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Federal Communications Commission
Office of the Secretary

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Policy Implications of the Changing Video Marketplace	)	MM Docket No. 91-221
	)	

To: The Commission

JOINT COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND THE PUBLIC BROADCASTING SERVICE

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Summary

Public television will be a leader in the emerging multi-media distribution environment. It has already embarked, as Commissioner Duggan urged, on developing new technologies, forging new alliances and creating new ways of expanding service, channel capacity and methods of distribution. Public television has been and continues to be a leader in developing new communication technologies and using them to deliver public service programming to citizens. It was the first to use satellite technology for a national interconnection system. It pioneered ITFS, interactive videodiscs, live interactive satellite distance learning, interactive videotext, and ATV demonstration broadcasts. Public television continues to play a leadership role in each new technology highlighted in the OPP Paper: it is currently developing digital technology to be incorporated into its new TELSTAR satellite system, it is exploring and testing educational applications of VSAT technology, and it is integrally involved in testing and demonstrating advanced television systems and developing high definition programming.

With these advances in technology, public television is evolving from a broadcast to an educational telecommunications system; and from broadcasters to public service programming providers. It is utilizing multiple telecommunications technologies—including cable, direct broadcast satellites, videocassettes, interactive videodiscs, and videotext—to provide public services to homes, schools and the workplace. In so doing, public television is meeting, head on, the challenge of continuing to pursue its mission—to produce and distribute high quality noncommercial educational, informational and cultural programming to our Nation's citizens—in the evolving multichannel video marketplace.

The OPP Paper, which focused largely on commercial broadcasters' ability to compete, failed to recognize this key role that public television is playing in this emerging multi-media environment. It also reached erroneous conclusions about public television that require correction:

- There simply is no basis for OPP's statement that cable is meeting the same needs as public television. For a variety of reasons, including reach, program content, ratings, satisfaction and distinct programming philosophy and purpose, specialized cable channels are not and cannot replace public television service. Public television—because it seeks to educate, inform and enlighten an audience rather than to attract audiences for advertisers—is and will remain a unique media service.

- For this reason, contrary to OPP's suggestion, the justification for federal funding for public television remains constant and strong.

Congress has stated that it is in the public interest to ensure that public television not be deprived access to, and be enabled to make the best possible use of new technologies. As each new video medium emerges, public television needs the 1990s equivalent of the FCC's 1950s channel reservation. A continuation of the FCC's policy of access and recognition of the need for special accommodation for public television is essential to the continuing availability of public service programming for the American public. The Commission is now faced with a number of policy decisions in which it can exercise the same foresight today as it did in 1952 when it reserved broadcast spectrum for public television:

- Cable Must Carry - Access to public television on cable is at the very core of public television's ability to be a viable public service program provider in the 1990s' multichannel marketplace.

- Broadband Fiber Networks - In the event the FCC grants telephone companies the right to provide video dialtone services, public television seeks reserved capacity, similar to the reservation of broadcast spectrum, on broadband fiber networks.

- Direct Broadcast Satellite - Public television seeks reserved channel capacity for noncommercial public service uses.

- Advanced Television - Public television urges the FCC to continue to recognize the strong public policy behind the reservation of noncommercial allotments as it formulates a new ATV allotment/allocation scheme.

- Interactive Video Data Services - If the FCC authorizes spectrum for IVDS services, public television urges it to reserve a portion of that spectrum, or provide guaranteed access to IVDS services at reduced rates, for public service users.

The Commission's determination on these issues is critical to public television's ability to adapt to the evolving multichannel, multi-media environment and continue its mission to ensure universal access to public service programming.

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COMMENTS OF
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS
AND
THE PUBLIC BROADCASTING SERVICE

I. INTRODUCTION

The Association of America's Public Television Stations (APTS) and the Public Broadcasting Service (PBS) accept the Commission's invitation to comment on the public policy issues that affect public television stations in the changing video marketplace.

In a separate statement that accompanied this Notice of Inquiry, Commissioner Duggan observed that broadcasters need to embrace the new technological environment and create new models of service for the public:

> Broadcasters need to invent a whole new future. They need, as never before, to innovate: to launch a new era of research, technical innovation, and imaginative programming. Broadcasters should be

creating new services and forging new alliances that will expand their channel capacity and energize their programming.[1]

Public television already has embarked on the course outlined by Commissioner Duggan. We view ourselves not as "broadcasters" but as public service programming providers in a multi-media distribution environment. Rather than dig trenches to protect ourselves against new technologies, we have seized the opportunities presented by new technologies and used them to provide new and better services for the public. Public television is an innovator and a leader in virtually every technology area reviewed in the OPP Working Paper Number 26, Broadcast Television in a Multichannel Marketplace. Further, we have adopted these new technologies while maintaining our core mission of providing excellent educational and information services for all citizens.

