. The Cornerstone Contingent Obligation. In addition to the bank debt and overdue accounts payable reported in its audited financial statements, WQED also disclosed in its Petition that it would use the proceeds of the sale of Channel 16 to pay a currently contingent obligation to Cornerstone TeleVision, Inc. (Cornerstone). As explained in the Management Report submitted as Exhibit 4 to its Petition, this contingent obligation arises from a May 1996 agreement between WQED and Cornerstone, the licensee of commercial station WPCB-TV, Channel 40, Greensburg, Pennsylvania, which WQED entered into as a contingency plan should the Commission decline to dereserve Channel \*16. Under the terms of the agreement, Cornerstone, a non-profit organization, is required to exchange its Channel 40 for Channel \*16 and operate on Channel \*16 as a noncommercial station, thereby allowing WQED to sell Channel 40 to a commercial buyer. In consideration for Cornerstone's agreements relating to the exchange, WQED has agreed to pay Cornerstone \$7.5 million upon the closing of an assignment of license of WQEX(TV) to a commercial buyer, in which case the exchange would not occur. According to the Management Report, if the parties find it necessary to proceed with the channel exchange, and WQED assigns the license for Channel 40 to a commercial buyer, the agreement

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<sup>10</sup> WQED submitted numerous letters from government officials, educational institutions, charitable and cultural organizations, employees and viewers stating their support for WQED's proposal to sell WQEX(TV) to a commercial operator.

provides that the net proceeds of the sale will be evenly divided between WQED and Cornerstone, except that Cornerstone will be entitled to 60 percent of any proceeds in excess of \$45 million.

### THE COMMENTS

13. With the exception of noncommercial television station KETC, all of the commenters oppose WQED's request that the Commission dereserve Channel \*16 so that it may be sold to a commercial broadcaster.<sup>11</sup> Most of the commenters maintain that Congress did not mandate the dereservation of Channel \*16. Rather, they argue, the Commission was only directed to reach an expedited determination within 30 days from receipt of WQED's petition, and that the Commission remains obliged to make its own supportable public interest determination. While most of the commenters agree that WQED is in precarious financial condition,<sup>12</sup> they uniformly stress that the Commission has consistently maintained a strong policy advocating the importance of noncommercial educational broadcasting, and that the Commission has never deleted a noncommercial reservation without substituting another reserved channel in the same community. As ALTV states, while it is sympathetic to WQED's financial plight, WQED is asking the Commission to "cast aside over 40 years of precedent and sound public policy . . . to take the unprecedented step of dereserving a channel on which a noncommercial station is licensed and operating . . . on the basis of a purported public interest showing which reflects little more than the short-term self interest of one noncommercial licensee [who] wants to be bailed out . . . ." ALTV Opposition at 6-7. The commenters also argue that there is a greater need for a second noncommercial outlet in Pittsburgh than for a seventh commercial outlet and that large segments of the Pittsburgh viewing audience only have access to educational programming through free over-the-air broadcasting. The commenters further contend that dereservation is not the only option to solve WQED's financial problems. ALTV and WBPA-LP contend that because WQED has entered into a channel exchange agreement with Cornerstone that would preserve Channel \*16 as a noncommercial allotment, the drastic step of dereservation is unnecessary to solve WQED's financial crisis. Alliance contends that WQED can seek to reorganize through a Chapter 11 bankruptcy proceeding, and PET states that if WQED is financially incapable of sustaining operations on Channel \*16, the Commission should revoke the WQEX(TV) license and allow other entities, such as PET, to apply.

14. In its consolidated reply, WQED contends that Congress strongly favors the dereservation of Channel \*16 and ordered the Commission to substitute statutory criteria for prior precedent, statutory criteria which WQED asserts it has fully met. WQED also asserts that there will be a minimal loss of programming diversity if WQEX(TV) is sold. According to WQED,

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<sup>11</sup> We note that, before WQED filed its petition, the Commission received numerous letters from community organizations, viewers and government officials urging that we allow WQED to sell Channel \*16 to a commercial broadcaster. We also received a number of letters urging us to refuse any such request.

