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APTS

January 18, 2001

EX PARTE OR LATE FILED

Chairman William E. Kennard  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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JAN 19 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CS Docket 98-120  
Ex Parte Filing

Dear Chairman Kennard:

It has come to our attention that the Commission is discussing the appropriate definition of the term, "primary video" in the context of what digital content would be carried by cable operators in the above captioned proceeding. We understand that there is some consideration of defining "primary video" in a way that would require carriage of only one programming stream in a multicasting environment. This interpretation would be devastating to the service plans of public television stations across the nation and would significantly inhibit the distribution of innovative educational services to our nation's communities.

Public television stations believe that the capability to provide multicast educational services is the key benefit of digital technology. As we outlined in our comments (pp 35 – 42 attached), public stations throughout the nation plan to multicast at least four separate streams of digital programming. For instance, many stations are planning to multicast:

- A 24-hour children's programming channel;
- An educational channel devoted to instructional video and adult education;
- A channel focused on local legislative and public interest issues; and
- The award-winning national programming schedule distributed by PBS.

A definition of primary video that would exclude free over the air multicast services:

- would frustrate the current digital plans of public television stations to multicast valuable educational services to their communities;
- would prematurely build in a regulatory disincentive to the development of multicast services; and

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- would be inconsistent with existing voluntary carriage agreements with cable MSO's, and lower the threshold for negotiations currently underway.

The Commission should not pre-judge the value of digital multicasting by narrowing the scope of what is to be carried so early in the transition to digital.

We strongly urge the Commission to define primary video as including all multicast services that can be received free over the air. Alternatively, in recognition of the serious ramifications of this definition, we urge the Commission to defer a decision on this narrow but vitally important issue in favor of the development of a further record on the legal, business and technological issues involved

Respectfully submitted,



Marilyn Mohrman-Gillis  
Vice President, Policy and Legal Affairs  
Association of America's Public Television Stations

cc: Commissioner Michael Powell  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Gloria Tristani  
Karen Edwards Onyeije  
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David Goodfriend  
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OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DUPLICATE ORIGINAL

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

In the Matter of	)	
	)	
Carriage of the Transmissions of Digital Television Broadcast Stations	)	CS Docket No. 98-120
	)	
Amendments to Part 76 of the Commission's Rules	)	

TO: The Commission

**COMMENTS OF  
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS,  
THE PUBLIC BROADCASTING SERVICE, AND  
THE CORPORATION FOR PUBLIC BROADCASTING**

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For all of these reasons, the Commission should find that the transmission of analog and digital signals by the same station is not duplicative.

**VII. A BROAD RANGE OF PUBLIC TELEVISION SERVICES MUST BE CARRIED.**

In a digital environment, a much broader range of services can be carried over the air than in the analog environment. As described in Part I above, digital capability will allow public television to expand significantly its ability to fulfill its educational and public service mission. Cable carriage requirements should extend to the broad range of these mission-related services. This includes multiple streams of standard definition programming, as well as services that make use of data embedded in the bitstream.

Section 5 requires cable systems to carry the "primary video" of a qualified public television station.<sup>61</sup> This includes the full complement of over-the-air mission-related programming, whether analog or digital, that local public television stations intend their audiences to receive.<sup>62</sup> In the digital context, the "primary video" includes multiple streams of standard definition programming.

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<sup>61</sup> Section 5(g)(1) requires carriage, "in its entirety," of "the primary video, accompanying audio and line 21 closed caption transmission" of noncommercial stations and, if technically feasible, carriage of program-related material carried on the VBI or subcarriers of noncommercial stations "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." 47 U.S.C. § 535(g)(1).

<sup>62</sup> There is no indication, in either the statutory language or the legislative history, that "primary video" refers only to the analog signal.

Congress attached no restriction to the "primary video" definition, even though the Commission had noted the possibility of multiple digital programming streams at the time the must carry provisions were enacted.<sup>63</sup> Where a public television station broadcasts several streams of digital programming, each aimed at a different audience, as well as analog programming for those viewers who have analog receivers, no single one of these programming streams can be regarded as "primary;" all are "primary."

