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JAN 22 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: Reply Comments of WQED Pittsburgh
MM Docket No. 01-276

Dear Ms. Salas:

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

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

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Enclosures

cc with encl. (by hand): Roy 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

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
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Amendment of the Television Table of)
Allotments to Delete Noncommercial)
Reservation of Channel *16, 482-488 MHz,)
Pittsburgh, Pennsylvania)

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**MM Docket No. 01-276
FIN: 41314**

To: The Commission

REPLY COMMENTS OF WQED PITTSBURGH

WQED PITTSBURGH

By: Steven A. Lerman
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Its Attorneys

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SUMMARY

In its Dereservation Petition, WQED Pittsburgh (“QED”) compellingly showed that deleting the reservation of the WQEX frequency to permit the sale of the station to a commercial buyer will serve the public interest. The comments of the Alliance for Progressive Action and Citizens for Independent Public Broadcasting (“Alliance/CIPB”) not only fail to rebut this showing, they tellingly reveal Alliance/CIPB’s own skewed notion of the public interest. For these reasons, the Commission should reject the comments of Alliance/CIPB, and deserve the WQEX frequency promptly without opening the channel to competing applications.

By its actions and in its comments, Alliance/CIPB clearly favors an approach towards public television that is squarely at odds with the best interests of the Pittsburgh viewing public. Far from manifesting any genuine concern regarding public television’s future in Pittsburgh or the diverse viewing audience of the Pittsburgh community, Alliance/CIPB instead seeks access to Pittsburgh’s airwaves only to propagate its narrow “progressive” point of view.

Alliance/CIPB has no *bona fide* public mandate, and its self-interested opposition to the dereservation proposal should not mistakenly be viewed as broad-based community opposition to the sale of WQEX. Indeed, in letters to the Commission, hundreds of individuals – including elected officials, community and business leaders, national and state public television executives, and ordinary citizens – have expressed their firm support for dereservation. In contrast, the form petitions and letters offered by Alliance/CIPB in opposition to dereservation are merely the product of an unprincipled campaign orchestrated by Alliance/CIPB to discredit QED. Many of these letters merely parrot Alliance/CIPB’s canned and unsubstantiated rhetoric.

Alliance/CIPB accuses QED of pursuing dereservation only to realize a “windfall” that is somehow “corporate welfare” benefiting the “private” interests of QED and not the public interest in general. These accusations, however, cannot be squared with the fact that under

Pennsylvania non-profit corporation law and QED's charter, QED exists solely to serve the educational and cultural needs of Pittsburgh. The suggestion that QED seeks to line its own pockets at the expense of the public is particularly unseemly in light of the extensive community leadership of QED's board members and management, who collectively have devoted decades of voluntary, unpaid service to the Pittsburgh community. Alliance/CIPB's claim that QED has no interest in local programming is equally baseless, given its award-winning local programming that serves the educational and cultural needs of a broad constituency.

Regarding dereservation, Alliance/CIPB asserts that the Commission should first rule on its pending Petition for Reconsideration of the license renewal grant of Channel *16 before considering QED's request. If the Commission does so, it should summarily deny the Petition because Alliance/CIPB has offered no evidence that QED acted contrary to the statutory license renewal standard. Although Alliance/CIPB decries simulcasting on Channels *13 and *16, the FCC does not require that commonly owned noncommercial educational television stations be separately programmed. Moreover, simulcasting is neither inherently wasteful of spectrum nor functionally equivalent to going "dark," as Alliance/CIPB maintains.

Alliance/CIPB attempts without success to attack QED's showing that deleting the reservation of WQEX's frequency will serve the public interest. Alliance/CIPB first argues that the 1996 decision denying QED's initial dereservation request and the Ogden line of cases bar the relief QED seeks. However, that 1996 decision is not controlling because it turned on the existence of an alternative plan to sell WQEX to a third party, a "significant factor" absent from the instant dereservation request. In addition, the Ogden cases are not dispositive because the policy of preserving the potential of future noncommercial service articulated therein has been reversed by subsequent Commission decisions, including the decision to eliminate *hundreds* of vacant noncommercial NTSC reserved allotments in connection with the transition to digital television.