Over the foreseeable future, broadcast will be the only method of video distribution that will permit America's public television stations to continue to achieve its nearly universal access to the American public. However, we recognize that many households view public television over cable. Further, public television also uses many other distribution media to provide services for homes and schools, e.g., videocassettes, interactive videodiscs, ITFS, cable, direct broadcast satellites and videotext. In addition, we are active in research and development of digital compression technology, VSAT technology, and of high-definition television. In this sense, public television is currently a multi-media service that uses a broad "mix" of distribution technologies.

In these comments we hope to show the Commission how public television will continue to be a model for adapting to the new multi-media environment and

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[1] *Review of the Policy Implications of the Changing Video Marketplace*, MM Docket No. 91-221, (released Aug. 7, 1991) [hereinafter *Notice*] (Separate Statement of Ervin Duggan at 1).

how the Commission, through key policies, can facilitate our provision of a robust public television service in a changing video marketplace.

APTS and PBS are private, nonprofit membership organizations whose members comprise virtually all of the nation's 343 public television stations. APTS represents its membership on a national level by presenting the stations' views to the Commission, Congress and the Executive Branch, and to other federal agencies and policy-makers. The Association also provides policy planning and conducts research on a wide range of issues of interest to public television stations. PBS distributes national programming, manages the public television satellite distribution system, and provides a vast array of engineering and program-related services for its member stations nationwide.

II. PUBLIC TELEVISION AND THE MEDIA ENVIRONMENT

The OPP Working Paper Number 26, Broadcast Television in a Multichannel Marketplace, is a thought-provoking analysis of the technological environment in the 1990s. However, as a preliminary matter, we wish to correct a few misconceptions in the Working Paper about public television.

A. Public Television's Mission

The OPP Working Paper's view of public television's purpose—that it was "created as a response to the failure of the advertiser-supported program market to produce programming to suit the tastes of small audiences"[2]— does not recognize the full scope of public television's mission. Public television began in the early 1950s when television stations were first licensed to educational institutions for the

[2] *Broadcast Television in a Multichannel Marketplace*, Federal Communications Commission, Office of Plans and Policy, Working Paper No. 26 at 161 (June 1991) [hereinafter *OPP Working Paper*].

purpose of providing educational programming. In 1952, the Commission wisely determined that a significant share of broadcast spectrum should be reserved for noncommercial educational television.[3] This reservation was not meant simply to "suit the tastes" of a few, but rather to preserve the potential for society to use the power of this medium for educational purposes then and into the future. As the Commission explained, the need for public television is,

> Based on the important contribution such stations can make in the education of the in-school and adult population . . . Further, the justification for an educational station should not, in our view, turn simply on account of audience size. The public interest will clearly be served if these stations are used to contribute significantly to the educational process of the Nation.[4]

Public television was created through the foresight of the Commission, to provide a distinct source of high quality educational programming, not simply to react to the shortcomings of the commercial marketplace.

The modern era of public television began with passage of the 1967 Public Broadcasting Act. The legislation, based upon the recommendations of the Carnegie Commission, helped frame the mission of public television which is to:

- Reach and serve all Americans;
- Produce the highest-quality programs;
- Provide alternative programming and programs from diverse sources;
- Support local stations and services; and
- Provide instructional services and educational programming.

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[3] *See Sixth Report and Order*, 41 F.C.C. Rcd. 148 (1952) [hereinafter *Sixth Report and Order*].

[4] *See Sixth Report and Order* at 160.

As our mission demonstrates, public television serves many roles beyond those outlined in the OPP Working Paper. These goals and objectives will be as vital in the changing video marketplace as they have proven to be over the last 40 years. We urge the Commission, as it considers our policy recommendations discussed below, to exercise the same foresight today, as it did in 1952, to ensure that public television can continue to serve audiences in the changing video marketplace.

B. Public Television And Commercial Network Audiences

The OPP Working Paper notes that during the 1975-90 period of rapid cable growth, the audience share for commercial broadcast networks declined sharply. The report implicitly links public television to commercial networks in terms of audience loss.[5] In fact, public television has maintained a relatively constant audience share in the expanding video marketplace. In Tables 1 and 2, we provide an overview of some significant changes in the video marketplace and associated changes in audience shares for public television and commercial networks. During the period 1975 to 1990, cable penetration grew from 14 percent to 56 percent of U.S. TV households. Concomitantly, the number of channels available to an average TV household grew from 7 to 32.