Anything less than carriage of all mission-related programming streams would run counter to the policies underlying Section 5. Congress concluded that the government "has a substantial interest in making all nonduplicative local public television services available on cable systems" because, among other things, the educational and informational programming provided by public television advances the government's "compelling interest in educating its citizens."<sup>64</sup> The ability to offer multiple streams of programming will increase the opportunities for public television to bring high

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<sup>63</sup> See Third Report and Order, Third Further Notice of Proposed Rule-making, Memorandum Opinion & Order, MM Docket No. 87-268, 7 FCC Rcd 6924, 6967 (1992) ("We . . . intend to consider authorization of other advanced video applications, including future techniques that might provide for transmission of more than one ATV program service on a single conversion channel, so long as they are compatible with the ATV system we select. Such a development would be of potentially great significance to broadcasters' ability to compete in a multichannel environment.").

<sup>64</sup> 1992 Cable Act, Section 2(a)(8).

quality educational programming to the American public.<sup>65</sup> Thus, the public policy rationale for carriage requirements supports carriage, during the transition period and beyond, of all the mission-related programming streams broadcast by public television stations.

Moreover, the concept of "primary video" must be redefined in the context of digital broadcasting. As described in Part I above, public television's plan for digital operations envisions a broad range of educational and mission-related services. Of course, digital capability will help public television to improve its traditional services to the physically challenged, including closed captioning and descriptive video, and all of these enhanced services will clearly be subject to cable carriage requirements.<sup>66</sup> But digital

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<sup>65</sup> As explained in Part I.A. above, with the multicasting capability public television stations could air several programs at once, thereby serving different audiences at the same time. For example, a station could have a children's channel, an adult learning channel, and a channel geared to a minority audience.

<sup>66</sup> The 1992 Cable Act requires carriage "in its entirety" of "accompanying audio, and line 21 closed caption transmission" of public television stations. 47 U.S.C. § 535(g)(1). It also requires carriage, where technically feasible, of materials carried in the vertical blanking interval or on subcarriers that are necessary for receipt of programming by disabled persons. *Id.* In the digital environment, closed captioning is no longer carried on line 21, and there is no VBI. The complete closed-caption and video-description transmissions and similar services will be carried as part of the digital bitstream, and cable carriage of these services will be technically feasible. The requirement of cable carriage for digital signals plainly extends to all services that are necessary for receipt and understanding of programming by people with disabilities. Indeed, it is essential that these "lifeline" services be carried intact and that their transmission be monitored and delivered in a form readily displayable according to industry standards.

technology will allow public television to do much more. Among other things, public television intends to use digital capability to integrate video-based programs with data and images that will create entirely new, extremely powerful educational applications for services from preschool programs, to distance learning, to public television's signature programming.

For example, PBS plans to present a documentary on Frank Lloyd Wright this fall. Eventually, in a digital environment, viewers could explore photographs, blueprints, and images of buildings that Mr. Wright designed, in addition to the basic content contained in the video program.<sup>67</sup> Viewers could also review longer, more in-depth versions of interviews conducted for the documentary but edited out of the scheduled program due to time limitations. This data, which will be embedded in the broadcast signal, will allow the viewer to follow his or her own individual interests, as sparked by the program.<sup>68</sup>

Digital technology also will allow public television to enhance its children's programming significantly. With digital capabilities, public

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<sup>67</sup> PBS will begin testing this concept with focus groups this fall.

<sup>68</sup> Public television provides a wide range of performing arts and cultural programming, including, for example, concerts and plays from Lincoln Center in New York and country music performances from Austin, Texas. The ability to transmit data over the air through digital technology will allow transmission of a much broader range of program material, including educational information concerning the performers and the music, theater or other art form presented and schedules and ticketing information for cultural events.

television will be able to transmit interactive material that children and their parents can access before, during, or after a program. For example, in shows such as *Arthur* or *Sesame Street*, public television will be able to integrate stories, games, and/or lessons into the programs, allowing children to apply the skills and knowledge taught in the programs, or reinforcing a particular theme of a program.<sup>69</sup> These features will increase the educational value of children's programming and will provide schools, libraries, day care centers and homes, whether in big cities or small towns, with access to the most innovative learning tools available.

In addition, the ability to transmit data through digital technology will provide public television with a powerful instructional tool. For example, public television stations could transmit course-related materials, such as lesson plans and teacher and student guides, as part of their instructional programming.<sup>70</sup> The distance learning courses in

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<sup>69</sup> Public television currently carries "Parent Tips" on the VBI of children's shows, such as *Barney*, *Mister Rogers*, *Sesame Street* and *Reading Rainbow*. These tips help parents reinforce the lessons taught during the program. In the digital environment, public television will be able to expand these types of educational services. Public television also carries information in the horizontal overscan that prompts *Barney*, *Arthur*, *DW*, and other dolls and products to interact with the television program and the children viewing it.

