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Before the
Federal Communications Commission
Washington, D.C. 20054

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In the Matter of:

Advanced Television Systems and
Their Impact Upon the Existing
Television Broadcast Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 87-268

To: The Commission

Comments of
Association of America's Public Television Stations,
Corporation for Public Broadcasting,
and Public Broadcasting Service

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Summary of Argument

The Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making ("Third Report") raises an issue that is crucial to the future of the nation's public television service: whether special measures are necessary in connection with the filing and processing of applications for ATV channels by noncommercial stations to facilitate their transition into ATV service. Because of the unique funding sources upon which they rely, few public television stations will be able to satisfy the financial qualifications requirement imposed on commercial licensees within the three-year initial filing window proposed by the Commission. Even fewer will be able to make that showing at the beginning of the initial ATV filing window. Consequently, unless the Commission allows public television licensees to file ATV applications without demonstrating or certifying their financial qualifications on the filing date, those licensees will be unable to compete on an equal footing with commercial licensees for ATV channels, particularly if the Commission decides to adopt the first-come, first-served channel assignment procedure. This would be inconsistent with the Commission's commitment to take into account in ATV spectrum planning the important role played by public television stations and the "financial constraints they face in building" ATV stations. Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340, 3350 (1992).

The Commission need not be concerned that noncommercial stations will apply for ATV channels where they have no intent or realistic prospect of constructing ATV facilities; public television licensees have no other purpose than to provide service to their communities, and conversion to ATV is thus essential to their mission. Moreover, existing public television stations all have a track record of constructing television facilities, many in the face of severe financial difficulties.

If the Commission decides, notwithstanding these considerations, that some financial qualifications showing should be required of public television stations, it should impose a financial qualifications requirement that takes into account their unique funding sources and the lead time required for them to raise capital funds. Under the standard proposed by Public Television, noncommercial applicants would have to file with the Commission within a reasonable period of time after applying for an ATV channel a business plan outlining how they intend to raise the funds necessary to meet the matching requirement of the Public Telecommunications Financing Program ("PTFP") administered by NTIA.

Public Television also recommends that, in processing ATV applications filed by public television licensees, the Commission continue to coordinate its processing with NTIA's processing of PTFP applications. Most public television stations have historically relied on that program to assist in constructing their facilities, and the PTFP will unquestionably play a significant role in funding public television's transition to ATV. Since it is

highly unlikely that Congress will increase the funding for the PTFP by the magnitude necessary to finance public television's conversion to ATV within the next six years, the Commission must adjust its ATV application deadlines and processing procedures to take this funding reality into account. Accordingly, regardless of which channel assignment procedure the Commission ultimately adopts, public television licensees that plan to rely in part on PTFP funding should be allowed to secure an ATV channel by filing during the initial window and the Commission should hold that channel in a "cut-off" status until the applicant receives its grant of PTFP funding.

Public Television also urges the Commission to exclude from any simulcasting requirement noncommercial underwriting announcements and on-air fund drives in order to permit public television stations to experiment with ATV production and revenue producing techniques. Further, public television licensees should be afforded flexibility to use their ATV channels for ancillary purposes as long as they use the channel for ATV service. ATV technology offers public television licensees the opportunity to increase the number of program services they can make available to the public. The Commission should not foreclose that public benefit by unnecessary regulatory constraints. Public Television opposes, however, any minimum operating hours for noncommercial ATV stations. The Commission has never imposed minimum operating hours on noncommercial NTSC stations because of financial considerations, and the same considerations apply to ATV operations.