The effect of the changes on the commercial networks was clear—a sharp decrease in audience share. The effect on public television was quite different. During much of this period, the growth of cable television actually helped public television: some households that were outside the reach of a broadcast signal could now receive public television on cable; some households that received a weak broadcast signal could get a better picture on cable; and some households that could

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[5] *OPP Working Paper* at 160.

receive only one public television station could receive a second public television channel on cable. Thus, the growth of cable increased public television's availability for many viewers.

During the second half of the 1980s, public television began to feel some effects from the proliferation of channels on cable television systems. However, as shown in Table 2, the effect on audience share has been moderate. In sum, public television has held up quite well in the competitive environment of the 1990s—where an average household has four times as many channels available compared to 1975.[6]

Moreover, in the face of vastly increased options for viewers, public television has received significantly increased financial support from the public. Between 1979 and 1990, the number of individual contributors to public television increased from 2.3 million to 4.9 million; and the average per-person contribution increased from $27.40 to $56.02. As a result, membership income as a percentage of all income increased from 15 percent to 24 percent. These financial indicators suggest that the public, even with its increased choices, values public television services more than ever.

C. Public Television and Specialized Cable Channels

The OPP Working Paper spreads a common misperception that a number of cable channels are providing the same services and meeting the same needs as public television. The paper states, "with the advent of commercial viewer-supported programming on cable, many of the needs public television was intended

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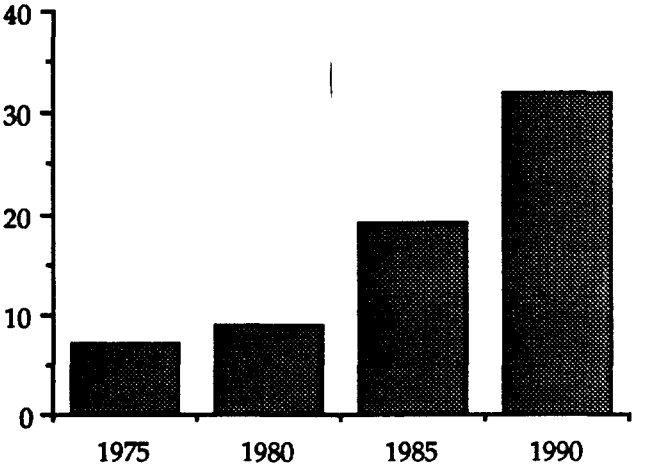
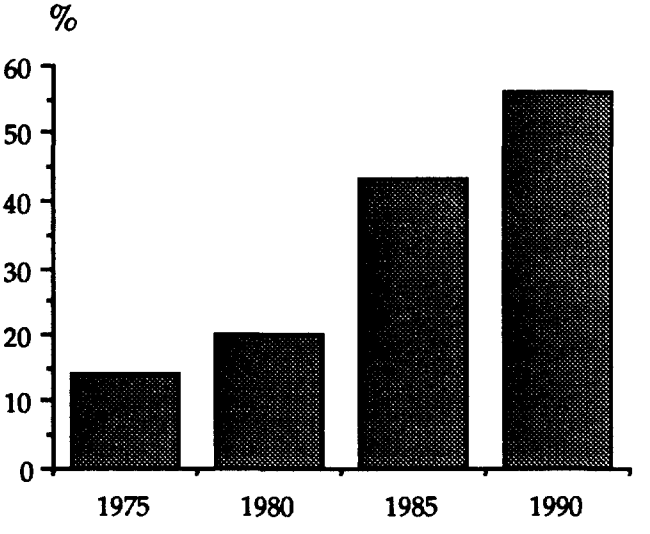
[6] Further, broadcast and cable audience data do not take into account audiences that public television reaches in schools or home audiences that watch purchased videocassettes of public television programming. In addition, data available on household taping of television programs indicate that public television's share of taping is greater than its share of regular viewing. Nielsen Television Index, *VCR Tracking Report* (February 1990) indicated that public television received a 5.8 share of full day taping versus a 3.4 percent share of full day viewing.