<sup>12</sup> Channel 29 argues that WQED has failed to prove that its broadcast operations are losing money, or that if they are, such losses have been the proximate cause of the Company's overall financial difficulties.

the two stations together currently broadcast nearly 100 hours a month of locally-produced programming, with almost two-thirds being carried on WQED(TV), and that local programming on WQED(TV) will be expanded by preempting current programming. WQED also notes that some of programming on WQEX(TV) is not educational, that the two stations presently duplicate programming, and that the duplication will increase dramatically in the fall because of a reduction in its grant from the Corporation for Public Broadcasting. WQED also defends its agreement with Cornerstone as a prudent contingency arrangement, but asserts that dereservation is a preferable option because WQED, and therefore public broadcasting, would receive a greater financial benefit.

### DISCUSSION

15. The statutory language pursuant to which WQED filed its petition does not require the Commission to grant the relief WQED requests. Rather, it specifies criteria that the Commission should utilize in determining whether to grant WQED's request to dereserve Channel \*16 in Pittsburgh. The criteria are: (1) the public interest; (2) the existing common ownership of two noncommercial stations in Pittsburgh; (3) the financial distress of WQED; and (4) the threat to the public of losing or impairing local public broadcasting service in the area. We have carefully and fully considered each of these criteria. Applying these criteria, we cannot find that dereservation of Channel \*16 under the circumstances now before us is appropriate.

16. We are presented here with strong competing public interest considerations. On the one hand, the record clearly establishes that WQED, the licensee of two highly regarded noncommercial educational television stations in the Pittsburgh market, and a recognized leader in the production of educational programming, is in severe financial distress. As characterized by the Duquesne University study, WQED is "in an unsustainable financial position," is "technically insolvent," and "continues to operate only with the tolerance of its creditors."<sup>13</sup> The financial solution which WQED proposes however -- the deletion of the reservation of an operating noncommercial educational television station so that it may be sold to a commercial operator -- is not only unprecedented, but is also inconsistent with the Commission's stated goal, over the past four decades, of promoting the growth of public television and the broadcast of educational programming.

17. Before the Commission adopted its Television Table of Allotments, it conducted an extensive hearing on whether certain assignments in the VHF and UHF band should be reserved for the exclusive use of noncommercial, educational television stations. Based upon the evidence before it, the Commission concluded that:

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<sup>13</sup> A company is deemed insolvent if its current liabilities exceed its current assets. According to the audited financial statements, WQED has not had enough current assets to cover its current liabilities since 1990, and its current liabilities are now three times its current assets.



[T]he record shows the desire and ability of education to make a substantial contribution to the use of television. . . . The public interest will clearly be served if these stations are used to contribute significantly to the educational process of the nation. The type of programs which have been broadcast by educational organizations, and those which the record indicates can and would be televised by educators, will provide a valuable complement to commercial broadcasting.

*Sixth Report and Order*, 41 FCC at 160. Accordingly, the Commission has historically sought to reserve approximately twenty-five percent of television channels for noncommercial use.<sup>14</sup> Congress has also recognized the fundamental importance of public broadcasting to the nation. In creating the Corporation for Public Broadcasting,<sup>15</sup> Congress specifically found, *inter alia*, that the public interest is served by encouraging "the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes" and "the development of programming that . . . addresses the needs of unserved and underserved audiences, particularly children and minorities;" and that "public television and radio stations . . . constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems . . . ." 47 U.S.C. § 396(a).