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The Association of America's Public Television Stations ("APTS"), the Corporation for Public Broadcasting ("CPB"), and the Public Broadcasting Service ("PBS") (collectively referred to as "Public Television") submit these comments in response to the Commission's Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making released October 16, 1992 ("Third Notice") in the above-captioned proceeding.^{1/}

The Third Notice raises an issue that is crucial to the future of noncommercial stations across the nation: whether special measures are necessary in connection with the filing and

^{1/} Public Television has actively participated in all phases of the proceeding. In addition to the numerous Joint Comments filed by CPB, PBS, and APTS since 1991, each organization also filed comments individually during earlier stages of the proceeding. APTS and PBS have also joined in the Comments filed by the Joint Broadcasters at earlier stages of this proceeding.

processing of applications by public television stations for ATV channels to facilitate their transition into ATV service. See Third Notice, ¶28-29. Public Television commends the Commission for focusing on this important issue. The Commission recognizes that the unique funding problems faced by public television stations and the unique role played by those stations in the nation's television system may require special regulatory treatment. That recognition is an indispensable first step in fashioning ATV application requirements and processing procedures that will afford noncommercial stations a reasonable opportunity to raise the capital funds needed to construct ATV facilities.

I. ATV Application Requirements and Processing Procedures Must Give Public Television Licensees A Reasonable Period Of Time To Raise The Funds Necessary To Construct ATV Facilities.

A. Public Television Stations Are Dependent On A Complex Funding Structure.

In order to place in context the need for special application requirements and processing procedures for noncommercial applicants, Public Television believes that it would be useful to provide some background information concerning the nation's public television stations and their funding sources. There are basically four types of public television licensees: (a) community-based, nonprofit, tax-exempt educational associations, (b) state educational or public broadcasting agencies or networks; (c) colleges and universities, and (d) local school boards or other local educational

institutions.^{2/} Community licensees account for approximately 36% of the nation's public television stations.^{3/} State agencies and networks, which typically operate several stations in order to provide public television service throughout a state, together with local government entities operate approximately 39% of the nation's public television stations. Universities, most of which are also dependent on state government funding, operate about 25% of the public television stations.^{4/}

Public television stations finance their operating costs from (i) federal appropriations distributed by CPB, (ii) grants from and contracts with federal agencies, (iii) appropriations from state legislatures and local governments, (iv) grants from corporations and foundations, and (v) contributions from the viewing audience. Across the system as a whole, federal funding sources, which include both funds distributed by CPB ^{5/} and direct federal grants and contracts, comprise approximately 12.5% of funding for public television stations;^{6/} state and local appropriations account for approximately 22%; private donations

^{2/} A list of the public television stations in each group is attached as Exhibit 1.

^{3/} See CPB, Public Broadcasting and You, p. 6 (1992).

^{4/} See id.

^{5/} Although CPB itself is a private, nonprofit corporation, the bulk of the funding distributed by CPB to the stations comes from federal appropriations.

^{6/} Additional federal funding goes to program producers and others to support public television activities, but not directly to the stations.

(including both viewer donations and contributions from corporate underwriters) comprise about 43% of public television station support; and about 8% of public television station funding comes from colleges and universities. As shown in Exhibit 2, the importance of each of these sources varies with the type of licensee, with state agencies most heavily dependent on tax revenues and nonprofit community associations most heavily dependent on individual and corporate contributions. Most public television licensees, however, must tap multiple revenue sources just to cover their daily operating costs.

While public television stations finance their operational expenses from these various sources, an important portion of public television's capital costs for equipment have been funded with matching grants by the Public Telecommunications Financing Program ("PTFP"), currently administered by National Telecommunications and Information Administration ("NTIA"). That program provides matching funds for the construction, repair and replacement of the production and transmission facilities of public television, public radio and other public telecommunications entities.^{1/}

Under the PTFP grant program, NTIA is authorized, in certain circumstances, to finance up to 75% of the cost of new public

^{1/} See 47 U.S.C. § 392. This program does not fund the construction of buildings to house transmission and production facilities.

television facilities,^{8/} although federal funds typically constitute 50% of the cost of eligible equipment purchased by successful applicants. In order to obtain a matching grant, noncommercial applicants must demonstrate that they can finance at least 25% of the cost of the new facilities from non-PTFP sources.^{9/} Where an FCC authorization is required in connection with a project for which PTFP funding is sought, an application must be filed with the Commission by the time the PTFP application is submitted.^{10/} The applicant indicates in its FCC application that its financial qualifications are dependent on a PTFP grant.^{11/} The Commission coordinates the grant of the construction permit with the award of the PTFP funding so that the construction permit and the PTFP grant are made at approximately the same time.^{12/}

The growth of public television is directly related to the availability of PTFP funds and federal funds distributed by CPB.