Table 1. Changes in the Media Landscape, 1975 - 1990

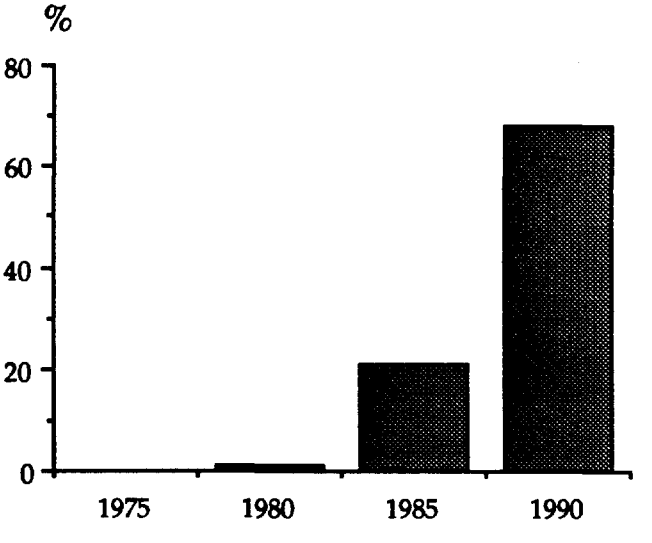
Number of Channels Available in the Average TV Household



Cable Penetration of TV Households

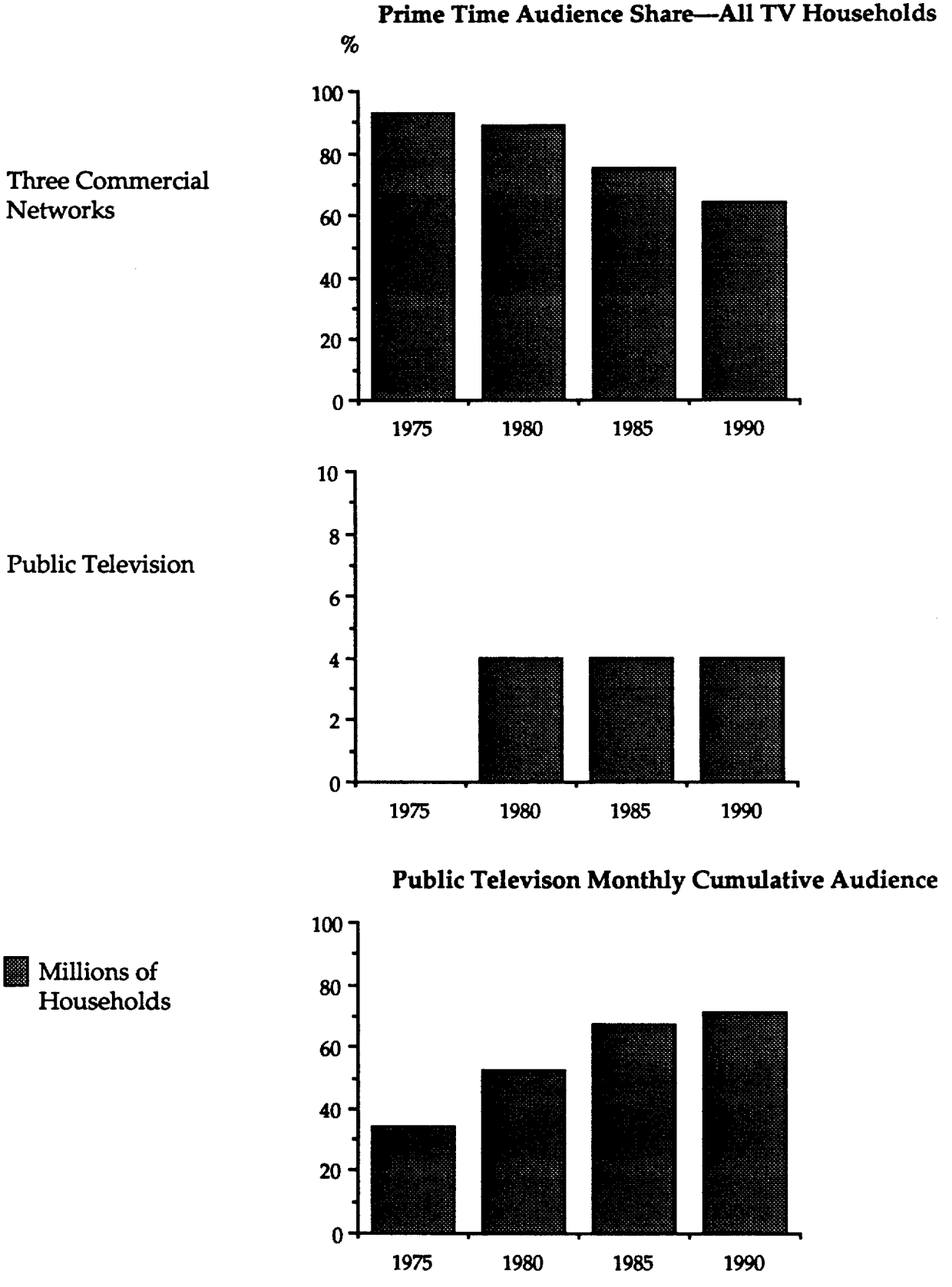


VCR Penetration of TV Households



Source: A.C. Nielsen and TV Bureau of Advertising

Table 2. Change in Audiences, 1975-1990: Commercial Networks and Public Television



Source: A.C. Nielsen and TV Bureau of Advertising

to fill have begun to be met by cable."[7] This simply is not true. The following distinctions between public television and specialized cable channels clearly demonstrate that cable is not replacing public television services:

- Reach. As Table 3 demonstrates, public television reaches approximately 98 percent of U.S. TV households. Cable television reaches approximately 60 percent.

