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LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.
SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

WWW.LSL-LAW.COM

December 18, 2001 DOCKET FILE COPY ORIGINAL

BARBARA K. GARDNER

DIRECT DIAL
(202) 416-6755

E-MAIL
BGARDNER@LSL-LAW.COM

DIRECT FAX
(202) 429-4603

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE, Suite 110
Washington, D.C. 20002

376

Re: Comments of WQED Pittsburgh in MM Docket No. 01-~~267~~

Dear Ms. Salas:

Pursuant to Section 1.419 of the Commission's rules, transmitted herewith on behalf of WQED Pittsburgh, licensee of noncommercial educational televisions stations WQED and WQEX, Pittsburgh, Pennsylvania, are an original and nine copies of the Comments of WQED Pittsburgh in the above-referenced proceeding.

Please date-stamp the enclosed "Return Copy" of this filing and return it to the courier delivering this package.

If there are any questions, please call the undersigned at 202-416-6755, or Steven A. Lerman, Esq. of this firm at 202-416-6765.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosures

cc with encl. (by e-mail):
Roy J. Stewart, Chief, Mass Media Bureau
Barbara Kreisman, Chief, Video Services Division
Clay Pendarvis, Chief, Television Branch
Susan Eid, Office of Chairman Michael K. Powell
Stacy Robinson, Office of Commissioner Kathleen Q. Abernathy
Susanna Zwerling, Office of Commissioner Michael J. Copps
Catherine Crutcher Bohigian, Office of Commissioner Kevin J. Martin

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

DEC 1 8 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Television Table of	)	
Allotments to Delete Noncommercial	)	MM Docket No. 01-276
Reservation of Channel *16, 482-488 MHz,	)	FIN: 41314
Pittsburgh, Pennsylvania	)	

To: The Commission

COMMENTS OF WQED PITTSBURGH

WQED PITTSBURGH

By: Steven A. Lerman
Barbara K. Gardner
Philip A. Bonomo
Peter M. Gould

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW
Suite 600
Washington, DC 20006
(202) 429-8970

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Its Attorneys

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Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW
Suite 600
Washington, DC 20006
(202) 429-8970

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Its Attorneys

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SUMMARY

The future of community-based noncommercial educational television service in the greater Pittsburgh area is at stake in the instant proceeding. Unless the Commission promptly allows the dereservation of WQEX's frequency to go forward, the ability of WQED Pittsburgh ("QED") to serve Pittsburgh's educational and cultural needs will be permanently hampered.

Channel 16 was originally a commercial frequency. For more than five years, QED has sought to restore the channel's non-reserved status, to enable QED to sell WQEX as a commercial station and use the proceeds to alleviate its financial distress. The severity of this distress even prompted Congress, in 1996, to direct the Commission to act on QED's initial dereservation petition within 30 days, without opening the channel to competing applications. Although the Commission denied that petition, in doing so it relied heavily on the existence of QED's alternative plan to sell the station to a religious broadcaster – a plan that the Commission overtly encouraged QED to pursue. However, when QED did so, its implementing assignment applications were subjected to protracted delay, and ultimately undermined by the FCC's stringent (and subsequently rescinded) guidelines regarding religious programming on noncommercial stations. In the words of two Commissioners, QED has "suffered greatly" due to the FCC's "initial delay, prior misguided decisions and subsequent reversal." Because it still lacks the relief contemplated by Congress, QED earlier this year renewed its efforts to dereserve Channel *16 – this time to permit its sale to a company headed by Diane Sutter, a Pittsburgh native with extensive local commercial broadcasting experience.

Without question, the public interest will be well served by the dereservation of WQEX's frequency. First, the proceeds of the sale of WQEX to a commercial broadcaster will allow QED to retire the crippling debt that it inherited from prior management. By virtue of current

management's efforts to improve QED's financial condition through stringent cost-cutting measures, modest net unrestricted operating gains have been posted over the past two fiscal years. However, these gains pale in comparison to the size of the inherited debt. QED's auditors, KPMG LLP ("KPMG"), believe that without improvement in the financial condition of the company, there is substantial doubt regarding QED's continuing viability. The debt adversely affects QED's fund-raising efforts, as local corporations and foundations have made clear that they prefer to contribute to tangible projects and not to debt reduction. It has also compelled QED to take the unwelcome steps of reducing its programming initiatives, downsizing its staff, and curtailing the implementation of its multimedia strategic plan, which limit QED's ability to reach its full potential as a noncommercial licensee. With the proceeds from the sale of WQEX, QED will be able not only to reverse these regrettable downgrades, but also to create a permanent local programming endowment.

In addition, the sale of WQEX will enable QED to fund two substantial, near-term expenses: the FCC-mandated conversion to digital television ("DTV"), and long-overdue repairs to the company's physical plant. While QED has commenced work on both projects, the money expended to date represents only a small fraction of the total amount that must be spent before both are completed, which QED estimates to be approximately $11.6 million. If QED is to become financially stable, management's cost-cutting efforts and reliance on traditional funding sources alone will not be enough. As KPMG has suggested, the sale of WQEX as a commercial station is "critical and essential" to ensure QED's fiscal health.

QED's financial distress has been exacerbated by the severe economic decline of the Pittsburgh area, which is reflected in the most recent U.S. Census figures. *Of the top 42 U.S. metropolitan areas, Pittsburgh is the only one that experienced a drop in population over the* *past decade.* Today, Pittsburgh ranks as the 22nd largest metropolitan area. In contrast, in 1950, just a few years before the FCC added reserved Channel *16 to the Television Table of Allotments for Pittsburgh, the metro area was the eighth largest in the U.S.

The decline in the population of Pittsburgh continues a trend that began during the 1960s, when the U.S. economy shifted from one based on heavy industry to one based on service. Over the past 40 years, several of Pittsburgh's corporate leaders have either gone out of business or have been absorbed by other companies and left the area. Predictably, the loss of corporations has led to a substantial decrease in the base of financial support available to QED. Because Pittsburgh is unlikely ever to regain its former stature as a business and population center, the continuing viability of WQED and WQEX – two debt-ridden, donor-dependent noncommercial stations – in Pittsburgh is dubious at best, absent the relief requested herein.

Viability aside, there is no longer even a need to maintain two noncommercial television stations in Pittsburgh, given the expanded opportunities for educational programming available in both the classroom and in the home through cable, direct broadcast satellite ("DBS"), the Internet, DTV multicasting and other alternative media sources. The Pittsburgh region is one of the nation's leaders in terms of the percentage of children using computers in the classroom, and its schools also benefit from in-class programs such as Cable in the Classroom. Outside the classroom, educational and cultural programming directed to Pittsburgh's residential viewers has never been more prevalent and varied, with literally dozens of such programming options offered on cable and DBS, and a virtually unlimited menu of choices available over the Internet. QED itself has implemented or planned, and will continue to implement and expand if funding is available, innovative multimedia initiatives that can help it more effectively and efficiently fulfill its educational and cultural mission than WQEX can, including DTV multicasting, Internet-based programs such as the WQED Learning Center, and partnerships with other local educational and cultural organizations.

For its size, the Pittsburgh market is currently underserved by commercial broadcasters, and the introduction of a new commercial station would clearly benefit the market. QED has entered into a binding agreement to sell WQEX to ShootingStar, Inc., a communications entity headed by Diane Sutter, a Pittsburgh native with a strong track record as a local commercial broadcaster.

In evaluating QED's dereservation request, the Commission should fulfill its obligation to manage spectrum flexibly to best suit the changing market demands and community needs outlined above. It should recognize that, in contrast to the substantial benefits to be gained by selling WQEX to ShootingStar, retaining the channel's reserved status will simply preserve an outmoded regulatory construct without tangible public gain, particularly since the programming of Channel *13 will continue to be simulcast on Channel *16 if the WQEX frequency is not dereserved.

The Commission should remove WQEX's noncommercial reservation without opening the channel up to competing applications, for four reasons. First, there is no basis for reliance on a half-century-old "uncodified rule" purportedly requiring consideration of third-party applications, because that "rule" has been effectively overturned by subsequent Commission precedents. Second, the two-step course that the Commission proposes to embark upon – initially assessing if dereservation is in the public interest and if it is, only then deciding whether to consider competing applications – is illogical, because dereservation can *only* be found to be in the public interest if it results in the strengthening of QED. In turn, QED cannot be strengthened unless WQEX can be sold and the proceeds remitted to QED – which would be precluded if Channel 16 were to be made subject to competing applications. Third, Congress has previously expressed its concern that allowing competing applications would disserve QED's interests. Fourth, in any event, QED will withdraw its dereservation petition if third party applications are accepted.

For the foregoing reasons, WQEX's frequency should be dereserved without delay, and without opening the frequency to competing applications.

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Pittsburgh, Pennsylvania	)	

To: The Commission

COMMENTS OF WQED PITTSBURGH

WQED Pittsburgh ("QED"), licensee of noncommercial educational television stations WQED (Channel *13) and WQEX (Channel *16), Pittsburgh, by its attorneys, hereby comments on the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding, initiated by the Commission to determine whether the public interest would be served by the dereservation of Channel *16 to allow for its sale as a commercial station.[1]

When QED petitioned the FCC for the dereservation of Channel *16 earlier this year, it presented the Commission with compelling evidence setting out the unique circumstances that forced QED to seek this particular form of relief. Because this evidence remains relevant to the Commission's instant inquiry, QED herein reiterates the key points previously made, while

[1] Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, Memorandum Opinion and Order and Notice of Proposed Rule Making, MM Docket No. 01-276, FCC 01-286 (released October 11, 2001) ("NPRM"). The Commission issued the NPRM in response to QED's petition, filed January 9, 2001, requesting that the Commission amend Sections 73.606 and 73.622 of the Commission's rules to delete the noncommercial reservations of Channel *16 and its paired digital television ("DTV") frequency without opening the channels to competing applications, thereby permitting QED to sell WQEX as a commercial station and to use the net proceeds from the sale to alleviate its financial distress. See Petition to Delete Noncommercial Reservation (filed January 9, 2001) ("Dereservation Petition").

supplementing and updating them as appropriate to reflect the most current data and information available. Taken together, the original and updated evidence amply support a conclusion that the prompt dereservation of WQEX's channel – without opening the frequency to competing applicants – will serve the public interest.

I. INTRODUCTION

At stake in the instant proceeding is the future of local noncommercial educational television service in the greater Pittsburgh area. The decision that the Commission now makes with regard to the dereservation of WQEX's frequency will determine whether QED can continue to develop as a leading regional multi-media educational and cultural resource, as called for by QED's strategic plan, or instead will become a mere passive retransmitter of others' programmatic initiatives. Indeed, unless the Commission promptly grants the relief that QED has sought for nearly six years, QED's financial distress will permanently hamper its ability to serve the educational, cultural and entertainment needs of the Pittsburgh community as a noncommercial licensee.[2] The citizens of Pittsburgh deserve a better fate.

