the common carriers into building more capacity. While these effects may entail economic benefits or burdens, they do not constitute any "incidental restriction on . . . First Amendment freedoms" for the purposes of O'Brien or Turner.

In sum, because the preferential rate structure in video dialtone service would be implemented within a common carrier regulatory structure, the proposal presents few, if any, of the constitutional issues that were litigated in Turner. Indeed, by ensuring access for entities that otherwise might be excluded in whole or in part from this new medium, a preferred rate structure would actually further the Congressional policy favoring "diversity," 47 U.S.C. § 396(a)(5), and thereby "promote[] values central to the First Amendment," Turner, 114 S.Ct. at 2470.

II. LONGSTANDING, NATIONAL POLICY FAVORS FACILITATING ACCESS TO DISTRIBUTION TECHNOLOGIES FOR PUBLIC TELECOMMUNICATIONS SERVICES.

The nation's public telecommunications entities represent the only locally-controlled programming services in the United States whose sole purpose is to provide and distribute educational, informational, cultural and instructional programming at the community level. Congress and the Commission have long recognized the public interest benefits of public telecommunications services and have adopted a policy of ensuring that all citizens have access to public telecommunications programming.

A. Congress.

For example, in 1967, Congress, in establishing the Corporation for Public Broadcasting ("CPB"), amended the Communications Act to provide that

> "it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most

> effectively make noncommercial educational radio and television service available to all citizens of the United States."[12]

In furtherance of this policy, Congress amended the Communications Act to make explicit that public telecommunications entities may receive preferential access to common carrier transmission facilities. The Public Broadcasting Act of 1967 added Section 396(h) of the Communications Act, which provides that

> "[n]othing in [the Communications Act], or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services[.]" 47 U.S.C. § 396(h)(1).

As new technologies for transmitting video programming to consumers have developed, Congress has repeatedly responded to ensure that educational public telecommunications services will be available to the public on these emerging technologies. In 1978, Congress amended the Communications Act to provide that one of the goals of CPB is to "extend delivery of public telecommunications services to as many citizens as possible by the most efficient and economical means, including use of broadcast <u>and nonbroadcast</u> technologies."[13] This policy was reiterated recently in the Public Telecommunications Act of 1992, which amended the Communications Act to state that

> "it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public

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[12] The Public Broadcasting Act of 1967, Pub. L. No. 90-129, 81 Stat. 365 (codified at 47 U.S.C. § 396(a)(7) (1988 & Supp. IV 1992)).

[13] The Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405 (codified at 47 U.S.C. §390 (1988)) (emphasis added).

> telecommunications services through all appropriate available telecommunications distribution technologies . . . ."[14]

This policy of facilitating access for public telecommunications programming has also recently been applied to two specific technologies -- cable television and direct broadcast satellite ("DBS"). In the 1992 Cable Act, Congress required cable television systems to carry public television stations, recognizing "a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations . . . ."[15] Congress found a

> "compelling interest in ensuring that [public telecommunications services] remain fully accessible to the widest possible audience without regard for the technology used to deliver these educational and informational services."[16]

Congress further concluded that the marketplace will not support carriage of public telecommunications programming, finding a "substantial likelihood" that citizens will be deprived of these services absent mandatory carriage requirements.[17]

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[14] The Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (codified at 47 U.S.C.A. §396(a)(9) (West Supp. 1994) (emphasis added).

[15] The constitutionality of the "must carry" provisions was addressed in Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445 (1994), in which the Supreme Court determined that "must carry" is a content-neutral restriction and should be sustained if it furthers important governmental interests without burdening speech more than is necessary to further those interests. The Court confirmed that the reasons Congress articulated for the "must carry" provisions are important governmental interests, but remanded the case to the district court to hold further evidentiary proceedings to determine whether the "must carry" provisions will in fact advance those governmental interests.

[16] H.R. Rep. 682, 101st Cong. 2d Sess. 47 (1991) (emphasis added).

[17] 1992 Cable Act, § 2(a)(8)(D), Pub. L. No. 102-385, 106 Stat. 1460, 1461.