  Table 3. Homes that can receive Public TV and selected cable channels, second quarter 1990

Public TV	98%
Discovery Channel	55%
Art & Entertainment	50%
The Learning Channel	22%
Disney Channel	5%
Bravo	4%

  OPP's examination of cable growth rates suggests that cable is not likely to enter more than two-thirds of U.S. households for the foreseeable future. This means that one in three households will not receive services that are distributed on cable. Further, cable is often unaffordable to low-income, inner city households, those most in need of education services of public television.

- Program Content. Approximately 55 percent of the programs on public television during a full broadcast day consist of children's and educational or instructional programs. Among specialized cable channels, only Nickelodeon has a significant percentage of programming in one of these categories—children's programs. Most of Nickelodeon's programs for children, however, consist of games, cartoons and other forms of general entertainment. The Learning Channel has a significant amount of instructional programs, but many of their instructional programs were originally produced by public television (e.g., Annenberg/CPB telecourses).

- Ratings. Many more people watch public television than specialized cable channels. Public television's prime time rating is significantly greater than that of specialized cable channels. For example public television programs have an average audience rating of 2.3 as

[7] *OPP Working Paper* at 161.

compared to 0.6 for the Discovery Channel, 0.3 for Arts and Entertainment and 0.6 for Nickleodeon.[8]

- Satisfaction. A number of surveys have shown a high viewer satisfaction with public television. People look first to PTV for science and nature programs, performance programs and quality children's programs. Public satisfaction with cable is lower overall, and many subscribers are dissatisfied with the service they receive from cable operators as well as the escalating prices of basic cable service.

- Program Investment. Public television invests significantly more in original, nationally available, high quality programming, than specialized cable channels such as A&E or The Discovery Channel. Further, public television invests significantly in local and regional program productions and acquisitions. Nearly all of the specialized cable channels that have been compared to public television are national networks that have no local programming.

- Program Awards. While it is very difficult to quantify "excellence" in programming, one reasonable indicator of excellence is the number of major awards for programming. In 1989, public television received twice as many Emmy and Peabody awards as all cable channels combined.

- Noncommercial Nature. An important distinction between public television and specialized cable channels is the absence of advertisements. Associated with this is a freedom from the pressures of commercial sponsorship that allows public television to program to special interests and target audiences of little value to advertisers. The special funding mix of federal, state and local tax dollars as well as private contributions is an important factor underlying public television ability to provide a unique quality program service.

- Distinct Programming Philosophy. Commercial television and basic cable seek to attract audiences so that access to those viewers can be sold to advertisers. The measurement of a program's worth lies not in its intrinsic value, but rather its drawing power. In contrast, in public television, programming is the purpose. Our simple goal is to select and provide the very best programming we can in order to educate, inform, and enlighten an audience. The only prerequisite is the intrinsic worth (and affordability) of the program, not whether the program will attract large audiences. Public television's different programming philosophy makes it a unique media service.

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[8] 1991 Nielsen Cable Activity Report.

In sum, there is no evidence to indicate that specialized cable channels can replace public television.[9] The demise of public television, under the onslaught of cable channels, has been predicted before. Chairman Sikes has eloquently explained the continued survival of public television in the new multichannel marketplace:

> Back in the early 1980s, there were a lot of concerns voiced about the future prospects for public broadcasting. . . . Cable television was expanding rapidly and people were concerned that some of its offerings would siphon away precisely the same viewers who had long been the core of public television's support. And, there were concerns that more competition for programming would increase public broadcasting's costs faster than new revenues could be gained.
>
> Fortunately, not many of the gloomy forecasts of that era have materialized. . . . One explanation is the sustained quality of the (public television) programming. Series such as The Civil War truly represent television service at its best.
>
> But, in the final analysis it is public broadcasting's demonstrated commitment to excellence which is yielding and will continue to yield significant dividends. Today, some 60 percent of the public has access through cable television to an average of 32 video channels. And, better than three-quarters of the public has a VCR. In an age of video abundance, quality and excellence will become even more important. That lesson is being driven home to commercial broadcasters today. But it is a lesson which public broadcasters learned long ago, and practice successfully today.[10]

D. Justification for Government Support For Public Television

The OPP Working Paper also states, with very little commentary or supportive evidence, that "in the future, government funding of public television

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[9] The trend appears to be towards increased cooperative relationships between noncommercial public television and commercial cable or broadcast channels, e.g., the carriage of Annenberg/CPB telecourses on both PBS and The Learning Channel, PBS carriage on Cable in the Classroom, and shared coverage of the 1992 political conventions by NBC and PBS.