QED reminds the Commission that it did not reach the difficult decision to pursue the sale of WQEX willfully or casually. Instead, this decision was forced upon it by a set of circumstances that, by any measure, are unique in their severity. Most of these circumstances – including QED's crippling debt inherited from prior management and the continuing economic decline of Pittsburgh – will be discussed fully herein in response to the Commission's specific requests for comments. Another important factor, however, and one addressed by QED in the Dereservation Petition but which bears repeating here, is the singular history of QED's struggle to sell WQEX, which has cost QED dearly, both in terms of lost time and human resources.

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[2] See 47 C.F.R. § 73.621(c) (providing that "[n]oncommercial educational television broadcast stations may transmit educational, cultural and entertainment programs").

The effort to alleviate QED's severe financial crisis through the dereservation of WQEX began in 1996. In recognition of the exceptional set of circumstances afflicting QED that warranted prompt and favorable Commission action, Congress passed Public Law 104-134, which directed the Commission to act on a petition by QED to dereserve Channel *16 within 30 days of receiving the petition and without either conducting a rulemaking (or other proceeding) *or opening the channel to competing applications*.[3] The statute clearly reflected Congressional concern that the slow pace of the Commission's normal processes would exacerbate, rather than resolve, QED's situation.

While the Commission denied the 1996 dereservation petition in a timely manner, its decision relied heavily on QED's alternative plan to sell WQEX to Cornerstone TeleVision, Inc. ("Cornerstone"), a Pittsburgh-area religious broadcaster.[4] The Commission overtly encouraged QED to pursue the Cornerstone alternative, but then subjected the implementing assignment applications to protracted delay. As two Commissioners have correctly observed, when the FCC finally granted the applications, it "simultaneously undermine[d] the deal with ill-conceived, stringent 'guidelines' regarding religious programming on noncommercial educational television stations."[5] Although the Commission subsequently rescinded this so-called "Additional Guidance," by then the damage was done: Cornerstone refused to revive the proposed sale due to its concern that these restrictions, which were perceived by Cornerstone to impede its

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3 Omnibus Consolidated Recissions and Appropriations Act of 1996, Pub.L. No. 104-134, 110 Stat. 1321, 1349 (1996), reprinted in H.R. Conf. Rep. No. 104-537 at 51-52 (1996).

4 Cornerstone intended to provide noncommercial educational programming on Channel *16, thereby permitting retention of the channel's noncommercial reservation. The Cornerstone transaction involved applications to assign Cornerstone's commercial license to a subsidiary of Paxson Communications Corporation ("Paxson"), and WQEX's noncommercial license to Cornerstone. The consideration received from Paxson for Cornerstone's license for non-reserved Channel 40, Greensburg, was to be shared by QED and Cornerstone.

5 Joint Statement of Commissioners Kathleen Abernathy and Kevin Martin, appended to the NPRM ("Abernathy/Martin Joint Statement").

programming mission, could be revived by the FCC in the future.[6] Significantly, these events occurred against the backdrop of Commission assurances that it would process the applications on an expedited basis[7] and would permit assignment of a noncommercial license to a qualified religious broadcaster.[8] As Commissioners Abernathy and Martin have summarized this tortuous odyssey: "QED already has suffered greatly due to [the FCC's] initial delay, prior misguided decisions and subsequent reversal." [9]

With its Cornerstone deal terminated, QED, still lacking the relief contemplated by Public Law 104-134, earlier this year renewed its effort to dereserve WQEX – this time to permit its sale as a commercial station to a company headed by Diane Sutter, a Pittsburgh native with extensive commercial broadcasting experience in that and other markets. Although QED urged the Commission to act on its second dereservation request expeditiously because any further processing delays would exacerbate its fragile financial condition, more than nine months elapsed before the Commission acted on the request by adopting the NPRM. In light of this unfortunate delay, prompt resolution of the instant rule making proceeding is respectfully and urgently requested.

For nearly 50 years, QED has served as an important voice for the Pittsburgh community, with its viewers coming to rely on QED for award-winning programming that speaks directly to their concerns and interests. This unparalleled half-century of service can only continue,

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6 Both QED and Paxson were prepared to close and urged Cornerstone to do so, to no avail.

7 Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, Memorandum Opinion and Order, 11 FCC Rcd 11700, 11711 (1996) ("1996 Order") ("Should WQED choose to [submit an application to assign WQEX to Cornerstone], . . . we will afford any such submission expedited consideration.").

8 Id. at 11710 n.18 ("The Commission has previously held that noncommercial educational organizations and institutions, even though religiously oriented, may acquire reserved broadcast channels if they make an appropriate showing as to their qualifications."). See also Way of the Cross, Memorandum Opinion and Order, 101 FCC 2d 1368 (1985), relied upon by the Commission in the 1996 Order.

9 Abernathy/Martin Joint Statement.

however, if the Commission allows QED to unlock the value of WQEX as proposed in the Dereservation Petition. As detailed herein, the net proceeds from such a sale would retire QED's enormous debt inherited from prior management, endow a local programming fund, and provide essential funding for QED's operations, thereby promoting the public interest by securing the future of community-based public television in Pittsburgh and providing the community with a new independent commercial voice.

II. QED CONTINUES TO SUFFER FROM A CRIPPLING DEBT, AND ITS FISCAL RECOVERY REQUIRES THE SALE OF WQEX TO A COMMERCIAL BUYER.

In the NPRM, the Commission requests comment on a series of considerations regarding the public interest benefits of dereserving WQEX. The Commission first asks for comment on QED's present financial condition and the likelihood that its ability to serve the educational needs of the Pittsburgh-area region will be substantially impaired absent a sale of WQEX as a commercial station.[10] In the Dereservation Petition, QED described how prior mismanagement left the company with a crippling debt, and explained that this debt plus declining revenues compelled drastic cuts in existing programming, new programming initiatives, and staffing. At that time, QED also noted that current management's cost-cutting measures had enabled it to "gain[] ground in turning around its financial situation."[11]

QED is pleased to report that its most recent financial statement indicates that the company's bottom line continues to improve, with revenues modestly outpacing expenses for the second consecutive fiscal year. Nevertheless, the debt inherited from past management remains so enormous that there is only one realistic means by which it can be erased – through the sale of WQEX as a commercial station. Without this relief, QED will be forced to continue to operate

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10 NPRM at 7.

11 Dereservation Petition at 11.

under the weight of a debt load so crushing that its ability to serve Pittsburgh's educational and cultural needs will be unavoidably and substantially impaired.

A. The Magnitude Of QED's Debt Calls Into Question Its Future Viability.

As evidence that its fiscal condition remains critical despite realizing modest excess revenues over expenses for the past two fiscal years, QED has updated the series of charts detailing its financial state that was previously included in the Dereservation Petition. As before, the data in these charts are taken from QED's financial statements, prepared in accordance with generally accepted accounting principles for not-for-profit organizations by QED's independent auditors, KPMG LLP ("KPMG").[12] In the Dereservation Petition, QED provided the Commission with copies of QED's audited financial statements for the Fiscal Years ended June 30, 1996, 1997, 1998 and 1999. Attached hereto as **Exhibit A** are QED's most recent audited financial statements, for the fiscal year ended June 30, 2000 and for the subsequent three-month period ended September 30, 2000, as well as an unaudited report for the fiscal year ended September 30, 2001.[13]

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12 Under the provisions of Statement of Financial Accounting Standards No. 117, "Financial Statements of Not-For-Profit Organizations," net assets and revenues, expenses, gains and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, QED's net assets and changes therein are classified by KPMG as follows:

> **Permanently restricted net assets** – Net assets subject to donor-imposed stipulations that they be maintained permanently by QED. Generally, the donors of these assets permit QED to use the income earned on related investments for general or specific purposes.
>
> **Temporarily restricted net assets** – Net assets subject to donor-imposed stipulations that may or will be met by actions of QED and/or the passage of time.
>
> **Unrestricted net assets** – Net assets not subject to donor-imposed stipulations. Donor-restricted contributions expended in the year of receipt for the restricted purpose are reported as unrestricted.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets.

13 In 2000, QED changed the start of its fiscal year from July 1 to October 1. The financial statement for the three-month period ended September 30, 2000 was prepared to place QED on its new fiscal year track.

As with past assessments, the auditors' most recent assessment of the company's financial condition literally calls into question QED's future viability. KPMG concludes that "[w]ithout improvement in the financial condition of [QED], there is substantial doubt about its ability to continue as a going concern."[14] The auditors' reports also note that the "[s]uccessful, timely completion" of management's plans, including specifically the sale of WQEX to a commercial interest, is "*critical* and *essential* to the improvement of the financial condition of the Company."[15] In the letter attached hereto as **Exhibit B,** KPMG explains that QED has met the requirements for the issuance of a doubtful "going concern" opinion for the past several years because of the company's excess of expenses over revenues, when adjusted for unusual revenue transactions, and its having an unrestricted net asset deficit.

KPMG's conclusions reflect the fact that QED's current debt stands at approximately $9 million, including bank debt of about $1.5 million, accounts payable of about $3 million, and repayments of $4.5 million due to QED's Capital Campaign fund.[16] Each of these figures represents either no change, or only a slight decrease, from the debt reported in the Dereservation Petition.[17]

Chart I and footnote 19 below summarize QED's operating results from July 1, 1992 through September 30, 2001. Consistent with management's fiscally prudent objective of realizing positive cash flow from operations (i.e., avoiding incurring additional debt), the

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14 WQED Pittsburgh Financial Statements and Schedule, September 30, 2000, at 8.

15 Id. (emphasis added).

16 Of the approximately $3 million in accounts payable, most is more than 30 days overdue, including approximately $1 million owed to the Public Broadcasting Service ("PBS") since 1999, a figure that excludes PBS-imposed late charges, which are paid monthly. The "repayments" figure represents funds borrowed from QED's own assets to provide working capital and pay down a portion of the bank debt. These borrowed funds must be repaid.

17 In the Dereservation Petition, QED reported current debt at approximately $9.32 million, including bank debt of $1.65 million, overdue accounts payable of $3.17 million, and repayments of $4.5 million due to QED's Capital Campaign fund.

company experienced a net unrestricted operating gain of $116,000 during the most recent twelve-month reporting period – the second consecutive fiscal year in which QED was able to report a modest revenue surplus. However, these small gains, each well under one quarter million dollars, pale in comparison with the approximately $9 million current debt figure. In addition, these gains fail to offset the cumulative unrestricted net losses from previous years, including years when current QED management was forced to incur deficits in order to restructure the ailing company bequeathed to them by prior management. Thus, QED has compiled cumulative unrestricted net losses since 1992 of $12.57 million, a significant increase over the $9.2 million cumulative total reported to the Commission in 1996 as part of the first dereservation effort.[18]

CHART I
Excess (Deficiency) of Unrestricted Revenue Over Expense[19]
(in thousands)

Year Ended

June 30, 1993	June 30, 1994	June 30, 1995	June 30, 1996	June 30, 1997	June 30, 1998	June 30, 1999	June 30, 2000	(unaudited) Sept. 30, 2001
$(4,754)	$87	$(3,034)	$(2,886)	$(568)	$(806)	$(266)	$ 207*	$116

* Reflects one-time payment from Paxson on expiration of Channel *16 sales agreement.