Alliance/CIPB next expresses concern that the grant of QED's dereservation request will lead to a flood of similar requests from other noncommercial licensees. This concern is misplaced, however, because it ignores the unique set of circumstances that effectively and conclusively removes any risk that the QED case will serve as meaningful precedent. Moreover, very few public television broadcasters are comparably positioned to benefit from the grant of a request similar to QED's.

Alliance/CIPB clearly understates QED's financial distress in concluding that its existing debt provides no basis for dereservation. More than a mere "clear and present threat" to local public television service, QED's financial condition already has drastically impaired such service, and will continue to do so absent grant of the requested relief. QED's auditors, KMPG LLP ("KPMG"), have repeatedly concluded that substantial doubt exists about QED's ability to continue as a "going concern," and that the sale of WQEX to a commercial interest is "critical and essential" to the improvement of the company's financial condition – an assessment Alliance/CIPB does not even attempt to, and cannot, refute.

Alliance/CIPB's claims that QED's debt is overstated and that its financial distress is the result of "creative accounting" are patently false. QED has never announced a debt of only \$7 million, as Alliance/CIPB maintains. In addition, it must fully repay the funds that it borrowed from its Capital Campaign Fund, and has not failed to reveal sources of available funding.

Alliance/CIPB offers two gratuitous "alternatives to dereservation" that it alleges can solve QED's financial distress without the sale of WQEX. The first alternative – selling Pittsburgh magazine – would be a decidedly poor business decision because it serves as a reliable and critical source of income for QED, yet might bring little on the open market because its circulation numbers are not subscription-based. More fundamentally, selling the magazine would run counter to QED's strategic plan to continue to develop as a leading regional multi-media educational and cultural resource. The second alternative – reducing QED executive

salaries – would unnecessarily punish the officials who have helped to resurrect the ailing company inherited from prior management. In any event, QED certainly does not pay “abnormally high executive salaries,” as Alliance/CIPB claims. Any nominal difference between QED’s salaries and those of some other public television stations can be attributed to the fact that QED executives manage a multi-media enterprise comprised of television, radio, magazine and Internet operations.

In support of its position that the Pittsburgh economy is able to support two noncommercial television stations, Alliance/CIPB commissioned a study of the region which concluded that the Pittsburgh economy is “healthier than ever” – an astounding claim that exposes the study’s several weaknesses. The study, for example, suffers from the inherent biases of its author – a public supporter of Alliance/CIPB – and his failure to provide even one source for the economic data relied upon. These weaknesses aside, the study clearly overstates the case that Pittsburgh’s workers are better off today than ever before. In fact, area wage growth from 1999-2000 was the lowest among the 25 largest metropolitan regions in the U.S. and, when adjusted for inflation, actually decreased over that time. The study also acknowledges the reduction of major corporations in Pittsburgh, but simplistically concludes that the higher profits and sales that the remaining companies boast means that the potential for corporate sponsorship remains high. However, successful non-profit fundraising requires a large, diverse pool of potential donors. Thus, a reduction in the number of corporations in Pittsburgh translates into a reduction in corporate sponsorship.

Alliance/CIPB’s next economic argument – that a number of markets comparable in size to or smaller than Pittsburgh support more than one noncommercial station – is also misleading. In adopting this position, Alliance/CIPB overlooks the fact that most noncommercial stations in markets with more than one such station are held by state networks and universities – which bear the major costs of operation – and not by community licensees.

Alliance/CIPB believes that Pittsburgh requires a second noncommercial station, despite the wealth of educational and cultural programming available on alternative forms of media, because “none of these media provide the necessary space for full public discussion of issues confronting the community.” But Alliance/CIPB misses the point: these media *collectively* obviate the need for a second noncommercial station in Pittsburgh. Moreover, these media’s nominal subscription fees constitute such a low barrier to entry that cable, direct broadcast satellite, and the Internet are nearly universally available. As for those who prefer not to pay or cannot afford even these modest fees, QED will continue to serve their educational and cultural needs via Channel *13.