^{8/} Public Television believes that construction of ATV facilities should be considered a top priority worthy of funding at the 75% level.

^{9/} 15 C.F.R. § 2301.16(a). The availability of non-federal capital funds is often contingent on receiving a PTFP matching grant, even when the grant is far less than the full cost of facilities.

^{10/} 15 C.F.R. § 2301.8(a).

^{11/} See FCC Form 340, Section III.

^{12/} The PTFP awards are made annually, typically during the summer months. Earlier in the fiscal year, NTIA announces a date by which grant applications for that year must be filed. See 15 C.F.R. § 2301.5(c).

Congress passed the PTFP program initially because it concluded that educational interests could not fund the construction of television stations.^{13/} Indeed, during the ten-year period prior to the establishment by Congress of the PTFP in 1962, only 69 public television stations went on the air.^{14/} During the following five years -- from 1962 until 1967, when Congress passed the Public Broadcasting Act of 1967 and provided funding for public television programming as well as facilities -- an additional 76 public television stations commenced operation. In the ensuing 15 years, approximately 150 public television stations began broadcasting.^{15/} With the help of PTFP funding, public television stations now reach 94% of the population with an over-the-air broadcast signal.^{16/}

As the foregoing data demonstrate and as the Commission has recognized,^{17/} noncommercial stations are dependent on a number of different sources for their funding, none of which standing alone will support its capital or operating costs. Moreover,

^{13/} See, e.g., S. Rep. No 67, 87th Cong., 1st Sess. reprinted in 1962 U.S. Code and Admin. News at 1614, 1615 (1962).

^{14/} Id.

^{15/} See Exhibit 3.

^{16/} For a brief survey of the role the PTFP program played in the development of public television, see The Carnegie Commission on the Future of Public Broadcasting, A Public Trust, Appendix E (1979).

^{17/} See Third Report, ¶ 28. See also Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340, 3350 (1992) ("Second Report").

generating revenue from these sources requires substantial effort and considerable planning. Appropriations must be sought in advance^{18/} and public television must compete with other programs placing demands on limited tax revenues. Securing contributions from corporations and foundations also requires a concerted and planned effort to demonstrate that support of public television will promote the goals of the foundation or is in the interests of the corporate funder. Raising funds from the public entails programming efforts and on-air activities with which the Commission is familiar. Thus, public television funding is a complex process; it must proceed on several fronts; and it is dependent on the vagaries of the political process (at both the federal and state levels) and on the generosity of corporations, foundations and viewers.

Raising funds for capital improvements, such as the costs of constructing an ATV facility, is even more difficult. Indeed, as the history of public television demonstrates, it took more than 20 years after the commencement of federal funding in 1962 for public television to serve every state. While public television is in a better position today to raise funds than it was during those formative years, it still does not have ready access to financing for capital improvements of the magnitude needed for ATV. Therefore, it will take public television licensees

^{18/} Indeed, CPB's 1995 appropriations and 1986 authorization are already determined and authorization legislation for 1997-99 may be scheduled for consideration by Congress this year.

substantial time to plan and mount capital campaigns and demonstrate their financial qualifications to the Commission.

B. ATV Application Requirements For Public Television Applicants Must Reflect The Funding Realities Faced By Those Applicants.