Also in the 1992 Cable Act, Congress required that a DBS service provider reserve between 4 and 7 percent of its channel capacity "exclusively for noncommercial programming of an educational or informational nature."[18] DBS providers must make this capacity available at preferential rates established by the Commission.[19]

B. The Commission.

The Commission also has long recognized the unique needs of public telecommunications entities and has adopted policies to ensure public access to such services. In 1952, the Commission reserved 242 channels on the Ultra High Frequency ("UHF") spectrum for educational television.[20] And more recently, the Commission has committed to carry over its channel reservation policy in its allotment of advanced television channels to broadcasters.[21] In adopting this policy, the Commission acknowledged "the important role noncommercial educational stations play in providing

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[18] 1992 Cable Act, § 25, 106 Stat. at 1501 (codified at 47 U.S.C. § 335(b)(1) (Supp. IV 1992)). Section 335 has been declared unconstitutional by the district court in Daniels Cablevision, Inc. v. United States, 835 F. Supp. 1, 8-9 (D.D.C. 1993), on the grounds that there was not sufficient justification in the record for the set aside. APTS submits that there is sufficient justification for the reservation in the Communications Act, and has appealed the case on this and other grounds. See Daniels Cablevision, Inc. v. United States, No. 93-5290 (D.C. Cir.), which was held in abeyance pending the outcome of Turner, supra.

[19] These rates cannot be in excess of 50% of the total direct costs of making the capacity available. 1992 Cable Act, § 25, 106 Stat. at 1502 (codified at 47 U.S.C. § 335(b)(4)).

[20] Television Assignments, Sixth Report and Order, 41 F.C.C. 18, 148 (1952).

[21] Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Report and Order/Further Notice of Proposed Rulemaking, 7 F.C.C. Rcd. 3340, 3350, ¶¶36-37 (1992); Memorandum and Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rulemaking, 7 F.C.C. Rcd. 6924, 6950-51, ¶¶ 33-34 (1992).

quality programming to the public and financial constraints they face in building and running their stations."[22]

In implementing Section 396(h)(1) of the Act, the Commission found that "the public interest is served by the expansion of noncommercial educational broadcasting service to the public through free or reduced rate interconnection common carrier services for education broadcast stations."[23] Though the Commission opted not to mandate preferential interconnection rates, the Commission advised the carriers that it "expected the carriers to provide [interconnection service at preferential rates] and that the Commission considered it to be in the public interest for the carriers to do so."[24]

And with regard to cable, the Commission has concluded that mandatory carriage of public telecommunications programming is necessary to ensure public access. In its 1990 Cable Report to Congress, the Commission stated:

> "Because of the unique service provided by noncommercial television stations, and because of the expressed governmental interest in their viability, we believe that all Americans should have access to them. We believe that mandatory carriage of noncommercial television stations would further this important goal."[25]

Video dialtone is merely the latest technology for disseminating video programming. The longstanding federal policy of ensuring that public

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[22] Second Report and Order, 7 F.C.C. Rcd. at 3350, ¶ 36.

[23] Free or Reduced Rate Interconnection Service for Noncommercial Educational Broadcasting, Memorandum Opinion and Order, 20 F.C.C. 2d 491, 493 (1969).

[24] Id.

[25] Competition, Rate Deregulation, and the Commission's Policies Relating to the Provision of Cable Television Services, 5 F.C.C. Rcd. 4962, 5044 (1990).

telecommunications entities have access to all available telecommunications distribution technologies must be applied to video dialtone as well. Given Congress' well-established precedent of assuring such access for public telecommunications entities, the Commission, pursuant to Section 201(b) of the Act, should require that LECs provide preferential access to public telecommunications entities.

III. GRANTING PREFERENTIAL ACCESS TO VIDEO DIALTONE WILL SERVE THE PUBLIC INTEREST.

A. Video Dialtone Offers Significant Opportunity To Extend And Enhance Public Telecommunications Services.

With the launch of AT&T's Telstar 401 satellite and the advent of digital compression technology, public television will soon be able to greatly expand its capacity to deliver educational services. PBS will be capable of delivering 80 digital channels of educational services to local stations for delivery to homes, schools and institutions.

Video dialtone—with its broadband, interactive, on-demand capabilities—is particularly well suited for "last mile" delivery of these services to homes, schools, libraries, daycare facilities, training centers, medical facilities and job sites. The broadband capability will allow for the delivery of multiple streams of educational services; the interactive capability will allow public television to increase and enhance its current interactive educational services; and the on-demand capability will make these services available to teachers, students and others when and how they need them.