[10] Remarks of Alfred Sikes, Chairman, Federal Communications Commission, Before the University of Houston—KUHT Channel 8 Board of the Association for Community Television, Representatives of the University of Houston System, and University of Houston Board of Regents, February 6, 1991, pp. 5-6.

may have to be justified on different grounds."[11] This conclusion is premised on the erroneous statement, dispelled above, that commercial cable channels will somehow replace public television. The justification for the funding public television receives from the federal government (approximately 17 percent of its income)[12] remains constant and strong: public television provides the only locally controlled programming service in the United State whose sole purpose is to produce and distribute high quality noncommercial educational, informational and cultural programming to the nation's citizens. In short, public television provides universal access to the best programming television has to offer.

III. PUBLIC TELEVISION: A MODEL OF LEADERSHIP IN THE CHANGING VIDEO MARKETPLACE

Public television is changing with the rapidly evolving communications landscape in America. For more than a decade, public television has been a leader in exploring new communication technologies and using them to deliver excellent educational and informational services to citizens. Public television was the first to use satellite technology for a national interconnection system. It led with ITFS services and interactive videodiscs for schools. It pioneered in direct broadcast satellite services and online data services for the schools and is now a leader in the delivery of DBS services for education.[13]

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[11] *OPP Working Paper* at 161.

[12] When adjusted for inflation, federal support for public television declined during the 1980s. In constant 1980 dollars (removing the effect on inflation), the federal appropriation for CPB went form $152 million in 1980 to $148 million in 1990.

[13] We provide national DBS services through PBS and through the Satellite Educational Resources Consortium; regional DBS services through our regional public television associations; and statewide DBS services in states such as Kentucky and Nebraska.

Public television has also been a leader in the design and provision of interactive education services.[14] This includes interactive videodiscs (e.g., The Nebraska Videodisc Design/Production Group that was founded in 1978); live, interactive satellite courses (e.g., The Satellite Educational Resources Consortium provides distance learning opportunities for several thousand students spread across more than 20 states); and interactive videotext services (e.g., Learning Link, a consortium of public television stations in 14 states that provides computerized interactive training and information services for teachers and librarians).

Today, public television continues to lead the way in technological advances: it is involved in developing digital compression technology, in exploring educational applications of VSAT technology and in testing high definition television systems.

Public television has been working closely with the developers of digital compression technology, which will be incorporated into its new TELSTAR satellite system.[15] This new technology will allow public television to increase its transponder capacity by a factor of two to eight—or possibly more—thus permitting public television to provide multiple channels of services directly to the schools.

In addition, the new satellite system will feature a nationwide public television VSAT (Very Small Aperture Terminals) system. VSAT will make it possible to interconnect multiple combinations of educational users with interactive voice,

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[14] Commissioner Duggan, in his separate statement accompanying the *Notice*, challenged all of us to explore the intriguing possibilities offered by interactive television. *Notice*, (Separate Statement of Commissioner Ervin S. Duggan). The *OPP Working Paper* also discusses the potential of interactive services. *OPP Working Paper* at 59-62.

[15] PBS is also working with a consortium sponsored by Cable Television Labs which seeks to develop a digital compression system that will be widely used and available. PBS is committed to the development of an interoperable digital compression system that will be the key to making low cost decoding equipment available to the nation's television stations, schools and colleges.

computer data, facsimile or slow scan video services. Advances in digital compression technology, when coupled with the VSAT system, will enable the public television satellite system to deliver a wide array of educational services (audio, video and data) to literally every school in the United States. It will, for example, provide the foundation for a nationwide interactive distance learning system and make possible an extensive national electronic bulletin board system to store and exchange pertinent information for teachers, school administrators, stations and others. These services can be delivered to the schools by a variety of distribution technologies: copper wire, fiber optic link, coaxial cable, microwave, over-the-air or via space link.

Public television is also playing a leadership role in the development of an advanced television system. PBS conducted the first international satellite ATV telecast, and is working on plans to demonstrate ATV programming to the public through local public television stations. As a noncommercial organization, with strong technical and engineering capability and no vested interest in any specific ATV technology, public television is playing a critical, neutral role in the testing of ATV systems. PBS was recently selected by the FCC's ATV Advisory Committee to be responsible for conducting the ATV field tests, a critical component of the testing process.