For the foregoing reasons, unless the Commission allows public television licensees to file applications during the initial window without making a financial qualifications showing, few public television licensees will be able to seek ATV authorizations during the three-year initial filing period proposed by the Commission. Moreover, it would be virtually impossible for any public television station to file an application at the beginning of that period, when stations would have to file applications in order to compete for desirable ATV channels under the proposed first-come, first-served procedure.

Permitting public television stations to file ATV applications without demonstrating or certifying their financial qualifications on the filing date would be fully consistent with the rationale underlying the Commission's decision to afford current licensees the first opportunity to obtain ATV authorizations. As the Commission made clear in its Second Report and Order, the preservation of the nation's existing framework of local broadcasting is a cornerstone of its approach to ATV implementation.^{19/} The Commission recognized that

^{19/} See, e.g., Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340, 3343 (1992).

existing broadcasters have invested substantial resources in the present system and represent a "large pool of experienced talent."^{20/} It also concluded that existing broadcast stations provide a unique array of local and regional news, information, and entertainment as well as national and international programs, and found that the initiation of ATV within the existing framework of local broadcast stations "will uniquely benefit the public and may be necessary to preserve the benefits of the existing system."^{21/}

Those considerations apply with greater force to public television licensees. Existing public television licensees currently offer a wide array of noncommercial educational and cultural programs for the general public, complemented by blocks of daytime instructional programming distributed to local schools.^{22/} The diverse array of general and instructional program services provided by the nation's public television stations, which are not duplicated by any commercial program service, are the product of four decades of dedication and effort by today's public broadcasters backed by billions of dollars of

^{20/} Id.

^{21/} Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520, 6525 (1988).

^{22/} In a market with two or more public television stations, the general and instructional programming aired by the stations generally complement each other and serve diverse community needs.

tax revenues and private charitable contributions.^{23/} Public television service is enjoyed today by millions of viewers in almost every community in the country.

The public interest in preserving that service during and after the transition to ATV is manifest, and fully warrants the adoption of special rules that take into account public television's unique funding problems. Public television is committed to transitioning to ATV, as the active participation by public television organizations in the Commission's ATV Advisory Committee attests. Public television licensees have proven their commitment to serving their communities with public service and educational programming using the latest advances in broadcast technology. The introduction of ATV technology is simply the next step. Indeed, public television stations must convert to ATV if they are to continue to fulfill the mission for which they were created -- to provide high quality noncommercial educational program services to the public.^{24/} It would run counter to the Commission's objective of preserving and capitalizing on existing broadcast services to adopt financial qualifications requirements

^{23/} Since 1970, more than \$2.7 billion of federal funds and more than \$11 billion from non-federal sources (both state and local governments and private sources) have been invested in public television.

^{24/} Public Television believes that public pressure for ATV-quality public television programming will provide the political and public impetus necessary to fund public television's conversion to ATV. That was the case with the conversion to color and Public Television believes that the same forces will operate in time to assure funding for the conversion to ATV.

that many noncommercial licensees have no reasonable prospect of meeting during the initial three-year application window.

1. Public Television Licensees Should Not Be Required To Demonstrate Or Certify Their Financial Qualifications In Order To File ATV Applications.

In light of the foregoing, Public Television urges the Commission not to require noncommercial stations to demonstrate their financial qualifications in order to apply for ATV channels. The Commission historically has taken a different approach to financial qualifications requirements for noncommercial applicants than it has for commercial applicants in light of their different sources of funding,^{25/} and it should do so here as well. By not requiring public television applications to demonstrate or certify their financial qualifications when they file ATV applications, the Commission will permit public television licensees to file in a timely manner regardless of whether the Commission pairs ATV and NTSC channels or adopts its first-come, first-served proposal. This would substantially alleviate Public Television's concern that the Commission's proposed assignment procedure will prejudice public television stations.^{26/}

^{25/} See, e.g., KOED, Inc., 5 FCC Rcd 1784, 1785 (1990); Alabama Citizens for Responsive Public TV, Inc., 69 FCC 2d 1061, 1072-74 (1978). See also Application Forms, 52 RR 2d 1362, 1364 (1982).