18 The cumulative unrestricted net loss total of $12.57 million includes a $667,000 deficiency in unrestricted revenue over expenses during the three-month period ended September 30, 2000. This three-month reporting period results from the transition to a different fiscal year. See n.13 supra. The $667,000 loss is consistent with the level of operating loss typically experienced by QED during the months of July, August and September.

19 In addition to the twelve-month figures reported, QED experienced a deficiency of $667,000 of unrestricted revenue over expenses for the three-month accounting transition period (July 1 – September 30, 2000) referenced in footnote 13 supra. See WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000, at 2; Financial Statements and Schedule, September 30, 2000, at 3; Financial Statements and Schedule, June 30, 2000 and 1999, at 4; Financial Statements and Schedule, June 30, 1999 and 1998, at 3; Financial Statements and Schedule, June 30, 1998 and 1997, at 4; Financial Statements and Supplementary Information, June 30, 1997 and 1996, at 4; Financial Statements and Schedule, June 30, 1996 and 1995, at 3 (included as Exhibit B to the Dereservation Petition); and Management's Discussion and Analysis of Financial Condition at 2, included as Exhibit 4 to QED's Petition to Delete Noncommercial Reservation, filed June 24, 1996 with the Commission ("1996 Dereservation Petition"). The 1998 figure in Chart I excludes the $3,310,076 in extraordinary gain realized by QED from the 1998 sale of its WonderWorks library.

QED's operating losses result, in part, from a decline in revenues. Chart II lists the unrestricted revenues of QED by category, and indicates that these revenues overall have dropped by more than half during the last ten years, from a high of $38.3 million for the fiscal year ended June 30, 1991 to only $18.7 million (unaudited) for the most recent fiscal year.[20] As QED noted in the Dereservation Petition, the decrease in unrestricted revenue results primarily from declining program production and distribution revenues, reflecting both a general lack of funds to generate program development proposals and, more specifically, QED's decision to concentrate its limited programming resources on productions with a local, and not necessarily national, focus. Also significant is the decline in government funding for operations, which decreased from $3.5 million in fiscal year 1991 to $2.4 million in the year ended September 30, 2001. This decline, in part, reflects the elimination in 1998 of funding by the Corporation for Public Broadcasting for "second station" noncommercial stations such as WQEX.

While the most recent report reveals a significant increase in contributions from individuals – reflecting renewed community trust in QED and its regional service mission – unfortunately, QED has found that its ability to raise revenues by tapping into traditional corporate underwriting sources has been significantly hampered because of its debt. Several large Pittsburgh foundations have refused outright to contribute money to QED until it is debtfree. Even those foundations that continue to support QED frequently do so in amounts smaller than would be the case if there were no QED debt. In the overwhelming number of cases, local corporations and foundations want their contributions to support programmatic or other tangible QED initiatives, not the retirement of debt.

[20] In the Dereservation Petition, QED reported an *unaudited* unrestricted revenue total for the fiscal year ended June 30, 2000 of $18.243 million. Chart II reflects the audited figure of $19.257 million. Similarly, in Chart I and in the charts that follow, all unaudited figures for the fiscal year ended June 30, 2000 have been replaced with the audited results for that fiscal year.

CHART II
Unrestricted Revenue[21]
(in thousands)

	Year Ended										
	June 30, 1991	June 30, 1992	June 30, 1993	June 30, 1994	June 30, 1995	June 30, 1996	June 30, 1997	June 30, 1998	June 30, 1999	June 30, 2000	(unaudited) Sept. 30, 2001
Contributions	$ 5,170	$ 5,166	$ 5,239	$ 5,123	$ 4,622	$ 4,849	$ 4,472	$ 4,811	$ 4,945	$ 5,202	$ 5,984
Government Grants	3,502	3,420	3,549	3,708	3,362	3,157	2,882	2,799	2,737	2,223	2,367
Underwriting	741	1,051	1,037	1,301	1,435	1,441	1,346	1,554	1,943	1,707	915
Magazine	2,949	3,039	3,037	2,868	2,693	3,084	3,098	3,156	3,691	3,636	3,820***
Program Prod./Dist.	24,624	20,681	14,454	12,406	10,931	9,911	8,785	4,707	3,440	4,276	4,916
Other/including released prog. assets	1,279	1,276	933	1,218	1,197	1,160	1,023	3,877*	489	2,213**	747
Total	$38,265	$34,633	$28,249	$26,624	$24,240	$23,602	$21,606	$20,904	$17,245	$19,257	$18,749

* Includes extraordinary gain from sale of WonderWorks library.
** Includes $1 million gain from Paxson on expiration of Channel *16 sales agreement.
*** Includes Internet and multimedia sales revenue.

The decline in revenues has forced QED to cut its expenses drastically, from $33 million in fiscal year 1993 to $18.4 million in the year ended September 30, 2001.[22] Notwithstanding management's aggressive cost-cutting measures, QED continues to experience a significant deficit in net unrestricted assets, i.e., the unrestricted portion of the company's net worth or book value, as Chart III indicates.

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21 QED also received $3,352,000 in unrestricted revenues during the three-month accounting transition period ended September 30, 2000. WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000, at 2; WQED Pittsburgh Financial Statements and Schedule, September 30, 2000, at 3; Financial Statements and Schedule, June 30, 2000 and 1999, at 3; Financial Statements and Schedule, June 30, 1999 and 1998, at 3; Financial Statements and Schedule, June 30, 1998 and 1997, at 4; Financial Statements and Supplementary Information, June 30, 1997 and 1996, at 4; Financial Statements and Schedule, June 30, 1996 and 1995, at 3 (included as Exhibit B to the Dereservation Petition); Management's Discussion and Analysis of Financial Condition at 3 (included as Exhibit 4 to the 1996 Dereservation Petition). Where applicable, the Foundation and Institutional Giving and Contributions line items have been combined into a single Contributions line in Chart II. In addition, recent reclassifications of the components of certain line items make year-to-year comparisons of those items difficult.

22 WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000, at 2; QED Communications, Inc. Financial Statements, June 30, 1993, at 3 (included as Exhibit 4 to the 1996 Dereservation Petition). The cost-cutting effort includes the simulcasting of WQED on WQEX beginning in 1997 at a savings of several hundred thousand dollars annually. In the last audit that provided separate figures for WQEX (i.e., fiscal year 1992), $1,037,469 was spent on the station's operations, but that figure does not reflect the cost savings derived from WQEX's co-location with WQED-TV and WQED-FM. QED Communications, Inc. Financial Statements and Schedules, June 30, 1992, Schedule 4 at 3. There have been significant cuts in QED staff and programming costs since then.

CHART III
Net Unrestricted Assets[23]
(in thousands)

Year Ended

June 30, 1993	June 30, 1994	June 30, 1995	June 30, 1996	June 30, 1997	June 30, 1998	June 30, 1999	June 30, 2000	(unaudited) Sept. 30, 2001
$(3,719)	$(3,636)	$(6,069)	$(8,891)	$(8,888)	$(5,589)	$(5,552)	$(4,683)	($3,809)

Finally, as Chart IV demonstrates, QED's net working capital – current assets minus current liabilities – also reflects a deficit for each year since 1993. For the most recent twelve-month period, QED experienced an increase of more than $300,000 in the net working capital deficit from the twelve-month period ended June 30, 2000.

CHART IV
Net Working Capital[24]
(in thousands)

Year Ended

	June 30, 1993	June 30, 1994	June 30, 1995	June 30, 1996	June 30, 1997	June 30, 1998	June 30, 1999	June 30, 2000	(unaudited) Sept. 30, 2001
Current assets	$ 6,986	$ 7,524	$ 4,351	$ 7,132	$ 5,122	$ 3,411	$ 2,481	$ 2,302	$ 2,690
Current liabilities	(8,794)*	(14,692)	(13,914)	(15,309)	(14,104)	(10,121)	(6,970)*	(6,563)*	(7,267)*
Net working Capital	$ (1,808)	$ (7,168)	$ (9,563)	$ (8,177)	$ (8,982)	$ (6,710)	$ (4,489)	$ (4,261)	$ (4,577)

* Excludes revolving credit facility where a given "Balance Sheet" or "Statements of Financial Position" does not include that figure within the "current liabilities" category ($5.7 million in 1993, $1.85 million in 1999, $1.675 million in 2000, and $1.475 million in 2001).

23 Net unrestricted assets for the three-month accounting transition period ended September 30, 2000 were ($5,041,000). WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000, at 1; Financial Statements and Schedule, September 30, 2000, at 3; Financial Statements and Schedule, June 30, 2000 and 1999, at 4; Financial Statements and Schedule, June 30, 1999 and 1998, at 2; Financial Statements and Schedule, June 30, 1998 and 1997, at 3; Financial Statements and Supplementary Information, June 30, 1997 and 1996, at 3; Financial Statements and Schedule, June 30, 1996 and 1995, at 2 (included as Exhibit B to the Dereservation Petition); Management's Discussion and Analysis of Financial Condition at 4, as modified by June 30, 1993 Financial Statements at 2 (included as Exhibit 4 to the 1996 Dereservation Petition).

24 For the three-month accounting transition period ended September 30, 2000, net working capital was ($4,815,000). The figure excludes the revolving credit facility in the amount of $1.65 million. WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000, at 1; Financial Statements and Schedule, September 30, 2000, at 2; Financial Statements and Schedule, June 30, 2000 and 1999, at 2; Financial Statements and Schedule, June 30, 1999 and 1998, at 2; Financial Statements and Schedule, June 30, 1998 and 1997, at 3; Financial Statements and Supplementary Information, June 30, 1997 and 1996, at 3; Financial Statements and Schedule, June 30, 1996 and 1995, at 2 (included as Exhibit B to the Dereservation Petition); Management's Discussion and Analysis of Financial Condition at 5, as modified by June 30, 1993 Financial Statements at 2 (included as Exhibit 4 to the 1996 Dereservation Petition).

In sum, despite management's success in reducing costs in all phases of operation, QED remains burdened by staggering debt, which adversely effects its ability to reach its full potential as a noncommercial licensee whose mission is to serve the Pittsburgh community. Indeed, as detailed in the next section, QED's debt has compelled the company to take the unwelcome steps of reducing its programming initiatives and downsizing its staff.