18. Since reserving television channels for noncommercial operation in 1952, the Commission has never dereserved a noncommercial channel without substituting another reserved channel. The Commission has repeatedly denied requests to delete reserved channels, citing as a principal reason for doing so the need to preserve the future availability of the channels. The Commission has maintained this view even where dereservation was sought by an incumbent noncommercial licensee which represented that it would go dark absent grant of its dereservation request. *See 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). Similarly, dereservation has been denied where the request involved a vacant channel and thus would not have resulted in the withdrawal of existing noncommercial service and despite a history of failed attempts to provide noncommercial service on the reserved channel. *See Amendment of Section 73.606, Table of Assignments, Television Broadcast Stations, (Ogden, Utah)*, 45 RR 2d 768, 774 (Broadcast Bureau, 1979)("[T]he Commission's commitment to noncommercial broadcasting has remained intact, and there is a heavy burden of persuasion on petitioners who seek to remove such frequencies from the reserved list . . . .")<sup>16</sup>

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<sup>14</sup> *See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Anchorage, Palmer and Seward, Alaska)*, 5 FCC Rcd 7570, 7571 (Policy & Rules, 1990), *citing Sixth Report and Order*, 41 FCC at 166.

<sup>15</sup> *See Public Broadcasting Act of 1967.*

<sup>16</sup> *See also Amendment of Section 73.606(b), Table of Assignments, TV Broadcast Stations, (Great Falls, Havre and Missoula, Montana)*, 1986 WL 291502 (Policy and Rules, April 14, 1986); *Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Houston, Texas)*, 50 RR 2d 1420, 1423 (Broadcast Bureau, 1982).

19. The Commission has also stated that its general policy is to disfavor the dereservation of lower band UHF channels even where higher band channels could be substituted and reserved for noncommercial use and the channels are presently unused. See *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, (Clermont and Cocoa, Florida)*, 5 FCC Rcd 6566, 6568 (1990), *aff'd, Rainbow Broadcasting Company v. FCC*, 949 F.2d 405 (D.C. Cir. 1991) ("[W]e note our long-standing reluctance to alter noncommercial educational allotments by dereserving a lower UHF channel and substituting a higher UHF channel.") For example, in denying a request that it substitute Channel 61 for Channel \*21 as the reserved channel at Houston, Texas, the Broadcast Bureau observed that:

[T]he reasons offered for dereserving Channel \*14 -- lower cost, easier tuning, early initiation of service -- are also true for providing a noncommercial educational service on Channel \*14. The likelihood of initiating a noncommercial educational rather than a commercial service on Channel 61 is less given the difference in costs at a time when state and federal funding [for noncommercial broadcasting] has been cut back . . . .

*Houston, Texas*, 50 RR 2d at 1423. Similarly, when the Commission adopted procedures permitting intraband channel exchanges between commercial and noncommercial stations, based in part on the fact that noncommercial educational stations would receive consideration which would enable them to improve the quality of their facilities or even, in some cases, to initiate broadcast operations, the Commission stressed that:

In no circumstances will educational reservations be eliminated through this process . . . Rather, it merely provides for more effective use of noncommercial educational channels by shifting reservations within the same band from one channel to another in light of evidence of substantial public interest benefits proffered in subsequent rule making proceedings. The number of reserved and unreserved channels available to provide service to a given community will remain the same.

*Intraband Television Channel Exchanges*, 59 RR 2d at 1462.<sup>17</sup>

20. In short, the Commission has repeatedly favored the long-term structural integrity of its noncommercial channel allotments scheme, including the maintenance of channel capacity as a means of facilitating future growth, over the needs of particular licensees, both commercial and noncommercial. We recognize, of course, that special public interest justifications could be presented that would support an exception to our strongly held policy disfavoring dereservation.

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<sup>17</sup> See also *Rainbow Broadcasting Company*, 949 F.2d at 410 ("At the initial allocation of channel space in 1952, the FCC set aside for itself special discretion in handling the allocation of channel space for educational stations. . . . In recognition of the public benefit of the operation of noncommercial stations, the FCC has since 1952 followed a pattern of insulating educational stations from market pressures.")