^{26/} See Public Television Comments dated July 17, 1992, at 2-10; Public Television Comments dated December 20, 1991, at 12-15.

It is particularly important that the Commission not require noncommercial stations to demonstrate their financial qualifications in the event that it adopts the proposed first-come, first-served application procedure. Such a procedure will place a premium on filing an application during the earliest filing window. Noncommercial applicants will simply not be able to file a competitive application if they are required to satisfy a financial qualifications requirement in their applications. Thus, coupling a financial qualifications requirement with a first-come, first-served application procedure would virtually assure that noncommercial applicants are unable to compete on an equal footing with commercial applicants for ATV channels. Given the Commission's stated commitment to take into account in ATV spectrum planning "the important role noncommercial stations play in providing quality programming to the public and the financial constraints they face in building and running their stations,"^{27/} the Commission could not intend that result.

Moreover, the Commission need not be concerned that noncommercial stations relieved of a financial qualifications requirement will apply for ATV channels even if they have no intent or realistic prospect of constructing ATV facilities. First, as noted above, public television licensees exist for the sole purpose of providing service to their communities. Thus, given that the Commission intends to terminate NTSC licenses at

^{27/} Second Report, ¶ 36.

the end of the ATV conversion period, conversion to ATV is vital if noncommercial licensees are to fulfill the purpose for which public television was created and to which it is dedicated. Second, the existing public television licensees have a track record of constructing and operating television facilities, many in the face of substantial financial difficulties. Those licensees also have meaningful incentives to launch ATV service. In the near-term, they will have to implement ATV service in order to provide television service comparable in technical quality to that provided by commercial broadcast television stations, cable systems, and other video delivery systems that utilize ATV technology. In the long-term, stations that fail to convert to ATV will eventually cease to exist, given the Commission's intention to require them to surrender their NTSC channels once ATV becomes the prevalent medium. See Notice of Proposed Rulemaking, 6 FCC Rcd 7024 (1991), ¶ 35-41.^{28/}

2. At Most, The Commission Should Require That Public Television Licensees Show Within A Reasonable Period of Time After Filing An ATV Application How They Will Raise PTFP Matching Funds.

If the Commission is concerned, notwithstanding these considerations, that noncommercial stations will file ATV applications but be unable to raise the funds to construct ATV

^{28/} The Commission need not be concerned that noncommercial applicants will speculate in ATV channels, since there is no profit to be made by obtaining a noncommercial construction permit or license.

facilities, Public Television suggests that the Commission require public television applicants to file, within a reasonable period of time -- perhaps three years -- after their initial ATV application is tendered, a business plan for raising the funds necessary to secure a matching grant under the PTFP program for the costs of constructing ATV facilities.^{29/} The Commission currently allows noncommercial applicants to certify that they are financially qualified where they have reasonable assurance of the availability of the funds necessary to meet the PTFP match.^{30/} In those circumstances, applicants indicate that their financial qualifications showing is dependent on NTIA funding when they make the certification. Clearly, no greater burden should be imposed on public television applicants seeking to upgrade to ATV, particularly since PTFP grants will be relied on by most public television licensees to assist in constructing their ATV facilities.

The requirement for a business plan -- rather than a demonstration that the applicant has current assets or a loan commitment to finance the facilities -- is warranted by existing public television stations' proven financial viability and record of commitment to serving the public as well as the unique nature

^{29/} For those few stations that do not intend to rely in part on PTFP funds to construct their ATV facilities, the Commission could allow those stations to file a business plan showing how they intend to raise the funds for construction and a timetable for raising the funds, the reasonableness of which would be subject to Commission review.