B. QED's Fiscal Crisis Has Led To Unavoidable Reductions In Local Programming And The Streamlining Of Staff.

1. Lack Of Funding Has Limited QED's Programming Options.

QED's steadily declining revenues, coupled with its debt service, have unavoidably curtailed QED's ability to produce its award-winning local programming. Most significantly, and as detailed in the Dereservation Petition, QED began simulcasting Channels *13 and *16 in 1997 in order to cut costs and thereby redirect its limited resources to WQED.[25] Absent a dramatic improvement in its current financial situation (an unlikely scenario given the level of QED's debt), WQEX will continue to be simulcast indefinitely.

QED's financial distress has also impeded production of new programming – notably programming with a local Pittsburgh focus. This development is particularly troubling because QED recognizes that its future viability depends on its ability to offer compelling, responsive local programming. Indeed, the results of a four-month, *pro bono* study conducted this year on behalf of QED by the consulting firm McKinsey & Company ("McKinsey") confirms the importance to QED's viability of providing regional programming. The McKinsey study concludes that strengthening the local content and multimedia nature of programming on

[25] As QED demonstrated in 1996, the city grade, Grade A, and Grade B contours of WQEX are entirely encompassed within those of WQED, indicating that all persons who can view WQEX can also view WQED. See Exhibit 1 to the 1996 Dereservation Petition.

WQED, Channel *13, is critical to QED's future, and identifies specific ways for QED to pursue these goals.

Overcoming the obstacle of an under-funded programming budget, QED still manages to produce "a lot with a little." Indeed, in recognition of its programmatic achievements, QED this year garnered more Mid-Atlantic Regional Emmy nominations (12) and awards (five) than any other station in the Pittsburgh market. In 2000, QED was likewise honored with nine Emmy nominations and four awards. Nevertheless, the shortage of funding means that each QED-produced program faces an uncertain future.

QED's new half-hour weeknight television "magazine" program, "On Q," provides a case in point. Launched early last year after QED secured initial funding from several local foundations, "On Q" blends in-studio interviews, produced segments, topical discussions and live performances, for which it has earned 13 regional Emmy nominations and seven regional Emmy awards. Past episodes have explored a wide variety of topics of interest to a broad cross-section of viewers within the Pittsburgh metropolitan area. A partial list of these topics includes:

- environmental reports on "longwall" mining in Southwestern Pennsylvania and efforts to clean up the Ohio, Allegheny and Monongahela Rivers;
- an examination of a local "welfare-to-work" program that has drawn statewide interest;
- an examination of efforts to diversify the Pittsburgh police force;
- a report on the region's family farms; and
- a look at charter schools in the Pittsburgh area.

In the aftermath of the September 11 terrorist attacks, QED devoted several episodes of "On Q" to the topic of understanding and coping with the tragic events. Other programming aired on QED in response to the attacks included "Talking to Kids About Terrorism and Violence," and a series of spots featuring Mister Rogers discussing violence, war, and how children and their families can deal with their emotions. These programs were offered in conjunction with successful "off-the-air" initiatives, including a WQED Connections phone bank staffed by trained grief counselors, and links posted on the QED web site to community organizations providing assistance to those seeking comfort.

Notwithstanding the critical and popular acclaim of "On Q," the show's future is very much in doubt because current funding expires at the end of 2002, and new sources of support do not appear available. The survival of "On Q" requires favorable Commission treatment of the dereservation issue, so that QED can use the proceeds from the sale of WQEX to fund a long-planned local programming endowment.

In addition to "On Q," QED produces other popular and highly regarded local programs, including "Black Horizons," the longest-running minority affairs program on public television, and "AgeWise," which for ten years has offered advice and entertainment to Pittsburgh's growing pool of citizens age 50 and up. While QED is proud of these two shows, both suffer from inadequate budgets that fail to allow for production enhancements and promotion to encourage more widespread viewership.[26]

Inadequate funding has also forced QED to postpone development of a number of programming initiatives. Examples include "Pittsburgh High," a program targeting the concerns of area high school students; "Pittsburgh Forum," a public affairs discussion series; "Jazz at the Guild," a local music show; as well as other programs focusing on local government, business, and the dramatic arts. In addition, a pair of documentaries with a distinctly regional focus – the first exploring the people, culture and music of Appalachia, and the second, examining the southwestern Pennsylvania Whiskey Rebellion of 1794 – have been shelved due to a lack of financial support.

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[26] QED's other local productions include Rick Sebak's award-winning series on Pittsburgh's history, and its neighborhoods; "QED Cooks," a local cooking show; and the "Doo Wop Specials," based on the 1950s and 1960s popular music phenomenon for which Pittsburgh was renowned.

If QED is to remain an important voice in the Pittsburgh community, new sources of funding must be forthcoming to permit programming with a local perspective like "On Q," "Black Horizons," and "Age Wise" to continue, and allow for the development of new regionally focused programming initiatives like "Pittsburgh High" and "Jazz at the Guild." With the proceeds from the sale of WQEX, QED will be able to create a permanent local programming endowment that will meet these goals.

2. QED Has Reduced The Size Of Its Staff By Nearly One-Half Since 1993.

QED's growing budget deficit has not only adversely affected programming, it has also forced the company to drastically reduce its workforce over the past eight years. As noted in the Dereservation Petition, beginning in 1993, QED began eliminating dozens of positions and has left many others unfilled. As a result, full-time paid employment was cut nearly in half, from 188 employees in 1993 to 98 employees in 2000.[27] In the past year, the number of employees at QED has held virtually steady, increasing to 99 as of July 31, 2001.[28] Obviously, having a staff that is one-half its former size significantly impairs QED's ability to serve the Pittsburgh community, in terms of both programming and community involvement.

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27 Dereservation Petition at 18 (citing the Broadcast Station Annual Employment Reports attached thereto as Exhibit C).

28 2001 Employer Information Report EEO-1 of WQED Pittsburgh, dated September 26, 2001 (attached as **Exhibit C**). All part-time employees (a total of 12), as well as all full-time employees who work exclusively or primarily for WQED-FM or Pittsburgh magazine (a total of 27), are excluded from this total.

C. QED Must Pay For The Mandated Conversion To DTV And Overdue Physical Plant Renovations.

In the Dereservation Petition, QED explained that its financial distress has been exacerbated by two substantial, near-term expenses facing the company: the FCC-mandated conversion to DTV, and long-overdue repairs to the company's physical plant. While QED has commenced work on both projects since the filing of the Dereservation Petition, the money expended to date represents only a small fraction of the total amount of funds that must be spent before either one can be completed.

QED estimates the total cost of converting the WQED and WQEX transmission, master control and production facilities to a digital format to be $8.6 million. To date, QED has received funding commitments of almost $3 million from the Pennsylvania Public Television Network ("PPTN"), the U.S. Department of Commerce, and a Pittsburgh foundation. Part of the PPTN funding, which was conditioned on its being obligated by June 30, 2001 (as manifested by purchase orders), permitted QED to purchase the digital transmission system for WQED's paired digital television channel, Channel *38, and a small portion of the future digital master control facility.

For the remaining approximately $5.6 million in estimated DTV conversion costs, QED is actively pursuing further funding from the Corporation for Public Broadcasting, the Commerce Department and local foundations, but expects no more than $1.5 million to be forthcoming. The balance of DTV construction costs will have to come from funding sources within Pittsburgh or through increased indebtedness, if the latter is even feasible.

In addition to digital conversion, repairs to the 30-year-old QED office and studio facility are now unavoidable. QED estimates the cost to renovate its physical plant to be $3 million, needed for long overdue structural improvements to the existing building, upgrades and renovation to bring the facility into compliance with the Americans with Disabilities Act, and necessary updates to its information technology infrastructure. While QED has begun these repairs by, for example, moving the lobby of its building from the second floor to the first floor to make it wheelchair accessible, the vast majority of work remains to be done. To assist in this effort, QED has requested a grant from the Commonwealth of Pennsylvania, but receipt of this funding is strictly contingent on QED's raising matching funds within three years' time.

Taken together, the costs of completing digital conversion and QED facility improvements constitute approximately $11.6 million in impending, near-term expenses. While some of this work is completed and some of these expenses can expect to be covered by the funding sources identified above, a shortfall of millions is inevitable, resulting in an acute aggravation of QED's financial situation.

D. Relieving QED's Fiscal Distress Requires The Sale Of WQEX To A Commercial Buyer.

As the foregoing discussion makes clear, without the proceeds realized from the sale of WQEX, QED will be unable to continue to serve adequately the educational and cultural needs of the greater Pittsburgh area. QED recognizes – and the financial reports of KPMG confirm – that management's aggressive cost-cutting efforts and reliance on traditional funding sources alone cannot overcome the company's enormous inherited debt. Instead, an extraordinary new source of income, in the form of the sale of WQEX as a commercial station, is essential to ensure QED's continuing viability as a significant educational and cultural resource for Southwestern Pennsylvania.

Fortunately, the relief that QED requires is at hand. As the Commission is aware, QED has already entered into a binding agreement contemplating the sale of WQEX to ShootingStar Inc. ("ShootingStar"), contingent on favorable action on the dereservation issue. ShootingStar has agreed to pay $20 million for the station, a sum of money that will not only relieve QED's financial distress, but will also permit the creation of an endowment targeted to local program development and production; completion of the digital conversion of QED; and continuation of the badly needed repairs to QED's physical plant. As each of these projects will enhance QED's ability to provide high-quality educational, cultural and entertainment service to the Pittsburgh community and thereby promote the public interest, QED urges the Commission to dereserve WQEX to allow for its sale to ShootingStar.

