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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 5, 2001

Ms. Magalie Roman Salas
Secretary, Federal Communications
Commission
445 12th Street Lobby
Counter TW-A325
Washington, DC 20554

Re: *Ex Parte* Meeting
MM Docket 98-203

Dear Ms. Salas:

The Association of America's Public Television Stations ("APTS"), hereby notifies the Commission of an *ex parte* meeting to discuss public television's position on the use of ancillary and supplementary digital spectrum. The meeting occurred on October 4, 2001, and was attended by Marilyn Mohrman-Gillis, APTS. I met with the following persons: Commissioner Kathleen Q. Abernathy, Stacy Robinson, Legal Advisor, Mass Media and Gennie Berry, student intern.

Sincerely,

Marilyn Mohrman-Gillis

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs

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List ABCDE

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ANCILLARY AND SUPPLEMENTARY USE OF PTV DIGITAL SPECTRUM

Below is a summary of key points from comments filed by APTS on February 16, 1999, reply comments filed on March 16, 1999, and an ex parte filing on October 8, 1999.

1. Public television is asking the Commission to extend to a digital environment the same restrictions currently placed upon a public television station's channel uses in an analog environment:

    - The channel must be used "primarily" for a noncommercial, nonprofit, educational service (Section 73.621(a) of the Commission's rules).

    - Any ancillary and supplementary service provided by the station to generate revenue may not interfere with the station's provision of its public telecommunications service (Section 399B of the Communications Act).

2. Public television stations are committed to using their digital channels to serve the public. Stations have developed bold and exciting digital multicast service plans geared toward the needs of their local communities.

    - All PTV stations have committed to provide at least one digital multicast channel (or the equivalent of 4.5 megabits per second of capacity) for formal educational services; and 75 percent have plans to allocate at least two channels for education.

    - 85 percent have plans to multicast a children's channel.

    - Others plan to provide multicast channels that focus on local public affairs, teacher training, foreign language programming and programming aimed at minority and under-served audiences.

3. As long as public stations meet the "primarily" and the "non-interference" tests, they should be permitted to provide ancillary and supplementary services to generate much needed revenue to support their digital service plans.

    - In addition to huge transition costs (the total for PTV's digital transition is $1.7 billion) stations face the challenge of financing these expanded and enhanced multicast digital services on an ongoing basis.

4. Restrictive FCC rules are premature. Stations plan to fully utilize their digital channels for educational services. But stations also have additional external constraints on the use of their channels.

    - Stations are governed by local governing boards and state law.

    - Stations are nonprofit entities. As such:

        - they must engage primarily in activities that further their exempt purposes;

        - they must pay taxes on any for-profit activities in which they engage; and

        - for-profit activities may not become disproportionately large in relation to stations' primary activities or they run the risk of losing their nonprofit status and subsequently losing their noncommercial licenses.

    - If any public television station engages in activities of concern to the FCC, it can address those on a case-by-case basis

5. The FCC should allow for public television stations to explore the full range of ancillary and supplementary revenue generating opportunities, including advertiser supported uses, that may be available. Permitting advertiser supported ancillary and supplementary services is consistent with the Communications Act.

    - Although Section 399B defines advertising to include messages or programming "broadcast or otherwise transmitted," the language of the prohibition against advertising in Section 399B forbids only the "broadcast" of advertisements and makes no reference to signals "otherwise transmitted."

    - Ancillary and supplementary services, which by definition are subscription based services that are not available free over the air to all, are "otherwise transmitted" and not subject to the prohibition on advertisements in Section 399B.

    - This interpretation is consistent with the FCC's rules in the analog context, in which the Commission has permitted the transmittal of advertiser supported ancillary and supplementary services in the vertical blanking interval (VBI) of the analog channel notwithstanding 399B.

    - The purpose behind 399B—to insulate public television from "program control and content from the influence of special interests"—will not be violated by advertiser supported ancillary and supplementary services.

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Voluntary Guidelines for the Ancillary or Supplementary Use of Digital Television Capacity by Public Television Stations

Preamble. The public television stations have requested, in comments submitted to the Federal Communications Commission in MM Docket No. 98-203, that the FCC establish certain rules to govern public television stations' use of ancillary and supplementary digital capacity. Specifically, the stations have stated that the Commission should provide public television stations with substantial flexibility in the use of their excess digital spectrum to provide ancillary and supplementary service, so long as the digital channel is used primarily to provide a noncommercial educational service and the ancillary or supplementary services do not interfere with the provision of public telecommunications services.

The stations have developed a set of voluntary guidelines and standards to provide further detail as to how they would plan to implement the broad rules that they have proposed to the Commission. The voluntary guidelines were adopted by the APTS Board of Trustees on October 17, 1999. The voluntary guidelines are intended to establish an industry approved set of standards to guide stations' use of ancillary and supplementary capacity. The voluntary guidelines are based on the assumption that the Commission will adopt the "primarily" and "non-interference" rules proposed by APTS.

Voluntary Guidelines

- Public television stations, consistent with their unique educational and public service mission, commit to use their digital spectrum to make high-quality, educational programs and services available to all Americans.

- The provision of ancillary or supplementary services will not derogate the free, over-the-air digital program service of public television stations.

  - Stations will maintain their primary broadcast service at equal or higher technical quality.

  - Stations will adopt internal policies prohibiting the carriage of ancillary or supplementary services that contain inappropriate content in conflict with the educational mission of public television.

- The ancillary or supplementary services will not interfere with a station's primary noncommercial educational broadcast service in terms of either quantity or quality.

- Entities that have an interest in ancillary or supplementary services (e.g., lessors of ancillary or supplementary capacity, or advertisers and/or sponsors for ancillary or supplementary services) may not influence the content of the licensee's primary noncommercial educational broadcast service.

- Licensees will exercise regular oversight over their station(s)' ancillary or supplementary services.

- Licensees will file an annual statement with the FCC certifying that:

  - They are using their digital channel primarily for noncommercial educational services; and

  - The ancillary or supplementary services provided by the station are not interfering with the station's primary noncommercial, educational services.