Public television has taken a leadership role in the development of ATV technology because it is particularly important to the appreciation of much of public television programming. The improved quality of advanced television broadcasts—the picture clarity, closer ideal viewing distance and undegraded stereo sound—will significantly enhance the quality of the cultural, educational and arts programming offered by public television. Perhaps more than any other group, public television producers can be expected to exploit the new creative opportunities ATV technology will offer.

With these advances in technology, public television is evolving from a broadcast system to an educational telecommunications system. We have become programming service providers that utilize multiple telecommunications technologies to reach our nation's citizens. Table 4 displays some of the technologies in our multi-media educational distribution system.

Table 4. Methods For Distributing Instructional Television Programs To Schools By Public Television Licensees, 1990

Distribution Technology	Percentage of Respondents	Number
Main Broadcast Channel	95%	116
Cable Carriage of Broadcast Channel	60	75
Videocassettes	52	65
Satellite	18	22
ITFS	13	16
Separate Cable Channel Programmed By The Station	11	19
Second Broadcast Channel	10	12

Source: 1990 Public TV Census Survey of Educational Services, Public Broadcasting Service

The evolution of our distribution system will continue throughout the 1990s and into the next century. But this does not signal any change in public television's commitment to broadcast service—broadcasting will remain the principal means for

providing universal service to citizens for the foreseeable future. Nonetheless, public television will continue to lead the way in developing new technologies and utilizing new distribution mechanisms to deliver public service programming to the Nation's viewers, teachers and students. In developing this new model of public television, we will rely upon the Commission to continue to adopt policies and rules that provide universal access to public service programming.

IV. POLICY RECOMMENDATIONS: THE FCC SHOULD ADOPT THE 1990s EQUIVALENT OF THE 1950s CHANNEL RESERVATIONS

The Commission itself has long recognized the need to ensure access to technologies for noncommercial public telecommunication services. In the Sixth Report and Order, 41 FCC 148 (1952), the Commission reserved spectrum for educational uses, recognizing that, without such a special accommodation, noncommercial institutions would be unable to obtain access to broadcast spectrum as educational and public service programming and uses were developed. Since 1967, when Congress drew the first blueprint for public broadcasting (see p. 6 infra), Congress has consistently provided a funding base for public television to provide the type of high quality educational programming that market forces in the ratings-conscious commercial television field would not sustain.[16]

Congress has specifically supported public television's access to emerging communication technologies. In its report on the Public Telecommunications Financing Act of 1978, the Senate Commerce Committee stated:

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[16] *See* S. Rep. No. 447, 94th Cong., 1st Sess. 3 (1975) (renewing and expanding funding for public television facilities for construction); H.R. Rep. No. 1178, 95th Cong., 2d Sess. 41, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5345, 5348; H.R. No. 82, 97th Cong., 1st Sess. 21 (1981); H.R. Rep. No. 825, 100th Cong., 2d Sess. 10 (1988) (reauthorization of public television funding).

> This bill recognizes that public broadcasting can benefit from the technological revolution occurring today in the field of communications. The increased commercial and noncommercial application of various technologies: satellite, co-axial cable, microwave, and translators, as well as advances in the use of audio and video cassettes and discs, and the breakthroughs that are likely in optical fiber and computer memory, if they are planned for and used properly, will create a wealth of new services and greater program choices for the public. It is in the public interest for public broadcasting to make the maximum use practicable of these new technologies. [17]

The emergence of new television technologies recently led Congress to reiterate its belief that public television must not be excluded from access to new technological developments: "[I]t is critical that the public broadcasting system be able to take advantage of technologies such as advanced television technologies, including HDTV, interactive video and digital data distribution."[18]

Public television has consistently and repeatedly advocated its broad policy position—that all of our Nation's citizens should have access to public service programming which they support through federal and state tax dollars as well as private contributions[19]—in a variety of different contexts before the Commission. The need for the Commission to ensure access for public service programming on all distribution mechanisms is even more critical in the new multichannel marketplace.

As each new video medium emerges, we need the 1990s equivalent of the 1950s channel reservation. No matter what technology or media is used, Americans

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[17] Senate Committee on Commerce, Public Telecommunications Finance Act of 1978, S. Rep. No. 95-858, 95th Cong., 2d Sess. 6.

[18] H.R. Rep. No. 825, 100th Cong., 2d Sess. 14 (1988), *reprinted in* 1988 U.S. Code Cong. & Admin. News 4357, 4369.