^{30/} See, e.g., KOED, Inc., 5 FCC Rcd 1784, 1785 (1990).

of their funding sources. A station's business plan might consist of a plan for a capital campaign to raise funds from viewers, corporate underwriters and foundations, and any PTFP grant or appropriations expected from state and local governments. The plan would outline the expected time frame within which the station expects to raise the matching funds. The plan should be subject to very limited Commission review: the plan should be found to satisfy Commission requirements if it is reasonable on its face and satisfies the PTFP matching requirement. Thus, the Commission would not have to expend extensive staff resources in detailed reviews of applicants' business plans.^{31/}

Public Television urges that the Commission not require any showing with respect to operating costs. During the first three month period, ATV operating costs will be nominal as the Commission is only requiring stations to have facilities that will permit them to transmit an ATV signal. Most public televisions stations will, during that period, rely on ATV

^{31/} If the Commission is concerned that a public television station might file for ATV channels and file its business plan but be unable to implement the plan, the Commission could require the filing of periodic (e.g., annual) reports concerning the station's progress in implementing its capital campaign until its application is granted.

However, as noted above, Public Television does not believe that requiring existing public television stations to file either a business plan or annual updates is necessary to assure that they construct ATV facilities, and the Commission would avoid the administrative burdens that these requirements would impose on both its staff and on those stations by not requiring public television licensees to make a financial qualifications showing.

programming distributed by PBS and other program distributors for their ATV service. Thus, their only operating costs will be transmission expenses. Consequently, requiring them to demonstrate the availability of funds to operate the transmitter is an unnecessary burden.^{32/}

II. Processing of Applications for Noncommercial ATV Channels Should Be Coordinated With PTFP Funding.

The Commission requests comment on whether it should adopt a special (presumably longer) application period for noncommercial applicants or coordinate its application process with funding agencies such as NTIA in order to facilitate the entry of noncommercial stations into ATV service.^{33/} While the Commission suggests that it might be able to stagger noncommercial application deadlines so as to harmonize them with available funding, it questions "the feasibility of establishing such coordination with all possible funding sources" and expresses concern that such coordination would add to its administrative burden in implementing ATV.^{34/}

As discussed above, considerable funding for new noncommercial broadcasting facilities currently comes, and has

^{32/} The Commission does not currently require existing noncommercial licensees to demonstrate their ability to fund any costs -- construction or operating -- associated with changes in an operating facility. See FCC Form 340, Section III.

^{33/} Third Notice, ¶ 29.

^{34/} Id.

historically come, from the PTFP. The PTFP will also be an important source of funding for most public television stations to construct ATV facilities. Given present federal fiscal constraints, however, it is unlikely that Congress will appropriate sufficient funds in the next six years for the PTFP to enable NTIA to fund ATV facilities for all of the nation's 349 public television stations. Indeed, assuming a modest construction cost of between approximately \$800,000 and \$1 million per station and 75% PTFP funding, Congress would have to appropriate between approximately \$35 million and \$44 million per year -- almost twice PTFP's current budget -- over a six-year period in order to fund noncommercial ATV facilities, even with matching funds provided by the stations.^{35/} While Public

^{35/} The actual amount by which Congress will have to increase the PTFP appropriation to fund public television's transition is actually more. First, these figures make no provision for the costs of studio transmitter links, links from satellite receive stations to the transmitters, and other broadcast auxiliary costs that stations will have to incur in order to be able to transmit programming in an ATV mode. For state networks and agencies which operate six or seven or more transmitters, these interconnection costs will be substantial. Second, these figures assume that all of the PTFP appropriations will be devoted to public television. However, not all PTFP funds are awarded to public television applicants. Attached as Exhibit 4 is a chart showing PTFP funding from 1987 through 1991 and the amounts awarded to public television applicants. As indicated in that Table, approximately 64% of the PTFP funds were given to public television during that five-year period. Based on the amounts awarded to public television licensees during that five-year period, Congress would have to increase the PTFP appropriation for public television by 2.5 to 4 times current levels to fund ATV conversion within a six-year period. Third, even those figures assume that all of the PTFP funds given to public television would be devoted to ATV construction. As Congress recognized when it enacted the most recent PTFP authorization, (continued...)