III. PITTSBURGH CAN NO LONGER SUPPORT TWO DEBT-RIDDEN, DONOR-DEPENDENT NONCOMMERCIAL STATIONS.

In the Dereservation Petition, QED explained that Pittsburgh's steady decline over the last 40 years as a center of industry, commerce and population is unique in its severity, and that this decline has permanently altered the ability of the city and its surrounding areas to support both WQED and WQEX. In response, the Commission requests further comment on the Pittsburgh region's ability "to continue to adequately support" two noncommercial educational television stations "as it has done for more than 40 years."[29]

As an initial matter, QED takes exception to the Commission's assumption that WQEX has been "adequately" supported since its inception in 1958. Were such support indeed available, QED would not have diligently pursued the dereservation of WQEX these past six years. QED opted to seek the relief that it does precisely because the Pittsburgh region lacks the financial resources to sustain both WQED and WQEX, two donor-dependent noncommercial stations in precarious financial condition inherited from prior management. The fact that no other noncommercial entity has come forward with a *bona fide* offer to purchase WQEX during

[29] NPRM at 7.

the past six years serves as compelling evidence that the not-for-profit community recognizes that operating Channel *16 under Pittsburgh's current economic climate is not viable.[30]

Since QED last reported to the FCC earlier this year on the state of Pittsburgh's economic condition, new evidence has emerged that confirms the region's continuing economic slide. Most significantly, the recently released 2000 U.S. Census figures indicate that the Pittsburgh area *alone among the top 42 U.S. metropolitan areas* experienced a drop in population over the past decade, despite an overall 13.2 percent population increase in the United States and a 3.4 percentage increase in the Commonwealth of Pennsylvania.[31] Moreover, from 1990 to 2000, the population of the city of Pittsburgh fell 9.5 percent to 334,563 from 369,879.[32] As a result, Pittsburgh now ranks as the 52nd largest U.S. city, down from its position as the 40th largest only a decade ago.[33] Since 1950, when Pittsburgh was ranked as the 13th largest U.S. city with a population of 676,806, its population has plummeted by more than 50 percent.[34]

Significantly, unlike other industrial centers whose main city population decreases over the past decade have been more than offset by population increases in their suburbs,[35] the

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30 As the Dereservation Petition explains, in its 1996 decision denying QED's first dereservation request, the Commission relied on the fact that two nonprofit entities, Cornerstone and Pittsburgh Educational Television, Inc. ("PET"), had expressed interest in providing noncommercial educational programming on Channel *16. 1996 Order, 11 FCC Rcd at 11710. As discussed above, Cornerstone has understandably withdrawn from acquiring WQEX, while PET never pursued a purchase of the station, but instead sought to disqualify QED as a Commission licensee by bringing frivolous litigation which, at the Commission's request, was summarily dismissed in QED's favor. See Jerry Starr and Pittsburgh Educational Television v. FCC, No. 96-1295 (D.C. Cir. May 20, 1997).

31 U.S. Census Bureau, Metropolitan Areas Ranked by Population: 2000, at www.census.gov/population/cen2000/phc-t3/tab03.pdf (April 2, 2001) ("Metro Area Population Table"); U.S. Census Bureau, Population Change and Distribution, Census 2000 Brief, at www.census.gov/population/cen2000/c2kbrol-2.pdf.

32 U.S. Census Bureau, Population for the 15 Largest Counties and Cities and Townships in Pennsylvania: 1990 and 2000, at www.census.gov/Press-Release/www/2001/tables/pa_tab_6.PDF.

33 Gary Rotstein, Population Still Shrinking: Region Now 21st In Nation, Pittsburgh Post-Gazette, April 3, 2001 at A-1 ("Post-Gazette Article"). The article's omission of San Juan, PR from its ranked listing of metropolitan areas results in the incorrect statement that Pittsburgh is the 21st ranked U.S. metro area; in fact, it ranks 22nd.

34 The World Almanac and Book of Facts for 1956 at 300 (Harry Hansen ed. 1956).

35 Cleveland, for example, lost 5.4 percent of its population during the past decade, but its metropolitan area gained three percent. Similarly, the city of Detroit lost 7.5 percent of its population while its suburbs showed 5.2 percent growth. Post-Gazette Article at A-10.

Pittsburgh metropolitan area as a whole experienced a population loss – to 2,358,695 in 2000 from 2,394,811 in 1990 (a decrease of 1.5 percent).[36] As noted, Pittsburgh was the only metropolitan area among the top 42 to show a population decline since 1990,[37] and one of only six in the top 130 metro areas.[38] Today, the Pittsburgh metropolitan area is the 22nd largest in the U.S.; in 1950, shortly before the FCC reserved Channel *16 and allotted it to Pittsburgh, it was the eighth largest.[39] In addition, the 2000 Census results show that the citizens of Pittsburgh are, in percentage terms, aging in greater number than in the nation as a whole: the 85-and-older population in Pittsburgh, for example, grew 41 percent between 1990 and 2000 compared to a 38 percent gain in the nation.[40]

Pittsburgh's continuing decline can be measured in other ways. As a television market, Pittsburgh has dropped from the 10th ranked ADI in the nation in 1969 (the first year markets were ranked as ADIs) to the 21st ranked DMA today.[41] In that time, Pittsburgh's percentage share of total U.S. television households dropped more than one-third, from 1.670 percent in 1968 to just 1.089 percent in 2001.[42] Pittsburgh also has declined steadily as a radio market,

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36 Metro Area Population Table.

37 Id.

38 Id. The other five metro areas with population declines during the past 10 years are Buffalo, New York, Dayton, Ohio, Syracuse, New York, Scranton, Pennsylvania, and Youngstown, Ohio, none of which supports two public television stations.

39 Metro Area Population Table; The World Almanac and Book of Facts for 1956 at 300.

40 Gary Rotstein, Region Aging More Quickly Than Average, at www.post-gazette.com/census/20010520 censuscensus3.asp.

41 Broadcasting Yearbook 1969 at 27; Nielsen Media Research Local Universe Estimates for the 2001-2002 Broadcast Season, at http://www.nielsenmedia.com/DMAs.html ("2001-2002 Nielsen Estimates").

42 Broadcasting Yearbook 1970 at 61; 2001-2002 Nielsen Estimates.

falling from the 19th largest Arbitron Metro Survey Area in 1989 to the 23rd largest Arbitron Metro Survey Area today.[43]

The decline in population in the Pittsburgh area over the past ten years continues a trend that began during the 1960s, when Pittsburgh's once-robust economy fell into a tailspin from which it has yet to recover. Although the region has taken some initial steps towards diversifying its own economy, the shift in the nation's economy as a whole from one centered on heavy industry to one based on service and technology has left Pittsburgh with an outdated industrial base, a reduced labor force, and no "export-oriented" businesses needed to spur growth in the region.[44] As QED explained in the Dereservation Petition, the results have been dramatic. For many years, Pittsburgh was home to the third-largest concentration of Fortune 500 headquarters in the country, after New York and Chicago.[45] Today, many of these companies no longer exist. One of Pittsburgh's long-time corporate leaders, Gulf Oil, has been absorbed by Chevron and its local headquarters dissolved. Other major corporations that either went out of business or were absorbed by other companies and left Pittsburgh include Westinghouse Electric, Rockwell International, National Steel, Crucible Steel, Jones & Laughlin Steel, Pittsburgh Steel, Koppers Company, Dravo Corporation, Cyclops Corporation, Copperwell Corporation, the Pennsylvania Railroad, and many smaller companies and suppliers that depended on the business of these larger corporations.

Predictably, the loss of corporations has led to a substantial decrease in the base of financial support available to QED. Gulf Oil, for example, was once the sole source of funds for

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43 The Broadcasting Yearbook 1990 at B-461; Broadcasting & Cable Yearbook 2001 at D-727. In 1998, Pittsburgh's ranking was lowered by one position following the inclusion of the Puerto Rico radio market to the Arbitron survey.

44 Ralph L. Bangs, The State of the Region Report: Economic, Demographic, and Social Conditions in Southwestern Pennsylvania, Executive Summary (1999) at www.pitt.edu/~ucsur/SORsummary.htm.

45 John P. Hoerr, And the Wolf Finally Came — The Decline of the American Steel Industry 591 (1988).

QED's acclaimed National Geographic specials, which aired on PBS stations across the nation. When Chevron bought Gulf Oil in 1984, the new company honored Gulf's commitment to National Geographic for several years, but for more than a decade has offered no financial support. QED has also felt the loss of Westinghouse. The Westinghouse Foundation was a reliable contributor until the mid-1990s, when the company bought CBS Corporation and relocated its headquarters from Pittsburgh to New York City. Before its departure, Westinghouse contributed to QED's annual television auctions, its capital campaign, and the African American Music Tree project.

In sum, during its heyday as one of the nation's leading economic centers, Pittsburgh was home to numerous funding sources that ably supported the operations of WQED and WQEX. Unfortunately, QED cannot rely on a comparable level of support ever again, given the immense economic losses suffered by Pittsburgh and its surrounding areas. Because Pittsburgh is unlikely ever to regain its former stature as a business and population center, the continuing viability of two donor-dependent, debt-ridden noncommercial television stations in Pittsburgh is, without question, highly dubious.

IV. PITTSBURGH NO LONGER NEEDS TWO NONCOMMERCIAL TELEVISION STATIONS GIVEN THE ABUNDANCE OF ALTERNATIVE SOURCES OF EDUCATIONAL PROGRAMMING.

The Commission requests comment on the continuing need for two educational television stations in Pittsburgh in light of the wealth of media sources available today.[46] QED believes that the reserved channel allotment scheme, devised nearly a half-century ago when schools' and consumers' media choices were limited to a handful of over-the-air radio and television stations, is an anachronism that ignores the expanded opportunities for educational, cultural and

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[46] NPRM at 7.

entertainment programming available through cable, direct broadcast satellite ("DBS"), the Internet, DTV multicasting, and other existing and anticipated sources. To its credit, the Commission has, in other contexts, come to recognize that its rules and polices must be flexible enough to respond to these revolutionary technological and marketplace changes. As Chairman Powell recently put it:

> "The underpinnings of the [FCC's] current regulatory regime for media are dated. Much of the regulatory structure and analytical foundations that exist today were built around television and radio as it existed in the 'golden age.' The current rules, standards and principles do not take account of very dramatic changes in the media landscape."[47]

The Chairman's observation is particularly appropriate in the case of Channel *16, which was reserved in 1958 in order to enlarge the classroom and home instruction service offered on WQED, Channel *13, as well as to provide "specialized educational service for the industries and professions of the Pittsburgh area."[48] Initially assigned to formerly commercial Channel 22, Pittsburgh's second noncommercial reservation was later moved to formerly commercial Channel 16 at QED's request.[49] ***Grant of the instant petition, therefore, would simply restore Channel *16's original non-reserved status.***

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[47] "Digital Broadband Migration," Press Conference Comments of Michael K. Powell, Chairman, Federal Communications Commission (as prepared for delivery) (October 23, 2001) ("Powell Comments").

[48] See Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Pittsburgh, Pennsylvania et al.), Report and Order, 17 RR 1563, 1564 (1958). In approving the assignment, the Commission stated that:

> [A] compelling need has been shown for a second educational television channel in Pittsburgh. The use of Channel 13 for 81 - 2 hours per week averages almost 12 hours daily and from the standpoint of efficient use of the channel, compares favorably with regular commercial television broadcast stations. Under these circumstances the assignment of a second educational TV channel to Pittsburgh cannot be considered prodigal.

Id. at 1565. In its current analog mode, WQED is now on the air 136 hours per week. Digital transmissions on WQED-DT will commence next year; plans for DTV multicasting are on the horizon. As QED observed in the Dereservation Petition, the assignment of a second educational channel to Pittsburgh under the circumstances that prevailed in 1958 would most assuredly be considered a highly inefficient use of spectrum today.

[49] Because Channel 16 had been operated commercially for three years, a large number of television receivers in the area were equipped to receive it. See Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Pittsburgh, Pennsylvania), Report and Order, 17 RR 1568d, 1568e (1958).