<sup>70</sup> For example, in the digital environment, PBS will be able to offer instructional materials before, during, or after the transmission of its Ready to Learn programs. Currently, students, parents and teachers must obtain a hard copy of such materials separately. The ability to transmit materials with the broadcast signal undoubtedly will make the instructional materials more

advanced subjects, now offered to high school and university students via public television in several states, could be significantly improved by providing similar types of instructional data along with the programming.

Further, public television stations could deliver selected portions of the Internet directly to a viewer's television set without the need for a computer, telephone connection, or access provider.<sup>71</sup> This service could include websites related to public television programming, such as *NOVA*, *FRONTLINE*, *Nature*, *Arthur*, *The Living Edens*, and *The Democracy Project* or other related Internet content. This information would be an additional source of educational material that could benefit students and the general public. Moreover, by using public television as a gateway, parents could ensure that their children have a wholesome experience when they use the Internet.

Cable carriage of these types of educational services is not a new concept. Congress contemplated that cable would carry similar types of public television material when it provided in 1992 that, where technically feasible, cable must carry "program-related material" carried on public

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readily available and thereby more useful for children and parents using the Ready to Learn service. In addition, public television could adapt and extend PBS Mathline and Scienceline, year-long professional development services that use video and online techniques to help teachers improve their instructional practices based on national educational standards.

<sup>71</sup> Some public television stations are already providing the PBS Kids! website on the VBI.

television stations' VBI or subcarriers for "educational . . . purposes."<sup>72</sup> In explaining this provision, the House committee report referred to "lesson plans and other data on the VBI to accompany the educational programming delivered to the nation's schools."<sup>73</sup> In the digital environment, such data will not be delivered through a VBI but instead will be delivered as part of the bitstream that carries the video programming.

Requiring cable carriage of the full range of services related to public television's educational and public service mission will further Congress's goal of ensuring the distribution of unique noncommercial, educational programming to audiences in every part of the United States.<sup>74</sup> It is also consistent with Congress's determination that "it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunication services through all appropriate available telecommunications distribution technologies,"<sup>75</sup> as well as with Congress's explicit intention "to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services."<sup>76</sup>

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<sup>72</sup> 47 U.S.C. § 535(g)(1).

<sup>73</sup> H.R. Rep. No. 628, p. 101.

<sup>74</sup> See 1992 Cable Act, Section 2(a)(7).

<sup>75</sup> Public Telecommunications Facilities Act of 1992, 47 U.S.C. § 396(a)(9).

<sup>76</sup> 47 U.S.C. § 396(a)(2).

The fact that the services described above go beyond traditional forms of video programming does not remove them from the basic must carry obligation. Congress and the Commission mandated a digital conversion in large part because of the many improvements digital offers over analog.<sup>77</sup> Clearly, Congress could not have intended that, following the conversion, two-thirds of television viewers could be denied access to the new services that made digital so attractive in the first place.<sup>78</sup> The Commission should therefore make clear that all of public television's mission-related services must be carried.

**VIII. THE TERM "ANCILLARY OR SUPPLEMENTARY SERVICE" MUST BE DEFINED NARROWLY FOR PUBLIC TELEVISION STATIONS.**

Congress in 1996 explicitly excluded from cable's carriage requirements any "ancillary or supplementary service" offered by a

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<sup>77</sup> See, e.g., Fifth Report and Order, 12 FCC Rcd at 12811 (outlining benefits of digital technology).

<sup>78</sup> Even in the analog environment, the Commission has recognized that cable carriage requirements are broad enough to accommodate new broadcast services. In determining what material carried on a station's VBI is "program-related" and therefore must be carried by cable where technically feasible, the Commission has stressed the need to be flexible. See *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report & Order, 8 FCC Rcd 2965, 2986 (1993) ("Carriage of information in a station's VBI is rapidly evolving; thus, we believe no hard and fast definition [of program-related] can now be developed."); see also *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Memorandum Opinion & Order, 9 FCC Rcd 6723, 6732 (1994) ("the factors set forth in [*WGN Continental Broadcasting Co. v. United Video Inc.*, 693 F.2d 622 (7<sup>th</sup> Cir. 1982)] do not necessarily form the exclusive basis for determining program-relatedness.").