Services currently offered by public television that can be enhanced and extended with access to video dialtone capacity, include:

- PBS ONLINE, which uses both satellite and ground-based networks to deliver lesson plans, course materials, program transcripts and video segments to schools in 20 states;

- Live interactive seminars on early childhood education delivered to Head Start teaching teams serving rural, migrant, Native American and Alaskan village populations in 26 states;

- Distance learning math, science and foreign language courses, delivered by state public television networks and departments of education, to 5,000 high school students in rural and disadvantaged schools in 28 states;

- Interactive video programs—based on signature series such as *NOVA*, *Sesame Street*, *The MacNeil/Lehrer NewsHour*—that provide children with hands-on learning experiences;

- Mathline, a video, data and voice service devoted to improving the math achievement of American students; and

- Ready-to-Learn, an early childhood development service aimed at helping parents and childcare providers raise children who are ready to learn.

Today, public television stations must rely on a variety of technologies to deliver these and other services, including state-funded satellite, fiber or microwave networks, partnerships with cable operators and costly phone connections (to achieve the interactive component). Access to video dialtone capacity at preferred rates would provide public television with a consistent, reliable, advanced last-mile distribution system. This in turn would enable stations to realize Congress' intent to extend these types of public services to all states and communities in the country.

Access to video dialtone capacity at preferred rates will ensure that this powerful new technology will be utilized for noncommercial educational services and that the educational potential of the so-called information highway will be realized. In addition, it will facilitate public television's current efforts to extend the information

highway's reach to underserved, minority and economically disadvantaged communities nationwide.[26] The advanced services of video dialtone cannot be restricted to those who can afford pay-per-view or premium subscription fees. Providing preferred rate access to public television at the provider end will permit public television to offer a package of noncommercial educational services to users either at the lowest possible cost to the end user.

B. Requiring Public Telecommunications Entities To Pay Commercial Rates For Video Dialtone Will Impair The Distribution Of Public Telecommunications Services.

Paying commercial rates for the capacity to distribute these educational services is not an option. First, public broadcasters, in line with Congress' mandates,[27] are firmly committed to the widest possible dissemination of educational services at the lowest possible cost. Commercial video information providers recoup the costs of developing and disseminating services through subscription fees, pay-per-view billing mechanisms or commercial advertisements. None of these are options for public

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[26] Public television licensees are forming partnerships with schools, libraries, museums, medical centers, and local governments to create community computer networking projects designed to facilitate free or low-cost access to a variety of educational, library and municipal services. Such services include English as a second language and high school equivalency courses for adults; teachers' guides, teacher training, and curriculum planning for K-12 schools; library services such as card catalogues, book discussion groups; and municipal information on items such as property taxes, driver's and marriage licenses, city job listings, and public notices. With preferred access to video dialtone capacity, public television stations can utilize these same partnerships to bring important public services to communities through video dialtone.

[27] See 47 U.S. C. § 396(a)(7) and 47 U.S.C.A. § 396(a)(9).

broadcasters. Charging—either by the minute or through a subscription fee—for public telecommunications services would directly undermine Congress' goal to "ensure that all citizens . . . have access to public telecommunications services through all appropriate available telecommunications distribution technologies . . . ." 47 U.S.C.A. § 396(a)(9).

Moreover, such services simply cannot be fully supported by users. The long-standing federal policy of facilitating access to public telecommunications services is premised on the fundamental principle that the marketplace simply will not and cannot support the development and dissemination of certain educational and cultural services. Over the years, Congress has recognized that:

- "[T]he economic realities of commercial broadcasting do not permit widespread commercial production and distribution of educational and cultural programs which do not have a mass audience appeal."[28/]

- Public television strives "to present the very best in television programming, to bring to the American people that which is unavailable anywhere else, and to develop programs that meet the needs of underserved and diverse audiences throughout the country."[29/]

- Public television's "original mandate" is to serve as "an educational, innovative and experimental alternative to commercial broadcasting."[30/]

Public broadcasters, in line with Congress' direction, fill voids left by the commercial marketplace. They provide quality, in-depth, educational, cultural and public affairs programming (47 U.S. C. § 396(a)(1)); serve the unserved and underserved

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28/ H.R. Rep. No. 572, 90th Cong., 1st Sess. 1 (1967)

29/ H.R. Rep. No. 82, 97th Cong., 1st Sess. 21 (1981).