Alliance/CIPB’s desire to open the dereserved Channel *16 to competing applications misreads Commission case law. The supposed “uncodified rule” from 1952 cited by Alliance/CIPB has subsequently been eviscerated, and Commission precedent no longer requires that a newly dereserved channel must be made available to competing applications. In any event, Alliance/CIPB appears to favor competitive bidding not to further its own goals, but rather to ensure that QED itself cannot benefit from dereservation – a mean-spirited position that the Commission should recognize as such.

In sum, the public interest will best be served by dereserving the WQEX frequency to allow for the sale of the station to a commercial buyer. Accordingly, the Commission should reject the comments of Alliance/CIPB opposing dereservation, and promptly grant QED’s dereservation request. In the words of one Pittsburgh-area resident: “Let WQED sell WQEX before neither station is broadcasting anything. Besides, [we] already have TLC, Discovery Channel, HGTV, Travel Channel, History Channel, etc. Times have changed. Catch up.”

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To: The Commission

REPLY 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 replies to the comments filed by the Alliance for Progressive Action and Citizens for Independent Public Broadcasting – Pittsburgh (“Alliance/CIPB”) in the above-captioned proceeding.¹

The comments of Alliance/CIPB fail to rebut QED’s compelling showing that the dereservation of WQEX to allow for its sale as a commercial station will serve the public interest.² In fact, these comments tellingly reveal Alliance/CIPB’s own narrow and self-

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”). These Reply Comments are being filed on January 22, 2002. According to the NPRM, the deadline to file reply comments is January 21, 2002. However, because January 21, 2002 is a “holiday” as that term is defined by the Commission’s rules, the filing date for all reply comments in this proceeding is extended until the next business day. See 47 C.F.R. § 1.4(e)(1) & (j). Thus, these Reply Comments are timely filed.

² Comments of Citizens for Independent Public Broadcasting and Alliance for Progressive Action In Opposition to WQED’s Dereservation Petition (filed December 18, 2001) (“Alliance/CIPB Comments”).

serving notion of the public interest. Accordingly, QED urges the Commission to reject the comments of Alliance/CIPB, and to grant on an expedited basis the relief requested by QED in its Dereservation Petition.³

I. INTRODUCTION

In its comments filed in response to the NPRM,⁴ QED described the many ways in which dereservation of the WQEX frequency and the sale of the station to a commercial buyer will serve the public interest – namely, by allowing QED to use the proceeds from such a sale to retire the enormous debt it inherited from prior management, to establish a permanent local programming endowment, to complete the mandated transition to digital technology, and to pay for badly needed repairs to its physical plant. The sale of WQEX will also serve the public interest by introducing an independent broadcast voice to a market underserved by commercial stations. The comments emphasized that QED reached the difficult decision to seek the dereservation of Channel *16 for one reason: so that QED could fully overcome its financial distress and thereby continue to develop as a leading multi-media resource serving the educational and cultural needs of a broad cross-section of citizens in the Pittsburgh region.

In its comments, Alliance/CIPB favors a very different approach towards public television – an approach that is squarely at odds with the public interest as a whole. Alliance/CIPB depicts itself as a grass roots organization committed to improving noncommercial television in Pittsburgh, yet its actions ultimately expose it to be nothing more than a small band of like-minded individuals intent on obtaining – by any means possible – access to Pittsburgh’s airwaves merely to propagate their narrow “progressive”

³ Petition to Delete Noncommercial Reservation (filed January 9, 2001) (“Dereservation Petition”).