While at one time broadcast television was the only means to disseminate educational programming in the classroom and in the home, that is no longer the case. Numerous alternatives to full-time classroom instruction by over-the-air broadcast stations, including in-school computer networks with access to both CD-ROMs and the Internet, the Instructional Television Fixed Service, satellite-delivered "distance learning," Channel One in-classroom informational television programming, videocassette recorders, and digital video disc ("DVD") players, have eliminated the need to dedicate broadcast stations for in-class instruction.

Computers, in particular, have been embraced by students as a valuable tool for learning. One study has shown that, when forced to choose one medium over any other, children aged 8 to 18 are nearly three times as likely to choose computers over television.[50] Significantly, Pittsburgh is at the forefront of the trend to incorporate new communications technologies – especially the computer – into the classroom. The region ranks third among the top 50 U.S. metropolitan areas in terms of the percentage of children (79 percent) using computers in the classroom.[51] This figure far exceeds the overall U.S. average of 63 percent.[52]

Pittsburgh schools and their students are also the beneficiaries of other innovative programs incorporating alternative media sources, including The AT&T Learning Network, a free online resource designed to help schools and communities use technology to enhance teaching and learning.[53] In December 1999, the Learning Network announced a $1 million grant to support the "Technology Leadership Program" to bridge the digital divide in underprivileged

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50 Victoria J. Rideout et al., Kids & Media @ The New Millenium: A Comprehensive National Analysis of Children's Media Use, Henry J. Kaiser Family Foundation, Executive Summary, at 34 (November 1999).

51 Robert D. Atkinson & Paul D. Gottlieb, The Metropolitan New Economy Index, at 26 (April 2001).

52 Id.

53 AT&T Learning Network home page at www.att.com/learningnetwork/about.html.

communities in Pittsburgh, among other cities.[54] This program provides technology training for teachers, community members and young people.

Pittsburgh also participates in the Cable in the Classroom ("CIC") program, a cable industry initiative that provides public and private schools in the United States with free access to educational television programs, by means of a free cable hookup and free continuing cable television service from 39 national program networks (including the Discovery Channel, the History Channel and CNN), totaling more than 540 hours of programming each month.[55] Offerings include current events, documentaries, dramatic and other performing arts presentations, and curriculum-related programs for math, English, science, social studies and foreign languages, among others. CIC also makes program-related teaching ideas, study guides and Internet resources available to assist teachers in the classroom. Unlike Channel One, which features commercials imbedded in its newscasts, CIC provides programming that is completely commercial-free.

Outside the classroom, educational, cultural and entertainment programming directed to residential viewers has never been more prevalent and varied. Cable television, DBS, multichannel multipoint distribution service, computer software, videocassette recorders ("VCRs") and DVD players, and the Internet provide a wealth of content unavailable when the over-the-air television allotment scheme was devised in 1952 and WQEX commenced operations in 1958.

As QED demonstrated in the Dereservation Petition, cable television, in particular, has experienced explosive growth both in its penetration levels and in the number of channels devoted to educational, cultural and entertainment programming. The other leading

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54 Press Release, "AT&T Helps Bridge 'Digital Divide' with Million Dollar Grant for Technology Leadership Program" (December 9, 1999), available at www.att.com/foundation/news/120999.html.

55 Cable in the Classroom home page at www.ciconline.com.

multichannel video programming distribution service, DBS, which has achieved a rapidly-increasing share of the market for video program services,[56] not only carries programming similar to that of cable systems, it also is required by the Commission's rules to reserve four percent of its channel capacity exclusively for noncommercial educational or informational programming.[57] The Pittsburgh area currently ranks 11th in the nation in terms of cable penetration (80 percent),[58] while the two DBS providers (EchoStar and DirecTV) serve this market as well.[59] The list of educational and cultural programming alone that is available to Pittsburgh's MVPD subscribers includes:[60]

- All News Channel
- Arts & Entertainment Network
- Animal Planet
- Bloomberg Television
- Bravo
- Cable New Network
- CNNfn/CNN International
- CNBC
- C-SPAN
- C-SPAN2
- Discovery Channel
- Discovery Civilization Channel
- Do It Yourself Network
- Food Network
- History Channel
- History International
- Home & Garden Television
- The Learning Channel
- Microsoft-NBC News
- National Geographic Channel
- Newsworld International
- Pittsburgh Cable News
- Noggin
- PBS (national feed)

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56 DBS providers now serve more than 15 percent of all households served by multichannel video programming distributors ("MVPDs"). Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Notice of Proposed Rule Making and Further Notice of Proposed Rule Making, FCC 01-329, slip op. at 16 (released November 9, 2001) ("Radio Ownership NPRM").

57 47 C.F.R. § 100.5(c).

58 Broadcasting & Cable Yearbook 2001 at C-6.

59 Both EchoStar and DirecTV offer four local commercial broadcast stations to their Pittsburgh subscribers, and have informed QED that they will carry WQED beginning next year. On the other hand, WQEX will not be carried because it duplicates WQED.

60 TV Week, Pittsburgh Post-Gazette, October 21, 2001, at 3; www.directv.com/programming/programmingpages/ 0,1093,176,00.html.

- Discovery Health Channel
- Discovery Kids Channel
- Discovery Science Channel
- Travel Channel
- Weather Channel

Because of the ready availability of these popular programs, viewers no longer look exclusively to broadcast television for educational and cultural programming, nor should the Commission. Chairman Powell recently recognized this fact when he observed that: "[m]edia markets are analytically segregated [by the FCC's regulatory apparatus] when they have converged from the perspective of consumers. Rules and policy debates are centered around 'broadcasting' and 'cable' rather than as an integrated media landscape."[61]

In addition to receiving the MVPD programming listed above, Pittsburgh residents have the option of purchasing or renting popular educational and "how to" videotapes and DVDs for play in VCRs and DVD players, which are now commonplace in the home. The Internet is likewise widely available, with 56 percent of Americans maintaining access to its plethora of educational offerings from their homes.[62] Moreover, new information-delivery services on the horizon promise even more viewing options. This fall, for example, Microsoft announced the launch of its Intertainer service, which will provide video-on-demand to subscribers in 35 of the country's top broadband markets, including Pittsburgh.[63] For a nominal monthly fee, subscribers will be given unlimited access to a select library of premium video content from such leading content providers as the Arts & Entertainment Network and the Discovery Channel.

In short, sources for educational, cultural and entertainment programming have never been more accessible and diverse than they are today. The Internet, cable, DBS, and the other

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61 Powell Comments at 2.

62 Radio Ownership NPRM at 16.

63 Press Release, "Intertainer Launches First Widely Available Video-on-Demand Service With Thousands of Hit Movies, TV Shows, Music Videos and More" (October 17, 2001), available at www.microsoft.com/PressPass/press/2001/oct01/10-17IntertainerPR.asp.

alternative media forms noted above have gained such widespread acceptance that the myriad offerings they provide have altered forever the way in which community educational needs are and will continue to be met, thus greatly diminishing the need for maintaining the reserved channel allotment scheme exactly as it was conceived in 1952.

Indeed, the Commission has an obligation to manage spectrum in a flexible manner that best suits changing market demands and community needs. The Commission has recognized that "[i]ncreased demand for spectrum-based technology and services necessitates an innovative and aggressive market-based policy . . . [which] ensure[s] that the public interest is best served through both efficient and equitable allocations." [64] In the present context, the Commission's flexible spectrum management policy imposes on the Commission an affirmative duty to modify the Television Table of Allotments because doing so best suits the public interest; that policy does not permit treating the table as immutable, or relying on outdated or inapposite precedent in evaluating requests to alter it.[65] Given the unique circumstances of QED's situation, dereservation of Channel *16 and sale to a commercial entity will serve the public interest by both fortifying WQED's ability to provide quality noncommercial programming to the Pittsburgh community, and providing a new commercial television station to serve that

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[64] Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, 14 FCC Rcd 19868, 19882 (1999) (setting forth a Policy Statement "intended to establish a framework for the Commission's spectrum management responsibilities as we enter the new millennium to facilitate a competitive marketplace"). See also Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Notice of Proposed Rule Making, FCC 00-83, ¶ 39 (March 8, 2000) ("[U]nder our authority to manage the spectrum, we would review the stations' channel elections to be sure that the use of spectrum is efficient and serves the public interest."); 47 U.S.C.A. § 303(a), (c) (2000) ("[T]he Commission from time to time, as public convenience, interest, or necessity requires, shall classify radio stations; . . . assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station . . . ."); Federal Communications Commission News Release, "FCC Takes Steps to Make More Spectrum Available Through the Development of Secondary Markets" (November 9, 2000) ("The Federal Communications Commission adopted a *Policy Statement* and *Notice of Proposed Rulemaking* (*NPRM*) today setting forth a framework to promote the development of more robust "secondary markets" in radio spectrum [since] [d]emand for spectrum has increased dramatically . . . .").

[65] See Section VI.A. infra.

community. As a result, the Commission should convert Channel *16 to a nonreserved frequency.

Moreover, as discussed in the Dereservation Petition, QED itself has eagerly embraced technologies in addition to television that can more effectively and efficiently fulfill its educational mission than WQEX can. Today, although many of the "industries and professions" it intended to serve in the 1950s via WQEX have left the Pittsburgh area, QED aspires to be a leading provider of interactive educational programs offering lifelong learning to the citizens of southwestern Pennsylvania – in the home, school and workplace. Using the Internet, radio, and print (and soon DTV), QED has begun to provide the Pittsburgh community with tools and resources that expand the frontiers of learning and culture beyond traditional boundaries. For example, last year, QED and the Electronic Information Network, the information technology backbone of the Carnegie Museums and Library of Pittsburgh, joined together as content partners to build a portal that will cross-index books and other library materials, television programming, radio programming and other resources from the archives of both organizations. QED also recently created an on-line Pittsburgh History Series teacher's guide for middle and high school teachers, which provides background readings, discussion questions and activities to be used in the classroom in conjunction with QED's award-winning local programming.

Initiatives involving QED's other operations are also under way and meeting with success. For example, QED's Pittsburgh magazine, in partnership with the Pittsburgh Regional Alliance and the Greater Pittsburgh Chamber of Commerce, features a monthly insert with news of economic development in the nine-county region of southwestern Pennsylvania.

The sale of WQEX will also enable QED to expand its participation in two PBS educational initiatives, "Ready to Learn," a multi-media program for children entering school, and "Teacherline," an Internet-based professional development series. QED plans to build on these and other existing programs in the near term with the WQED Learning Center, a multimedia initiative that will promote reading, math and science literacy and assist learners of all ages to harness the power of the Internet. Once it is fully funded and operational (a process that will be facilitated by the sale of WQEX), the Center, together with QED's existing regional services and educational partnerships, will enable QED to achieve the major original purpose for WQEX – the dissemination of educational programming – *without* Channel *16.