30/ H.R. Rep. No. 825, 100th Cong., 2d Sess. 10 (1988).

audiences, particularly minorities and children (47 U.S.C. § 396(a)(6)); utilize the electronic media to engage in community and outreach programs (47 U.S.C. § 396(a)(8)); and provide an alternative to commercial programming that must have mass audience appeal (47 U.S.C. § 396(a)(5)). This type of service is not and cannot be a marketplace-supported service.

Finally, public broadcasting's scarce resources, obtained through combinations of federal and state funding, underwriting and viewer contributions, are already stretched to maintain the universally-available public broadcast service that is the system's bedrock obligation to the American people. Given public broadcasting's scarce resources, the costs of accessing video dialtone systems puts the technology out of reach.[31/]

If public television stations were required to pay commercial marketplace rates to access video dialtone, they would be faced with two undesirable alternatives: 1) forego any use of video dialtone for distribution of public service programming to the public; or 2) deliver only those services that are able to generate sufficient revenues to cover the costs of access. Under the first alternative, public broadcasters—the major providers of noncommercial educational telecommunications—simply would not have access to this advanced and more versatile distribution technology. Public broadcasters

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[31/] Based on tariff data distributed by Bell Atlantic for its experimental video dialtone service in Northern Virginia (and assuming that public television usage and numbers of viewers remained the same), WETA would have to pay approximately $26,700 to distribute a one-hour episode of a prime time program; and would have to pay more than $83 million to make its entire program schedule available for one year over video dialtone services.

would be deprived of a reliable last mile distribution system for the multiple streams of interactive, digital educational services that are and will be available on Telstar 401, and the public would be denied access to the enhanced educational services that will be possible through this new technology.

The second alternative would, in essence, require public broadcasters to distribute only commercially viable services on video dialtone. This would run counter to Congress' directives—to serve the culturally diverse, unserved and underserved pockets of the American public and to provide an alternative to mass appeal, commercial program services. Simply put, if the Commission decides to permit public service providers access to video dialtone only on strict marketplace terms, it will restrict the public's access to public telecommunications services.

C. The Use of Appropriated Subsidies Or Grants Is Not An Adequate Alternative To Access At Preferential Rates.

The Commission questioned whether support for non-profit programmers on video dialtone systems could be provided through appropriated grants and subsidies.[32] Grants and subsidies are unreliable and impractical mechanisms to ensure access.

First, targeted funding through subsidies or grants is unpredictable. Subsidies and grants are subject to political and economic influences operative in federal or state governments on a year-to-year basis. Under the current economic and political

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[32] See Third Further Notice, ¶ 281.

environment, for example, such subsidies would likely be infeasible. The effective and widespread distribution of public telecommunications services should not rest on swings in the political agenda or cyclical budgetary pressures.

Moreover, grants and subsidies have practical drawbacks. Administering a grant or subsidy program for this new emerging technology would be difficult. There is little experience with the delivery system, equipment types, costs, pricing and other factors needed to develop criteria necessary to implement a grant program. Furthermore, video dialtone service offerings, costs and pricing structures differ in localities throughout the country, as do the needs of local public television stations for such capacity. This adds to the difficulty of administering a federal grant program with service criteria that are applicable across the board. In addition, the timing involved in grant cycles may constrain public television from experimenting with this versatile and still evolving technology to deliver educational services.[33/]

The availability of appropriations for public television programming has not eliminated the need for regulatory policies to facilitate the distribution of that programming. As discussed above, both Congress and the Commission have recognized the need to establish regulatory policies in the broadcast, cable and direct satellite services to facilitate access to tax-supported public service programming. In these cases, Congress

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[33/] It is interesting to note that Congress' grant of a preferential rate structure for public television's use of communications satellites, at a time when satellites were an emerging technology, actually spurred the use of satellites for the delivery of video services, and led to improvements in the delivery of commercial broadcast services and the explosion of the cable industry.

recognized that direct appropriations alone could not facilitate the widespread distribution of public telecommunications services. It adopted access regulations to ensure that government funds would not be wasted and that the public would not be denied access to federally-funded programming.