⁴ Comments of WQED Pittsburgh (filed December 18, 2001) (“QED Comments”).

point of view. Far from manifesting any genuine concern regarding public television's future in Pittsburgh or the diverse viewing audience of the Pittsburgh community, Alliance/CIPB instead seeks to establish noncommercial television service on *its* terms, in order to air programming that *it* alone deems worthwhile.⁵

The myopic programming view of Alliance/CIPB is perhaps best illustrated by its ironically named "Ready For PBS" documentary series, which aired last fall on a Pittsburgh-area low power TV station. Clearly intended to showcase the types of programming that Alliance/CIPB (or a companion organization⁶) would air were it running Channel *16, the "Ready for PBS" service consists of programs with little or no relevance to the daily lives of viewers in the Pittsburgh area, including a documentary on California labor history featuring union activities in the 1950s, a film showing how workers and communities around the world can unite to fight multinational corporations, and an examination of the Chinese government's response to the Falun Gong movement. If these programs are any indication, it is clear that the local educational and cultural

⁵ The lack of any real interest on the part of Alliance/CIPB in serving the interests of the Pittsburgh community as a whole is evident in numerous ways – for example, in its opposition to QED's former agreement to sell WQEX to Cornerstone TeleVision, Inc. ("Cornerstone"). As the Commission knows, that plan would *not* have required the dereservation of WQEX's frequency and, thus, would have retained Pittsburgh's two noncommercial stations – the alleged goal of Alliance/CIPB. Yet, because the proposed noncommercial programming of Cornerstone, a Pittsburgh-area religious broadcaster, did not meet the viewpoint standards of Alliance/CIPB, it vigorously opposed the plan.

⁶ Alliance/CIPB has endorsed the proposal to operate Channel *16 prepared by Pittsburgh Educational Television ("PET"), an organization aligned with Alliance/CIPB. See Alliance/CIPB Comments at 7, 30, referencing "Channel *16 – A Second Public Television Service for Pittsburgh: A Proposal From Pittsburgh Educational Television," available at <http://www.save16.org/onealternative.html> ("PET Proposal"). PET, however, appears woefully unprepared to take over operation of a public television station. Its proposal to operate Channel *16 is long on rhetoric and short on specifics. In it, PET simplistically predicts that "think[ing] outside the box of what passes for public television in Pittsburgh these days" will sustain its version of WQEX. PET Proposal at 12. But PET utterly fails to appreciate fully the many technical, programmatic and personnel particulars that go into running a major broadcast station, as detailed in the Reply Comments of ShootingStar, Inc., in this proceeding. The naïve nature of the proposal is underscored by PET's vague, unrealistic estimates of the costs involved in operating a public television station, and its even more vague plans regarding how to raise start-up funding.

needs of the Pittsburgh community will take a back seat to the advancement of certain left-of-center political causes under an Alliance/CIPB public television regime.

Alliance/CIPB has no *bona fide* public mandate, and its self-interested opposition to the dereservation proposal should not mistakenly be viewed as broad-based community opposition to the sale of WQEX. Indeed, hundreds of Pittsburgh's citizens have expressed their unwavering, vigorous support for such a sale in letters to the Commission, a representative selection of which are attached hereto as **Exhibit A**. These letters not only demonstrate the popular support that exists for dereservation, they highlight the many benefits that Pittsburgh residents anticipate once QED is able to improve its financial condition and increase the services it provides following grant of its dereservation request.

Significantly, many of these support letters have come from elected officials at both the local and national level, who understand that their constituents stand to benefit considerably from the Commission's grant of QED's dereservation request. U.S. Senators Rick Santorum and Arlen Specter of Pennsylvania, for example, fully support dereservation "as a means of alleviating the financial distress which has disabled WQED from fulfilling its mission."⁷ Members of Congress representing southwestern Pennsylvania agree, and urge prompt favorable action on QED's request to assure that "our region will benefit from a strong public television presence well into this century."⁸

⁷ Letter from U.S. Senators Rick Santorum and Arlen Specter to William E. Kennard, Chairman, Federal Communications Commission (January 5, 2001).

⁸ Letter from U.S. Representatives Mike Doyle, Frank Mascara, John P. Murtha and Melissa A. Hart to Michael K. Powell, Chairman, Federal Communications Commission (August 2, 2001).