Television would be gratified to see such a congressional commitment to public television's deployment of ATV technology, it cannot rely on Congress to provide this level of funding over the short-term. Consequently, it will take substantially longer than the proposed three-year application period or even six years for the PTFP program to be able to provide the needed matching grants to assist in financing public television's transition to ATV.

Therefore, it is imperative that the Commission's ATV application deadlines and processing procedures take into account these realities of noncommercial television funding. If they do not, noncommercial stations will be caught between the deadlines established by the Commission's ATV procedures and the PTFP funding processes -- each proceeding at different paces. As a result, public television licensees will not be given a real opportunity to make the transition to ATV service. Public Television is mindful of the Commission's desire to avoid adding to the considerable administrative burdens of implementing ATV, but believes that appropriate coordination can be achieved with minimal additional burden on the Commission. In fact, as noted

^{35/} (...continued)

however, public television's current NTSC facilities are aging and in need of replacement. See H.R. REP. NO. 102-335, 102d Cong., 1st Sess. 10 (1991) (more than half of 1990 grants "went to replace essential equipment at existing public broadcast stations"). Thus, a substantial portion of PTFP appropriations during the next six years will have to be devoted to replacing NTSC existing facilities if the current level of NTSC public television service is to be preserved during the transition period.

above, the Commission currently coordinates the grant of noncommercial educational authorizations with NTIA where PTFP funding is involved. A similar procedure should be employed for ATV applications.

Public Television proposes that, assuming the Commission allows public television licensees to file for ATV authorizations without demonstrating their financial qualifications when they file their applications, noncommercial television stations would apply for ATV channels within the initial filing window the Commission adopts for all existing broadcasters.^{36/} Whatever the channel assignment procedure ultimately adopted by the Commission -- a pairing plan or a first-come, first-served procedure -- the channel for which the noncommercial applicant applies should be held by the Commission for that applicant while its application is being processed, and no competing applications should be accepted.^{37/}

^{36/} The Commission proposes adopting a three-year application period in the Third Report, ¶ 16. Public Television believes that noncommercial stations could apply for channels within this filing window if the Commission imposes no financial qualifications requirement for filing an application or a relaxed financial qualifications requirement, as proposed above. See Section I.B supra.

^{37/} If the Commission adopts its proposed first-come, first-served procedure and two stations apply for the channel on the same day, a lottery would be held to determine which station receives the channel for which both stations applied. The channel would then be held for the station that won the lottery and the other station could then apply for another channel allotted to its market. If the Commission adopts a pairing plan, no competing applications for a paired ATV channel would be accepted after the initial three-year application period expires
(continued...)

The noncommercial station's application would be held in pending status until the applicant receives its grant of PTFP funds. At that point, the Commission will have assurance that the station is financially qualified to construct its ATV facility because, under NTIA's procedures, the station is required to have the matching funds available.^{38/} The Commission would then grant the station's application for a construction permit, much as it currently does where PTFP funding is involved. Upon receipt of the construction permit, the station would have three years to complete construction of its ATV facilities (or, under the Commission's current proposal, a longer period if the station files its application and is awarded a construction permit before the end of the three-year application period). See Third Notice, ¶ 16.

This procedure would coordinate the Commission's channel application procedure with the processing of applications for NTIA funding, yet would not require the Commission to adopt any special application deadlines for noncommercial applicants. All the Commission would have to do is hold the station's application in pending status, and hold the channel for which it applied, until PTFP funds have been granted. Public Television urges the Commission to adopt this procedure.

^{37/} (...continued)

as long as the station operating on the NTSC channel applies for the paired ATV channel during the three-year window.

^{38/} See 15 C.F.R. § 2301.5(d) (vi)-(vii), 2301.18.