The preferential rate structure is the most efficient and appropriate means of encouraging the use of video dialtone technology for educational and public purposes. It allows maximum flexibility both to the public video information provider and to the common carrier. Preferred rate access permits public television stations to deliver a wealth of educational services to the public at the lowest possible cost. The common carrier recuperates its costs and at the same time can offer its customers a basic package of low cost public service programming. The educational service's ability to attract additional consumers, who then become familiar with the capabilities of a video dialtone system, would also help offset the common carrier's foregone profits or opportunity costs. Moreover, the value of a baseline public telecommunications service in attracting video dialtone system users and maximizing network utilization will speed diffusion of the technology.

In any event, Congress has determined that public broadcast services are a merit good to be made available to all at no direct cost. Like schools and libraries, everyone benefits from the availability of these services. The imposition of commercial rates would effectively prohibit public broadcasters from using video dialtone to increase

circumstances, it is appropriate and consistent with the public interest for the Commission to adopt regulatory policies to avoid this consequence and to further Congress' goals.

IV. THE COMMISSION SHOULD AUTHORIZE PREFERENTIAL RATES FOR PUBLIC TELECOMMUNICATIONS ENTITIES.

A. Entities Entitled To Preferential Rates.

Preferential video dialtone rates should be provided to any "public telecommunications entity" as defined in Section 397(12) of the Act. This would limit the preference to "public broadcast station[s] or noncommercial television communications entit[ies]" that disseminate "non-commercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications."[34] This is a narrow, existing definition that has been used consistently by Congress and the Commission to define a class of communication entities that merit special treatment. It leaves no room for debate regarding whether a given entity qualifies for the preference, and it would alleviate any concerns regarding a LEC's ability to discriminate on the basis of programming or other impermissible grounds in determining eligibility for the preference.[35]

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[34] See Sections 397(12) and (14), 47 U.S.C. §§ 397(12) and (14).

[35] To further ensure that LECs are not able to discriminate among eligible entities, the Commission should allow any entity that believes it qualifies as a "public telecommunications entity" but has been denied preferential video dialtone rates to file a complaint with the Commission. Moreover, since an LEC will not be able to select or provide video programming, there will be no need for it to obtain a cable franchise. See National Cable Television Association v. FCC, 33 F.3d 66 (D.C. Cir. 1994).

B. **Incremental Cost-Based Rates.**

APTS believes that incremental cost-based rates are the most appropriate rates for public telecommunications entities. Incremental cost-based rates refers to the lowest rate that is consistent with the long run incremental cost or out-of-pocket cost (whichever would be lower) of the LEC in providing carriage on its video dialtone system. Video dialtone providers would charge only those costs that would be unavoidably incurred in transmitting public telecommunications programming. Under such a system, the video dialtone provider fully recovers its costs and the public telecommunications entities are able to gain affordable access to video dialtone systems which in turn permits them to provide affordable service to the public.

The Commission has decided not to adopt, at this time, video-dialtone-specific cost allocation and accounting rules. Rather, the Commission plans to utilize tariff review proceedings, Part 69 waiver proceedings, and other proceedings to review and amend cost allocation manuals to ensure that video dialtone costs are properly allocated. In the course of reviewing whether an LEC's commercial video dialtone rates are reasonable, the Commission and interested parties will have ample opportunity to review the LEC's incremental cost-based rates as well.

C. **Voluntary Preferential Rates.**

Though the compelling interest in having public telecommunications services distributed to the widest possible audience warrants mandatory preferential rates, allowing LECs to provide preferential rates on a voluntary basis would also serve the public interest and is legally permissible. Section 201(b) does not distinguish between

mandatory or permissive charges for different classes of communications. The only criterion is that the different charges be "just and reasonable." At a minimum, the Commission should expressly permit LECs to offer public telecommunications entities preferential rates. Failure to do so will deny the public access to noncommercial educational services via this new interactive video technology. An initial period in which preferential rates were permitted, but not required, would allow the Commission and the public to evaluate the need for, and appropriateness of, mandatory preferential rates. LECs would have the flexibility to accommodate voluntarily public telecommunications entities that cannot gain access at commercial rates. If it becomes clear that public telecommunications services are not being disseminated via video dialtone services throughout the country, the Commission can mandate preferred rates at a later time.