Several Pennsylvania State legislators and Allegheny County executives also have voiced strong support for dereservation.⁹

Executives of community and business groups representing a wide variety of regional interests have rallied behind QED's dereservation effort as well. For example, Gideon Toeplitz, Executive Vice President and Managing Director of the Pittsburgh Symphony Orchestra, and a WQED member for 12 years, writes that he is "proud of the many educational and cultural programs that WQED Pittsburgh offers," and that the FCC's decision to dereserve WQEX "will go a long way towards making WQED Pittsburgh strong once again."¹⁰ Doris Carson Williams, President of the African American Chamber of Commerce of Western Pennsylvania, observes that "WQED Pittsburgh plays an important role in our community," and that the financial stability that will result from grant of QED's request "will help ensure that WQED Pittsburgh is able to meet the public television needs of the community for years to come."¹¹ One prominent local organization, the Allegheny County Labor Council (representing more than 80,000 members), has rescinded its former opposition to the sale of WQEX, and "hopes to foster a close relationship between the labor community and WQED to further

⁹ See, e.g., Letter from State Representative James E. Casorio, Jr. to Michael K. Powell, Chairman, Federal Communications Commission (February 14, 2001); Letter from State Representative David J. Mayernik to Michael K. Powell, Chairman, Federal Communications Commission (February 26, 2001); Letter from Allegheny County Chief Executive James C. Roddey to Michael K. Powell, Chairman, Federal Communications Commission (February 1, 2001).

¹⁰ Letter from Gideon Toeplitz to Michael K. Powell, Chairman, Federal Communications Commission (January 23, 2001).

¹¹ Letter from Doris Carson Williams to Michael K. Powell, Chairman, Federal Communications Commission (February 9, 2001).

the educational, economic, and entertainment concerns of the people of Allegheny County and the surrounding counties.”¹²

Recognizing the unique plight of QED, numerous public television groups have backed the dereservation of WQEX, including the Corporation for Public Broadcasting, Children’s Television Workshop (now Sesame Workshop), and the Association of America’s Public Television Stations.¹³ The Pennsylvania Public Television Network likewise observes that, because of its financial distress, “WQED is lagging behind other Pennsylvania stations in converting to digital” and, thus, “it is important that the FCC take prompt action to dereserve Channel 16 so that the remaining one strong noncommercial station can begin to fulfill its mission both to the region and to the Commonwealth.”¹⁴

Given QED’s long and proud history of service to the Pittsburgh community, it is not surprising that citizens throughout the region also have expressed their support for dereservation. For example, Wendell G. Freeland, a civil rights activist for the past fifty-five years, writes that he is “very sensitive to the way in which public television . . . serve[s] the minority communities.”¹⁵ He believes that QED “is a vital part of my community and it must have financial stability in order to continue to meet the needs of

¹² Letter from Jack Shea, President of the Allegheny County Labor Council, to George L. Miles, Jr., President and CEO, WQED (November 19, 2001).

¹³ Letter from Richard W. Carlson, President and CEO, Corporation for Public Broadcasting, to Reed Hundt, Chairman, Federal Communications Commission (June 4, 1996); Letter from David V.B. Britt, President and CEO, Children’s Television Workshop, to Reed Hundt, Chairman, Federal Communications Commission (May 31, 1996); Letter from David J. Brugger, President, Association of America’s Public Television Stations, to Reed Hundt, Chairman, Federal Communications Commission (June 13, 1996).

¹⁴ Letter from Louis I. Pollock, Chairman, and H. Sheldon Parker, Jr., General Manager and Secretary-Treasurer, Pennsylvania Public Television Network Commission, to Michael K. Powell, Chairman, Federal Communications Commission (February 9, 2001).

¹⁵ Letter from Wendell G. Freeland to Michael K. Powell, Chairman, Federal Communications Commission (February 6, 2001).

my community's future."¹⁶ Richard J. Cook has "enormous respect for WQED," and he is "confident that the decision by their leadership to submit [the dereservation request] was made . . . with the best long-term interest of public television in Pittsburgh in mind."¹⁷

Another local resident, Nancy Flaherty Beck, would welcome a new commercial voice to Pittsburgh, observing that "[t]he dereservation of WQEX seems like a win-win option. Pittsburgh . . . get[s] a station that pays for itself, with a fresh viewpoint, [and] WQED gets free of debt and can continue its mission."¹⁸ Tom Downing, a dancer and choreographer, believes that QED "provides the best programming that showcases the arts," and specifically lauds the nightly program "On Q" for featuring "bands and performers that do not have a local outlet."¹⁹ Phil Groschwitz urges the Commission to "[l]et WQED sell WQEX before neither station is broadcasting anything."²⁰ Then, noting that he "already [has] TLC, Discovery Channel, HGTV, Travel Channel, History Channel, etc.," he succinctly reminds the Commission that "[t]imes have changed. Catch up."²¹

In contrast to the hundreds of letters expressing genuine support for dereservation, the form petitions and letters offered by Alliance/CIPB in opposition to dereservation

¹⁶ Id.