Given the circumstances in this case, however, we cannot conclude that WQED has made the compelling showing we believe essential for us to do so. First, we are not persuaded that there exists a clear and present "threat to the public of losing or impairing local public broadcasting service" that would warrant the dereservation of Channel \*16. While WQED has indicated that it would have to restructure its operations somewhat should dereservation of Channel \*16 not be approved, it acknowledges that it will not go dark if it is unable to sell Channel 16 to a commercial broadcaster. Consolidated Reply at 9.

21. Second, we cannot conclude that there is no need for a second noncommercial channel at Pittsburgh. According to the Alliance, the combined viewing share of WQED(TV) and WQEX(TV) is double the national average for noncommercial television station viewing in a market. While WQED asserts that it no longer needs WQEX(TV) to provide the service for which it was originally intended, classroom instructional programming, this argument overlooks the facts that WQEX(TV) is presently offering programming 16 hours a day and that this programming cannot be fully replaced simply by extending the hours of operation of WQED. Moreover, Pittsburgh currently has the benefit of two noncommercial educational stations during prime viewing hours, a benefit that would not be maintained by extending WQED's broadcast day. We also note that at least two other nonprofit entities, Cornerstone and PET, have expressed an interest in providing noncommercial educational programming on Channel \*16.

22. We are also not persuaded by the record that dereservation is 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 noncommercial licensing criteria, that would not require us to dereserve Channel \*16 or to otherwise reduce the number of noncommercial stations allotted to Pittsburgh. Under that agreement, and subject to Commission approval, WQED would assign Channel \*16 to Cornerstone and Cornerstone would, in return, assign its commercial Channel 40 to WQED. Channel \*16 would remain reserved and allotted to Pittsburgh and Cornerstone would operate on the channel as a noncommercial, nonprofit entity.<sup>18</sup> WQED would then sell Channel 40 to a commercial broadcaster and split the proceeds of the sale with Cornerstone. While WQED argues that under this approach it would receive smaller proceeds than from the sale of Channel 16 as a commercial station, it has not suggested that this alternative would produce income inadequate to avoid the service and programming losses that it predicts will occur absent some form of financial relief. Indeed, given WQED's decision to enter the agreement with Cornerstone and the substantial potential cost to it from having done

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<sup>18</sup> Several commenters state that Cornerstone broadcasts an extensive amount of religious programming on its present station, WPCB-TV, and question whether it is qualified to operate on a reserved channel. The Commission has previously held that noncommercial educational organizations and institutions, even though religiously oriented, may acquire reserved broadcast channels if they make an appropriate showing as to their qualifications. See *Way of the Cross of Utah, Inc.*, 101 FCC 2d 1368 (1985); see also *Columbia Bible College Broadcasting Co.*, 6 FCC Rcd 516 (1991); 47 C.F.R. § 73.621.

so, it is a fair inference that the channel exchange which that agreement contemplates would provide significant financial relief to WQED. We agree with ALTV and WBPA-LP that under these circumstances, we cannot find on the record now before us that the public interest would, on balance, be best served by the dereservation of Channel \*16 in Pittsburgh, as WQED has requested.

23. Finally, WQED's contention that grant of its Petition should be favored because it would dissolve an existing duopoly ownership pattern in Pittsburgh -- WQED(TV) and WQEX(TV) -- is unpersuasive. The result which WQED advances as worthy of pursuit through grant of its Petition -- enhanced diversity and competition in the Pittsburgh market through the divestiture of Channel \*16 to a commercial broadcaster -- will be achieved in a manner more compatible with the broad public interest if WQED were to pursue other options with respect to WQEX(TV), one of which may be to implement its agreement with Cornerstone. Nor has WQED presented the type of compelling evidence necessary to justify dereservation based on its allegation that Pittsburgh suffers from a lack of commercial service.