QED has ambitious designs for DTV, as well. The multicasting possibilities of digital technology will enable QED to offer the Pittsburgh area a wealth of educational programming heretofore not available. Planned programming for WQED-DT will focus on university credit courses, distance learning, statewide workforce development, and programming addressing local and national minority issues and local governmental and public affairs. This programming will, of course, be offered in addition to the traditional PBS feed, in fulfillment of QED's educational mission as well as an informal commitment to the Commonwealth of Pennsylvania in return for its financial support of QED's conversion to DTV.

In sum, QED has demonstrated, and will increasingly demonstrate as it inaugurates both DTV and its Learning Center, that it can ably serve the educational and cultural needs of the Pittsburgh area without reliance on a second reserved television station. Moreover, a wealth of educational and cultural content is already available, or soon will be, through numerous other parties employing the new media forms described above. QED believe these developments, taken together, should lead the Commission to conclude, in exercising its obligation to manage spectrum flexibly as market conditions change, that there is no need to maintain dual reserved television channels in a shrinking market like Pittsburgh – especially since the proceeds from the sale of WQEX will make substantially enhanced locally-oriented noncommercial educational programming available to that market on Channel *13.

V. PITTSBURGH IS UNDERSERVED BY COMMERCIAL BROADCASTERS AND WOULD BENEFIT FROM THE INTRODUCTION OF A NEW COMMERCIAL VOICE.

The Commission requests comment on whether the need for an additional commercial television channel in Pittsburgh outweighs the need for a second noncommercial educational television station there.[66] As discussed above, the citizens of Pittsburgh no longer need to rely on noncommercial television for educational and cultural programming and, instead, can turn to the many offerings available on cable, DBS, the Internet, videotapes and DVDs. The ready availability of these alternative sources of such programming (in both the home and classroom) means that the region's educational programming needs can be well served by one noncommercial television station – a stronger WQED, Channel *13 – particularly when closely integrated with QED's three additional media platforms, radio, publishing and the Internet, as called for by QED's strategic plan.

In contrast to the lack of any need for a second noncommercial television station in Pittsburgh, the region would benefit from the introduction of a new commercial station, as would result from the sale of WQEX to ShootingStar. As QED noted in the Dereservation Petition, the Pittsburgh market, for its size, has comparatively few commercial television allotments. Although ranked as the 21st largest DMA in the country,[67] the Pittsburgh market has only three commercial VHF and four commercial UHF allotments.[68] By way of comparison, Denver (with a 2001 DMA rank of 18) has 16 commercial allotments, and Orlando, Florida (whose DMA rank is 20) has 11 commercial allotments.[69] Even many smaller markets have more commercial

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66 NPRM at 7.

67 2001-2002 Nielsen Estimates.

68 Broadcasting & Cable Yearbook 2001 at B-219.

69 2001-2002 Nielsen Estimates; Broadcasting & Cable Yearbook 2001 at B-215, B-179.

allotments than Pittsburgh: Indianapolis (DMA rank 25) and Nashville (DMA rank 30) each has 10 commercial allotments; Salt Lake City (DMA rank 35) has 18 commercial allotments; and Albuquerque, New Mexico (DMA rank 48) has 21 commercial allotments.[70]

The need for a new commercial voice in Pittsburgh is also reflected in the recent agreements between Paxson and AT&T Broadband, and Paxson and Adelphia, to distribute Pax TV network programming via cable to subscribers in the Pittsburgh market.[71] Although well aware of the dereservation efforts of QED and the possibility of a new over-the-air commercial channel serving the region, Paxson nevertheless evidently concluded that consumer demand for its programming warranted *immediate* distribution of Pax TV in Pittsburgh, albeit over cable systems reaching fewer households than would an over-the-air broadcast station affiliate.

Also weighing in favor of establishing a new commercial station in Pittsburgh is QED's commitment to sell WQEX to a communications entity headed by Diane Sutter, a Pittsburgh native with a strong track record as a local commercial broadcaster. Ms. Sutter has extensive credentials in the broadcasting industry earned as a long-term senior executive and general manager of radio and television stations with Shamrock Broadcasting, Inc. – including 15 years as an employee with Stations WWSW(AM) and WWSW-FM in Pittsburgh (11 years as general manager) – and as president, CEO and part owner of the ShootingStar affiliate which owned and operated television station KTAB(TV) in Abilene, Texas. Ms. Sutter is also recognized as the founder and "dean" of the NAB Education Foundation's Broadcast Leadership Training program to advance women and minority broadcasters as group executives and station owners, a program that she developed and for which she secured funding. Consummation of the planned transaction

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70 2001-2002 Nielsen Estimates; Broadcasting & Cable Yearbook 2001 at B-160; B-194; B-211; B-225.

71 Rob Owens, TV Note: Pax Hitches a Ride on AT&T, Adelphia, at www.post-gazette.com/tv/20011204tvnote1204p3.asp.

will foster local and female ownership of broadcast facilities, consistent with the FCC's long-established goals of enhancing competition and diversity in the broadcast marketplace.[72]

In contrast, the benefits to retaining WQEX's reserved status are limited. First, as discussed above, the wide variety of readily accessible non-broadcast sources of educational programming that has evolved since the reserved channel allotments were established militates against the need to keep the reservation scheme intact. This wealth of media options notwithstanding, any public interest value in retaining the reserved allotment at issue in this proceeding – and thus any loss to be suffered by removing it – would be limited by the fact that programming on Channel *13 now is and will continue to be simulcast on Channel *16. QED made clear in its Dereservation Petition that it did not wish to simulcast, but its financial situation has left it with no alternative.

VI. THE COMMISSION SHOULD DERESERVE WQEX WITHOUT OPENING THE CHANNEL UP TO COMPETING APPLICATIONS.

In the NPRM, the Commission correctly observes that, in a rulemaking proceeding, it has discretion under Section 316 of the Communications Act of 1934, as amended, to limit potential applicants' ability to apply for dereserved channels if such action would promote the public interest, convenience and necessity.[73] This discretion notwithstanding, the Commission then inexplicably asks whether, assuming it finds that dereservation is in the public interest, it should waive an "uncodified rule" (set forth in the 1952 Commission order adopting the Television

[72] See, e.g., Radio Ownership NPRM at 10.

[73] NPRM at 6 (citing Storer Broadcasting v. FCC, 351 U.S. 192 (1956); Malrite of New York, Inc., FCC 84-338 (released July 31, 1984)).

Table of Allotments) purportedly requiring that a newly dereserved channel be made available to competing applicants rather than be permitted to be sold by the current licensee.[74]

QED believes that initiating such an inquiry is misguided for four reasons. First, the so-called "rule" is no longer controlling, having long ago been eviscerated by numerous subsequent Commission precedents. Second, the two-step course that the Commission proposes to embark upon – initially assessing if dereservation is in the public interest and if it is, only then deciding whether to consider competing applications – is illogical: dereservation can *only* be found to be in the public interest if it results in the strengthening of QED, which necessarily requires that Channel *16 *not* be made subject to competing applications in order that the proceeds of the sale of WQEX can be applied to relieve QED's financial distress. Third, Congress has previously expressed concern that allowing competing applications will disserve QED. *Finally, QED will withdraw its dereservation petition if competing applications are to be invited.* For these reasons, the Commission should declare that it will not entertain competing expressions of interest in WQEX.

A. The "Uncodified Rule" Relied On By The Commission Has Been Effectively Overturned.

The 1952 "uncodified rule" stating that newly dereserved channels should be made available for competing applications has effectively been overturned by Commission precedent. In the context of dereservation requests, the Commission has determined that where the public interest would thereby be served, "alternative and more flexible procedures" are preferable to a rigid application of the competing application model suggested a half-century ago.[75]

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74 NPRM at 6 (citing Amendment of Section 3.606 of the Commission's Rules and Regulations, Sixth Report and Order, 41 FCC 148, 212 n.51 (1952)).

75 Amendments to the Television Table of Assignments to Change Noncommerical Educational Reservations, Report and Order, 59 RR2d 1455, 1461 (1986), recon. denied, 3 FCC Rcd 2517 (1988), aff'd sub nom. Rainbow

In Intra-band Exchanges, the Commission acknowledged the significant public interest benefits theoretically possible from intra-band commercial and noncommercial channel exchanges. At the time, these benefits were illusory, however, because existing agency procedures requiring consideration of competing applications discouraged licensees from even proposing such exchanges for fear of losing their channels to third parties. In response, the Commission adopted a "no competing applications" policy to facilitate intra-band exchanges.[76] Similar public interest justification has been used by the Commission to amend the FM or TV Table of Allotments without consideration of competing applications in the contexts of the modification of FM licenses to higher class co-channel or adjacent channels,[77] the assignment of new communities of license,[78] and the substitution of TV channels to facilitate the transition to digital television.[79]

Like licensees proposing intra-band exchanges, QED will not permit the loss of its second channel to a third party following the dereservation of WQEX. The consistently stated objective of QED's now nearly six-year-long dereservation effort has been to raise funds that will alleviate QED's documented financial distress. Obviously, this objective will not be met if

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Broadcasting Co. v. FCC, 949 F.2d 405 (D.C. Cir. 1991) (adopting the rule allowing licensees of commercial and noncommercial educational television stations to exchange channels) ("Intra-band Exchanges").

76 Intra-band Exchanges, 59 RR2d at 1461.

77 Amendment of the Commission's Rules Regarding Modification of FM Broadcast Licenses to Higher Class Co-Channel or Adjacent Channels, Report and Order, 60 RR 2d 114 (1986).

78 Amendment of the Commmission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, Report and Order, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

79 See, e.g., Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Green Bay, Wisconsin), Notice of Proposed Rule Making, DA 01-2753, slip op. at 2 & n.1 (Chief, Video Services Division 2001) ("Green Bay") (refusing to accept competing expressions of interest for Channel 50 at Green Bay, Wisconsin, where an applicant for a new NTSC station on Channel 44 at Green Bay requested the substitution of Channel 50 in the TV Table of Allotments in order to eliminate a conflict with a Channel 44 digital TV allotment at Fond du Lac, Wisconsin).

QED must relinquish Channel *16 to the highest bidder at an FCC auction, since the proceeds of such auction will go to the U.S. Treasury. If competing applications are to be considered, QED would therefore promptly withdraw its dereservation petition.