¹⁷ Letter from Richard J. Cook, Ph.D., to Michael K. Powell, Chairman, Federal Communications Commission (November 28, 2001). Mr. Cook also understands the "visceral objections that a few in the community have registered to the idea of losing a public channel," but correctly observes that "those making the objections have offered no viable solution of their own." Id.

¹⁸ E-mail message from Nancy Flaherty Beck to FCC Commissioners (November 20, 2001).

¹⁹ Letter from Tom Downing to Michael K. Powell, Chairman, Federal Communications Commission (February 20, 2001).

²⁰ Letter from Phil Groschwitz to Magalie Roman Salas, Secretary, Federal Communications Commission (October 13, 2001).

²¹ Id.

merely parrot the inaccurate claims and inflammatory rhetoric of Alliance/CIPB, and display no actual familiarity with, or concern regarding, the sale of WQEX.²² In many cases, the letters simply duplicate text from a series of canned accusatory (and unsubstantiated) letter-writing points produced and distributed by Alliance/CIPB as part of its unprincipled orchestrated campaign to discredit QED (attached hereto as **Exhibit B**), including the highly irresponsible claim that “[a] WQED investigation into alleged embezzlement was kept secret even from its own board of directors.”²³ Many of these form letters also object to the sale of WQEX on the mistaken theory that noncommercial stations are owned by the public at large.²⁴

The disparity between the interests of Alliance/CIPB and the Pittsburgh community as a whole is personified by Jerold M. Starr, executive director of Citizens for Independent Public Broadcasting.²⁵ Starr is a staunch opponent not only of QED, but also of the Public Broadcasting Service (“PBS”), which he has recently described as “an

²² Alliance/CIPB goes to great lengths to describe the alleged tactics by which QED has sought to exclude the public from commenting on its dereservation proposals. See, e.g., Alliance/CIPB Comments at 15. Although this claim is of dubious relevance given that the instant rulemaking proceeding seeks and has generated an avalanche of public comment, QED reiterates that it has welcomed – and will continue to welcome – public participation because it believes that the vast majority of Pittsburgh citizens, community leaders, institutions and organizations support the dereservation effort. See Opposition to Motion of CIPB/Alliance (filed January 31, 2001).

Moreover, Alliance/CIPB’s complaint that QED “failed to disclose its plans or elicit community reaction” in connection with its negotiations with ShootingStar Inc., Alliance/CIPB Comments at 15, ignores a public broadcaster’s statutory prerogative to hold closed meetings to consider proprietary matters or information that would compromise company business if exposed. See 47 U.S.C. § 396(k)(4).

²³ Like other allegations in the Alliance/CIPB laundry list of canned charges (**Exhibit B**), this claim is not only false, it relates to events that took place before present management came to QED in 1994.

²⁴ The Communications Act of 1934, as amended (the “Act”), draws no distinction between the public trustee concept as applied to commercial and noncommercial operations. Indeed, to the extent that it can be said that the public “owns the airwaves,” that statement applies equally to both types of operations. Thus, noncommercial stations may be – and are – sold for consideration just as commercial stations are.