24. We specifically do not prejudge or signal approval of any future application seeking our consent to a "channel swap" between WQED and Cornerstone. Further, WQED has not affirmatively advanced a channel exchange with Cornerstone as a viable alternative to its request to dereserve and sell Channel \*16. There is no dispute on the record, however, as to the facts we have recited here concerning the Cornerstone agreement. Moreover, in the face of arguments by ALTV and others that the Cornerstone approach should be preferred to dereservation of Channel \*16, WQED has answered only that it would not receive as great a benefit from the channel exchange as from an outright sale of Channel 16. It has not contended that the channel exchange is an unworkable solution to its difficulties. Thus, while we do not have before us a complete record as to the Cornerstone agreement, we do have uncontroverted evidence that an alternative remedy is available to WQED that would have a substantially less adverse impact on our noncommercial allotment policies. This record is quite sufficient to inform our decision here that WQED has not met the heavy burden it faces in justifying dereservation of Channel \*16. Should WQED choose to do so, of course, it may submit any further details or arguments concerning the channel exchange approach which it wishes and we will afford any such submission expedited consideration. Alternatively, should WQED elect to immediately pursue its channel exchange agreement with Cornerstone, we will accord similarly expedited consideration to any implementing applications it might file.<sup>19</sup>

#### OTHER MATTERS

25. Alliance requested that we schedule oral argument on WQED's petition. Based on the record before us, and Congress' command that we act on WQED's petition within 30 days,

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<sup>19</sup> Given our resolution here, we need not, and do not, address commenters' remaining assertions in opposition to the proposed dereservation of Channel \*16 or other matters raised that are beyond the scope of WQED's instant request.

we conclude that oral argument is unnecessary to assist in our determination on WQED's petition. We will also deny Alliance's request that we order WQED to produce certain documents. The requested documents relating to allegations of mismanagement and fraud by prior management are not relevant to our determination here. Moreover, given our decision to deny WQED's petition, documents relating to the Duquesne University Study, the Mellon bank loan, and WQED's dealings with creditors are also unnecessary. Finally, we will not require WQED to produce its agreement with Cornerstone and with any potential purchaser of Channel 40. Those documents will be filed with the Commission should WQED elect to submit the assignment applications necessary to effectuate its agreement with Cornerstone. Short of WQED requesting further Commission action implicating the Cornerstone agreement, we see no need for the documents Alliance seeks.

26. In addition to its opposition, PET also filed a Petition to Revoke License, requesting that the Commission take official notice of WQED's Petition to Delete Noncommercial Reservation and revoke the license of WQEX(TV) because WQED is financially unqualified to remain a Commission licensee.<sup>20</sup> Section 312 of the Communications Act, 47 U.S.C. § 312, gives the Commission the discretion to institute revocation proceedings on its own motion, but does not specifically create rights in third parties to file petitions to revoke licenses. *KSDK, Inc.*, 93 FCC 2d 893, 895 (1983). Thus, we will treat PET's petition as an informal request for Commission action pursuant to Section 1.41 of the rules, and find that PET has failed to raise an issue regarding WQED's qualifications. The Commission requires that applicants for new broadcast stations and proposed assignees of broadcast permits and licenses certify that they have sufficient capital to construct the station and then operate for three months without advertising or other broadcast revenue. *See New Financial Qualifications Standard for Broadcast Television Applicants*, 72 FCC 2d 784 (1979). The Commission does not, however, exercise any continuing oversight regarding a licensee's finances, as evidenced by the fact that FCC Forms 303-S (Application for Renewal of License), 395-B (Broadcast Station Annual Report) and 323/323-E (Ownership Report) do not require an applicant to disclose any financial information. *See also* 47 U.S.C. § 309(k). We also note that in the event that a licensee's financial condition causes it to fail to broadcast for twelve consecutive months, the license automatically expires at the end of that period. 47 U.S.C. § 312(g). WQED states that WQEX(TV) will remain on the air irrespective of the action taken on its Petition to Delete Noncommercial Reservation. Accordingly, PET's petition will be denied.