Allowing LECs unfettered discretion in deciding which entities will be granted preferential rates does raise concerns about possible discriminatory conduct. LECs that choose to provide preferential rates may not discriminate among entities eligible for the preference. To prevent such discrimination, the Commission again should narrowly define the entities that are eligible for preferences, limiting the preferences to public telecommunications entities. Further, LECs that wish to provide preferential access should be required to serve all public telecommunications entities that request such access. Alternatively, if LECs wish to limit the amount of access that will be provided at preferential rates, that limit should be set forth in a tariff and public telecommunications entities should be provided preferential access on a first-come, first-served basis. These

measures will ensure that LECs are not able to discriminate among entities eligible for the preference.

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Video dialtone services are likely to play an integral part in the development of this nation's information superhighway. One of the overriding concerns in developing this superhighway is that new, multichannel interactive services be available to all socio-economic groups, not merely the "haves" of this country. Public telecommunications providers must be able to access video dialtone services on a preferential-rate basis to ensure that their educational programming can be made available to the less-advantaged members of our society for the lowest possible cost. To help maintain full public access to these services, the Commission should require video dialtone providers to offer access to public telecommunications entities at reduced rates.

Respectfully submitted,

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

ET Docket No. 94-124
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APPENDIX II

RECOMMENDATIONS FOR ASSURANCE OF ACCESS BY EDUCATIONAL AND PUBLIC TELECOMMUNICATIONS ENTITIES IN THE EVENT THAT SPECTRUM AUCTIONS ARE USED FOR AWARD OF LMDS LICENSES

If the Federal Communications Commission concludes that auctions should be used to allocate spectrum among LMDS operators, fixed satellite service operators and mobile satellite service operators in the 27.5 to 29.5 GHz band, any auction regulations the Commission promulgates must provide for educational use of this spectrum by non-profit educational and public telecommunications entities. There are several methods by which educational participation in LMDS auction assigned licenses could be encouraged. For example, the Commission could use the following methods:

1) Bidder credit equal to the percentage of spectrum operated by the educational and public telecommunications entity, and/or

2) Educational and public telecommunications spectrum set aside.

Other possible methods, such as a reservation of a sufficient amount of spectrum for use by educational or public telecommunications entities at preferential, incremental cost-based rates, could also assure the necessary access. Use of such methods would encourage educational and public telecommunications entities to develop beneficial educational use of the LMDS technology.

1) Commercial bidder credit equal to percentage of educational and public telecommunications entity operations

The Commission could grant a commercial bidder in the LMDS license auction a credit on its auction bid amount equal to the percentage of noncommercial spectrum that a non-profit educational or public telecommunications entity would operate on an LMDS system constructed by the commercial bidder. This would encourage LMDS applicants to make cooperative operational arrangements with educational and/or telecommunications institutions. For example, if an educational entity had an agreement with an LMDS commercial applicant for the educational entity to operate 40% of the spectrum, then the Commission could give that commercial bidder a 40% credit, which would result in the LMDS commercial operator having to pay the Commission 60% of the winning bid amount.

2) Educational and public telecommunications spectrum set aside

The Commission could allocate only one commercial LMDS license to be granted by auction for 1000 MHz of the LMDS spectrum in each Rand McNally Basic Trading Area (BTA) and could set aside 1000 MHz of spectrum in each BTA to be operated by an educational or public telecommunications entity to disseminate educational information and programs. To encourage rapid implementation of educational LMDS systems, the Commission could allow the educational and public telecommunications entities to develop excess airtime capacity leasing agreements. These leasing agreements would allow a portion of the educational spectrum to be leased either to the winner of the commercial LMDS auction for that BTA or to another company that would be interested in operation cooperatively on the educational spectrum in the BTA with an educational or public telecommunication entity.

Conclusion

The Public Interest Parties strongly urge the Commission to adopt one or both of the alternatives or a similar method to encourage educational participation in the LMDS if the Commission decides to auction the LMDS spectrum. Without an incentive plan, such as the above, educational participation in this innovative service could be blocked either because of the prohibitive expense of the auction bidding process or because, in some jurisdictions, educational and public telecommunications entities may be prohibited from expending public funds on spectrum auctions.

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