²⁵ Starr is a former member of QED’s Community Advisory Board who resigned from his position following his inability to convince QED management to broadcast specific programming reflecting the various particularized causes he supports. Mr. Starr apparently failed to recognize that “[i]n no case shall the [community advisory] board have any authority to exercise any control over the daily management or operation of the station.” 47 U.S.C. § 396(k)(8)(C).

aimless ‘has been’ living on past glory.”²⁶ Needless to say, Starr’s view of PBS is not shared by the public at large. For example, a recent poll conducted by Roper Starch Worldwide indicates that Americans consider public television, which is tantamount to PBS in the minds of most people, to be among the best values received in return for their tax dollar.²⁷

To further its cause, Alliance/CIPB’s comments level unseemly and baseless charges that attempt to belittle the laudable community service efforts of QED. In particular, Alliance/CIPB repeatedly states that QED is pursuing dereservation only to realize a “windfall” that somehow is “corporate welfare” benefiting the “private” interests of QED only and not the public interest in general.²⁸ Thus, Alliance/CIPB accuses QED of seeking “\$20 million at the expense of the Pittsburgh public”²⁹ and of intending “to serve its own self-interest to the detriment of the public.”³⁰ Elsewhere, it accuses QED of “alienat[ing] thousands while questing after an undeserved windfall.”³¹ Alliance/CIPB then dismisses “QED’s musing that it may use the sale proceeds to enhance its own service” as “not a guarantee or enforceable promise.”³² These accusations cannot be squared with the fact that under Pennsylvania non-profit corporation law and its own charter, QED exists solely to serve the educational and

²⁶ Jerold M. Starr, Happy Birthday, Public Broadcasting!, at <http://www.tompaine.com/feature.cfm?ID=4723>.

²⁷ Only defense spending and medical and technological research were rated by Americans as a better tax value. Corporation for Public Broadcasting Press Release, “Americans of All Ages Consider Public Radio, Public Television a Good Value for Their Tax Dollars” (May 7, 2001), available at www.cpb.org/programs/pr.php?prn=184.

²⁸ Alliance/CIPB Comments, Summary at iv, 11.

²⁹ Id. at 13.

³⁰ Id. at 15.

³¹ Id. at 19-20.

³² Id. at 34 n.130.

cultural needs of Pittsburgh, and any proceeds that it derives from the sale of WQEX can be used only to further this goal. In other words, QED will not – and indeed cannot – line its pockets with WQEX proceeds, as Alliance/CIPB would have the Commission believe.

The suggestion that QED seeks to put its private interests ahead of the public interest is particularly unseemly in light of the extensive community leadership of QED's board members and management. These men and women collectively have devoted decades of voluntary, unpaid service to a wide range of endeavors in the Pittsburgh community in general, and to QED in particular, as exemplified by the following:

W. Thomas McGough, Jr., Chairman of the QED Board of Directors, is a partner in the Pittsburgh law firm of Reed Smith LLP. He is a former Assistant United States Attorney for the Western District of Pennsylvania, former member of the Board of Visitors of the Heinz School of Urban and Public Affairs at Carnegie Mellon University, former president of the Allegheny County Bar Association, and former president of Dapper Dan Charities.

Herbert Bennett Conner, Vice Chairman of the QED Board of Directors, is a partner with the law firm of Buchanan Ingersoll. He is the former chairman of the Ethics Commission of the Commonwealth of Pennsylvania, and has served as Director of the Urban League of Pittsburgh.

Dr. JoAnne Woodyard Boyle, QED Board member, is President of Seton Hill College in Greensburg, Pennsylvania. She is a member of the board of directors of the Pittsburgh Ballet Theatre, the Pittsburgh Symphony Society and the United Way of Westmoreland County.

Dr. Mona Generett, QED Board member, is Vice President of Community Development at Dollar Bank in Pittsburgh. She is a member of the boards of Magee Women's Health Foundation and Pittsburgh Child Guidance.

Robert Knutson, QED Board member, is Chairman and CEO of Education Management Corporation, one of the largest proprietary education systems in the U.S. He is a member of the Commission on Government Relations of the American Council on Education and of the Board of Directors of the Western Pennsylvania Conservancy.

Claudette R. Lewis, QED Board member, is Special Assistant to the Director of the Allegheny County Department of Human Services. She serves on the boards of the City Theater, Women's Center and Shelter,

Manchester Craftsmen's Guild, and the Program for Female Offenders. She also serves on the City of Pittsburgh Planning Commission.