### CONCLUSION

27. Based upon our review of the record before us, we conclude that the public interest would not be served by removing the noncommercial reservation from Channel \*16 at Pittsburgh. Accordingly, IT IS ORDERED, That the Petition to Delete Noncommercial Reservation filed by WQED Pittsburgh on June 24, 1996 IS HEREBY DENIED.

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<sup>20</sup> WQED filed an Opposition on July 12, 1996.

28. IT IS FURTHER ORDERED, That the Petition to Revoke License filed by Pittsburgh Educational Television, Inc. IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

SEPARATE STATEMENT  
OF  
COMMISSIONER SUSAN NESS

RE: *WQED Petition to Delete Noncommercial Reservation*

My vote today to deny WQED's Petition is largely based upon my concern about the effect such a dereservation would have on the non-commercial broadcasting system in the United States, a service about which I deeply care. The WQED request would affect not just Pittsburgh but would have implications for stations in several cities across the country.

The owner of WQED and WQEX has asked for the change in WQEX's non-commercial status in order to sell WQEX to a commercial broadcaster. Such a sale would eliminate an important noncommercial voice in the greater Pittsburgh area. Since 1952, the Commission has never granted a change to commercial status without adding another noncommercial station to a market.

I decline to disturb long standing Commission precedent, especially with a decision that could ripple through the country, putting undue pressure on other public television stations to sell what essentially is their birthright. The strength of our noncommercial system flows from the combination of quality programming for underserved audiences and distribution over a system of reserved television stations in each market that blankets the country.

When "swaps" between VHF noncommercial and UHF commercial broadcasters became an issue several years ago, the prospect of immediate financial gains nearly obliterated concern about undermining the long term health of the public broadcasting system.

Although I am sympathetic to the desire of WQED management to solve its financial problems, the sale of its sister station to a commercial broadcaster is not the only possible solution. During the course of this debate, other less draconian measures were suggested which would allow two public television stations to continue to serve the greater Pittsburgh community.

Despite my vote to deny WQED's Petition, I am concerned about the longterm viability of WQED and WQEX if their current financial problems are not solved. However, I remain confident that station management and the Pittsburgh community can work together to fashion a solution that will return both stations to financial health.

CONCURRING STATEMENT OF  
COMMISSIONER RACHELLE B. CHONG IN WHICH  
COMMISSIONER JAMES H. QUELLO JOINS

*Re: Deletion of Noncommercial Reservation of Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania, FCC No. 96-314*

I reluctantly concur in the Commission's decision in this case. WQED Pittsburgh, the licensee of noncommercial educational television stations WQED(TV), Channel \*13 and WQEX(TV), Channel \*16 in Pittsburgh, like many other public television stations, is in serious financial trouble. WQED thought it had devised a creative way to solve its financial trouble. Its solution, to sell Channel \*16 as a commercial station, would have allowed WQED to become financially healthy now and help it stay financially viable well into the future. It would have allowed WQED to continue to produce the quality educational programming for which it is known. In addition, this solution would have permitted Pittsburgh, a city with fewer commercial TV allocations than comparably-sized markets, to have a new commercial competitor and more diversity in commercial programming. In my view, these could have been compelling reasons to support a grant of WQED's petition to dereserve Channel \*16 so that Channel 16 could be sold as a commercial station.

I concur in the denial of WQED's petition, however, because the record shows that WQED has another alternative to relieve its current financial distress without dereservation of Channel \*16. I understand that WQED has an option to swap Channel \*16 for commercial Channel 40 and divide any proceeds from the subsequent sale of Channel 40 with the Channel 40 licensee. The public expressions we received from the citizens of Pittsburgh make it unclear whether this alternative would better serve the development of public broadcasting in that city. Nonetheless, given the public interest considerations that led the FCC to reserve noncommercial channels and the Commission's strong precedent disfavoring dereservations, the presence of this alternative leads me to conclude that we cannot grant the petition on this record.