[19] In recognition of public television's integral role in serving the educational and informational needs of the Nation's citizens, the Federal Government has invested more than $3.44 billion in public broadcasting since 1969. In addition, since 1972, public television has been supported through local tax dollars and voluntary contributions in excess of $10.8 billion.

should be assured access to public television services. Such a reservation is essential to the continuing availability of public-service programming for the American public.

Based upon this general policy position, we offer the following specific recommendations.

A. Cable Must-Carry.

In its 1990 Cable Report to Congress, the FCC recently stated, "Because of the unique service provided by noncommercial television stations, and because of the expressed government interest in their viability, we believe that all Americans should have access to them."[20] Accordingly, the Commission recommended that Congress require cable carriage of public television stations.

Must-carry provisions for public television, based upon an agreement between public television and the cable industry, are included in three cable bills introduced in the 1991 session of Congress.[21] Unfortunately, passage of these measures is uncertain—not because of the merits of must-carry status for public television which has received cable, broadcast and congressional support—but because of other controversial provisions in the legislation.

Accordingly, we are looking to the Commission to adopt, as part of its regulatory scheme, the must-carry agreement between the cable industry and public television.[22] The agreement would require that cable systems carry, within certain

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[20] *Report* in MM Docket No. 89-600, 5 FCC Rcd. 4962, 5044 (1990).

[21] H.R. 1303, "Cable Television Consumer Protection and Competition Act of 1991," S. 12, "Cable Television Consumer Protection Act," and H.R. 3380 "The Fair Competition in Broadcasting Act."

[22] *See* Comments and Reply Comments of the Association of America's Public Television Stations in MM Docket Nos. 90-4 and 84-1296 (filed on Sept. 25 and Oct. 25, 1991). [hereinafter "APTS' Must Carry Comments"].

caps based on channel capacity, all nonduplicative local public television series requesting carriage on the lowest-price tier of basic cable service. APTS' most recent comments filed with the Commission clearly demonstrate why carriage requirements are critical, how they foster prudent public policy and how they pass muster under the Constitution.[23]

While must-carry is not part of this proceeding,[24] it is vitally relevant to the issues raised by the Commission in this Docket. Access to public television on cable is at the very core of public television's ability to be a viable public service program provider in the 1990s' multichannel marketplace.

We note also that the cable/public television cable carriage agreement currently before the Commission was reached in the context of limited cable channel capacity. The advent of digital compression technology, which will vastly increase the capacity of cable systems, may require modifications to the rules as currently proposed, to account for the increased capacity on cable systems and the increased ability of public television stations to provide a wide array of educational and public service programming. We are prepared to work with the Commission and the cable industry in developing an equitable policy for future cable systems that utilize digital compression.

B. Direct Broadcast Satellites (DBS)

Last session, the cable bill passed by the House of Representatives contained language that would have required DBS operators to reserve a small portion of their capacity for public telecommunications. Specifically, the proposed legislation would have required the Commission to initiate a rulemaking procedure to impose, with

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[23] In the absence of carriage regulations, local public television stations will continue to be dropped from cable systems. This in turn will threaten the financial viability of public television stations and their ability to continue to provide unique public service programming. APTS' Must Carry Comments at 17.

[24] *Notice* at n. 3.

respect to any DBS system that is not regulated as a common carrier under the Communications Act, public interest or other requirements on such systems providing video service. The legislation mandated that the Commission require DBS services that provide video programming to reserve not less than 4 percent nor more than 7 percent of the channel capacity for noncommercial public service uses. The legislation also called for the creation of a study panel—with representatives from The Corporation for Public Broadcasting, the National Telecommunications and Information Agency and the Office of Technology Assessment—to examine (1) methods and strategies for promoting the development of programming for transmission over the public use channels, (2) methods for selecting programming for such channels, and (3) identifying existing and potential sources of funding for administrative and production costs for such public use programming.

These requirements, which have been incorporated into S. 12 and H.R. 1303, two cable bills pending in the current session Congress, would directly further public television's goal of providing public service programs over a variety of distribution technologies. As Congressman Swift noted:

> Broadcasters under our system have a responsibility to serve the public. The question is, What will people using DBS have? We managed to let cable into the communications field without that responsibility, and this bill (H.R. 1303) contains a provision which says that if you are going to go into the direct broadcast satellite business, you have, like terrestrial broadcasters, a responsibility to serve the public. It sets a percentage of the capacity that is devoted to that purpose.[25]

If this provision is ultimately adopted by Congress, the Commission will play a significant role in establishing both the specific DBS public service set aside and the parameters for its use. We urge the Commission, in engaging in this or any other

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[25] 136 Cong. Rec. H. 7263 (1990).