The Commission has also determined that the Ashbacker doctrine[80] does not apply in cases where a petitioner is seeking to modify the Table of Allotments with respect to channels that are occupied, as Channel *16 is here.[81] Recently, the Commission reaffirmed what may be called its "occupied channels" policy by permitting the dereservation of Channel 23 in Buffalo, New York without soliciting competing expressions of interest.[82] In the Buffalo case, a licensee held two noncommercial television licenses, one for a reserved channel and the other for a nonreserved frequency; the licensee sought to exchange the channels' designations and then sell the newly dereserved channel to a commercial buyer. In granting the licensee's request, the Commission reasoned that it should permit the exchange of commercial and noncommercial educational designations without subjecting the newly commercial channel to competing applications, because the presence of such competing expressions of interest would prompt the petitioner proposing the channel exchange to withdraw its petition rather than risk losing the channel, thereby "result[ing] in a waste of Commission, public and licensee resources."[83] The same "occupied channel" circumstances pertain here.

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[80] Except where competitive bidding for spectrum is authorized, Ashbacker requires hearings to compare competing applications for available channels. See Ashbacker v. FCC, 326 U.S. 327 (1945).

[81] See, e.g., Intra-band Exchanges, 59 RR 2d at 1463.

[82] Amendment of Section 73.606(d), Table of Allotments, Television Broadcast Stations and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Buffalo, New York), Report and Order, 14 FCC Rcd 11856 (Chief, Allocations Branch 1999), aff'd, Memorandum Opinion and Order, 16 FCC Rcd 4013 (2000), aff'd sub nom. Coalition for Noncommercial Media v. FCC, No. 00-1253 (DC Cir. 2001) ("Buffalo, New York").

[83] See Buffalo, New York, 14 FCC Rcd at 11860. The Commission has also demonstrated a willingness to bar competing applications even where the channels at issue are *not* occupied. See, e.g., Green Bay.

In sum, the Commission has consistently held that where consideration of competing applications would frustrate the public interest – including where such applications involve an occupied channel – these applications need not be entertained. The "uncodified rule" from 1952, therefore, provides no basis for opening up WQEX's frequency to third party applications.

B. Once The FCC Determines That Dereservation Is In The Public Interest, It Must Then Conclude That Competing Applications Should Be Barred.

Even if there were a legal basis for the Commission to consider competing applications, such consideration would serve no purpose under the NPRM's proposed two-part inquiry that would determine whether competing applications should be allowed only after first finding that dereservation is in the public interest.[84] Dereserving WQEX can serve the public interest in only one way – by allowing its sale as a commercial station, with the proceeds going to QED to enhance its fulfillment of its public broadcasting mission. But, as noted above, QED will not benefit from such proceeds if a newly dereserved Channel 16 is made subject to competing applicants in an auction context. Put another way, in concluding that dereservation is in the public interest, the Commission logically must conclude that competing applications cannot be allowed.

C. Congressional Intent Disfavors Opening WQEX To Competing Applications.

The Commission also should find that excluding competing applications is consistent with the will of Congress. As noted previously, through Public Law 104-134, Congress recognized the severity of QED's financial condition and required the Commission to consider the dereservation and subsequent sale of WQEX without entertaining competing applications. Even if, as the Commission has concluded in the NPRM, Public Law 104-134 no longer provides

[84] NPRM at 6.

a basis for a *requirement* that the Commission respond to QED's Dereservation Petition within 30 days and without allowing competing applications,[85] the concern of Congress that inviting such applications will disserve QED's objectives is clear – and should be recognized and given deference by the Commission in acting on QED's current petition.

D. QED Will Withdraw Its Dereservation Request If Competing Applications Are Allowed.

Without question, entertaining competing applications in the present case will engender no public interest benefits whatsoever, because QED will immediately withdraw its dereservation petition if the FCC deems the newly dereserved channel to be open and available for competing applications. First, as discussed above, QED stands to gain nothing if Channel *16 is subjected to an auction with proceeds derived therefrom earmarked for the U.S. Treasury, yet QED's management, and its Trustees, have a fiduciary duty to maximize QED's return on the sale of any corporate asset, including the WQEX assets.[86] In addition, QED has entered into a binding agreement to sell WQEX to ShootingStar and, thus, is contractually barred from effectively turning in the WQEX license.

For all the foregoing reasons, QED urges the Commission to unequivocally affirm that WQEX, once dereserved, will not be opened to competing applications.

VII. CONCLUSION

Since the launch of WQED as the nation's first community-owned television station, WQED Pittsburgh has served the greater Pittsburgh area through the development, production

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85 Id.

86 Moreover, pursuant to Pennsylvania nonprofit corporation law, the Court of Common Pleas of Allegheny County, Orphans' Court Division has jurisdiction over the alienation of the assets of Pittsburgh-area nonprofit organizations.

and broadcast of high quality noncommercial educational, cultural and entertainment programming. Unfortunately, absent the dereservation of WQEX to permit its sale as a commercial station, the ability of the financially distressed QED to continue to meet the educational and cultural needs of the region in the twenty-first century is severely constricted.

As the foregoing comments make clear, the dereservation of WQEX will allow QED to eliminate its crippling debt, to establish a permanent local programming endowment, to continue the mandated transition to digital technology, and to pay for badly needed repairs to QED's physical plant. The sale of WQEX will also introduce an independent broadcast voice to a market underserved by commercial stations. Given these public interest benefits, QED urges the Commission to permit the dereservation of WQEX's frequency to go forward, and to do so both expeditiously and without opening the channel to competing applications.

Respectfully submitted,

WQED PITTSBURGH

By: Steven A. Lerman

Steven A. Lerman
Barbara K. Gardner
Philip A. Bonomo
Peter M. Gould

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW
Suite 600
Washington, DC 20006
(202) 429-8970

December 18, 2001

Its Attorneys

CERTIFICATE OF SERVICE

I, Randy L. Pannell, do hereby certify that on this 18th day of December, 2001, I sent by U.S. first-class, postage prepaid mail, a copy of the foregoing Comments of WQED Pittsburgh to the following:

Angela J. Campbell
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001

Counsel for Pittsburgh Citizens for Independent Public Broadcasting and the Alliance for Progressive Action

Randy L. Pannell
Randy L. Pannell

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EXHIBIT A

WQED Pittsburgh Financial Statements and Schedule, June 30, 2000 and 1999.

WQED Pittsburgh Financial Statements and Schedule, September 30, 2000.

WQED Pittsburgh Unaudited Statements of Financial Position, September 30, 2001 and 2000.

KPMG

WQED Pittsburgh

Financial Statements and Schedule

June 30, 2000 and 1999

(With Independent Auditors' Report Thereon)

WQED Pittsburgh

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KPMG

One Mellon Bank Center
Pittsburgh, PA 15219

Telephone 412 391 9710
Fax 412 391 8963

Independent Auditors' Report

The Board of Directors
WQED Pittsburgh:

We have audited the accompanying statements of financial position of WQED Pittsburgh (the Company) as of June 30, 2000 and 1999, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of WQED Pittsburgh as of June 30, 2000 and 1999, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As disclosed in note 2 to the financial statements, the Company has experienced an excess of expense over revenues, when adjusted for unusual revenue transactions, in the four years prior to the year ended June 30, 2000, and has an unrestricted net asset deficit which raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also discussed in note 2. The financial statements and supplementary information do not include any adjustments that might result from the outcome of this uncertainty.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information included in Schedule 1 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

KPMG LLP

January 16, 2001

WQED Pittsburgh

Statements of Financial Position

June 30, 2000 and 1999

Assets		2000	1999
Current assets:			
Cash	$	—	2,202
Short-term investments		655,927	519,558
Accounts receivable, net of allowance for doubtful accounts ($200,000 as of September 30, 2000, and June 30, 2000 and 1999		820,124	1,373,320
Unbilled project revenue		668,664	441,435
Contributions receivable		10,340	11,340
Other assets		146,462	133,477
Total current assets		2,301,517	2,481,332
Property, plant and equipment		13,983,397	12,997,482
Accumulated depreciation		(8,404,029)	(7,808,970)
Property, plant and equipment, net		5,579,368	5,188,512
Cash and short-term investments, restricted		5,008,104	4,107,850
Arts programming cash reserve, restricted		1,120,000	934,000
Marketable securities, restricted		709,361	1,060,922
Total assets	$	14,718,350	13,772,616
Liabilities and Net Assets			
Current liabilities:			
Accounts payable and accrued liabilities		5,173,902	5,216,104
Deferred revenue on uncompleted projects		1,388,896	1,753,993
Total current liabilities		6,562,798	6,970,097
Revolving credit facility		1,675,000	1,850,000
Total liabilities		8,237,798	8,820,097
Net assets:			
Unrestricted		(4,682,981)	(5,551,706)
Temporarily restricted		4,818,535	3,345,227
Permanently restricted		6,344,998	7,158,998
Total net assets		6,480,552	4,952,519
Total liabilities and net assets	$	14,718,350	13,772,616

See accompanying notes to financial statements.

WQED Pittsburgh

Statements of Activities

Years Ended June 30, 2000 and 1999

	2000				1999			
	Unrestricted	Temporarily restricted	Permanently restricted	Total	Unrestricted	Temporarily restricted	Permanently restricted	Total
Revenues and gains:								
Contributions	$ 5,133,858	27,842	—	5,161,700	4,843,526	—	—	4,843,526
Foundations and institutional giving	68,000	2,000	—	70,000	100,918	1,295,600	—	1,396,518
Government grants	2,222,720	1,586,000	186,000	3,994,720	2,737,291	2,606	—	2,739,897
Corporate and other underwriting	1,706,980	—	—	1,706,980	1,943,107	—	—	1,943,107
Magazine advertising and sales	3,636,528	—	—	3,636,528	3,690,542	—	—	3,690,542
Program production and distribution revenue	4,275,870	—	—	4,275,870	3,440,175	—	—	3,440,175
Investment gains (losses)	—	(12,641)	—	(12,641)	—	(15,410)	—	(15,410)
Gain on expiration of Channel 16 sales agreement	1,000,000	—	—	1,000,000	—	—	—	—
Other	500,973	243,297	—	744,270	296,696	232,207	—	528,903
	18,544,929	1,846,498	186,000	20,577,427	17,052,255	1,515,003	—	18,567,258
Net assets released from restrictions:								
Satisfaction of restrictions - program development	665,018	334,982	(1,000,000)	—	90,519	(90,519)	—	—
Satisfaction of other restrictions	46,918	(46,918)	—	—	101,730	(101,730)	—	—
Total revenue and gains	19,256,865	2,134,562	(814,000)	20,577,427	17,244,504	1,322,754	—	18,567,258
Expenses:								
Station operations	4,189,345	—	—	4,189,345	4,380,720	—	—	4,380,720
Magazine operations	3,004,514	—	—	3,004,514	3,195,952	—	—	3,195,952
Program production and distribution expense	3,383,988	—	—	3,383,988	2,207,624	—	—	2,207,624
Other operating expense	53,114	—	—	53,114	101,730	—	—	101,730
Total direct expenses	10,630,961	—	—	10,630,961	9,886,026	—	—	9,886,026

(Continued)