Leon Lynch, QED Board member, is International Vice President of Human Affairs for the United Steel Workers of America, overseeing the union's civil and human rights efforts. Mr. Lynch serves as a member of the Executive Committee for the Democratic National Committee and the Labor Roundtable of the National Black Caucus of State Legislators.

The Honorable Raymond Novak, QED Board Member, is a judge in the Criminal Division of the Court of Common Pleas of Allegheny County. Judge Novak serves on the boards of the Pittsburgh History and Landmarks Foundation and the Persad Center, which provides support to the gay and lesbian community.

D. Jin Song, QED Board Member, is President and CEO of Leslie Edward International, an investment holding company. He serves on the boards of Lifestyle International, Inc., MicroSignal and the Global Advancement Council of Lehigh University.

William Waterkotte, QED Board Member, is Director of Organizing for the Western Pennsylvania District Council of Carpenters. He is a long-time leader in local union circles.

Commander Gwen Elliott, QED Community Advisory Board member, is a 25-year veteran of the Pittsburgh Police Department. She serves on the boards of Pittsburgh Community Services, United Cerebral Palsy, and Center for Victims of Violent Crime.

Billy Jackson, QED Community Advisory Board member, is an independent film and video producer and director of Community Media in Pittsburgh, which teaches young people the profession of producing independent films.

The Honorable Lawrence Kaplan, QED Community Advisory Board member, is a judge in the Family Division of the Court of Common Pleas for the Fifth Judicial District, Allegheny County. He has earned numerous awards for his family advocacy.

Lucy Spruill, QED Community Advisory Board member, is a coordinator with United Cerebral Palsy in Pittsburgh, and formerly served as the Americans with Disabilities Act Facilities Coordinator for the City of Pittsburgh. She is a long-time advocate for people with disabilities.

George L. Miles, Jr., QED President and Chief Executive Officer, has worked in public television for 18 years. He is the former Executive Vice President and Chief Operating Officer of PBS flagship station WNET/Thirteen in New York. Mr. Miles serves on the Board of Directors of PBS and is former Chairman of the Association of America's Public

Television Stations. He was named 1997 Broadcaster of the Year by the Pennsylvania Association of Broadcasters. Mr. Miles is the founding chairman of the Mentoring Partnership of Southwestern Pennsylvania, and serves on the boards of WESCO International, Inc., Equitable Resources, the University of Pittsburgh, the Carnegie Museums of Pittsburgh, and the Urban League of Allegheny County (of which he is the former Chairman), among many others.

Not content with impugning the motives of QED's leadership in seeking to dereserve Channel *16, Alliance/CIPB also makes the preposterous claim that QED "has shown no interest in . . . local service programming on Channel *13."³³ Nothing could be further from the truth: during the nearly half century in which QED has been synonymous with public television in Pittsburgh, it has cultivated an unsurpassed understanding of how the educational and cultural needs of the Pittsburgh community can best be met. QED has put this knowledge into practice through the development, in-house production and broadcast of program series that directly and broadly respond to local interests and concerns, such as "On Q" (a nightly magazine show), "Black Horizons," "AgeWise," and the Pittsburgh History series, which have repeatedly earned QED regional Emmy nominations and awards.³⁴ QED's multi-media vision for the future continues to focus on *local* and *regional* programming, community partnerships and other outreach efforts.³⁵

In contrast, as shown, Alliance/CIPB maintains a narrow, self-serving vision of public television patently inconsistent with the broad public interest. For this reason, and the reasons set out below, QED urges the Commission to reject the Alliance/CIPB

³³ Alliance/CIPB Comments at 28.

³⁴ **Exhibit C** hereto describes QED's award-winning local programming and the broad constituencies served by that programming.

³⁵ Accordingly, Alliance/CIPB completely misses the mark in claiming that QED's focus is on "compet[ing] with other broadcasters (commercial and noncommercial) in developing new products for export." Alliance/CIPB Comments at 13. Since the arrival of current management in 1994, QED's explicit mission has been local and regional service.

comments and allow the dereservation of WQEX's frequency to go forward promptly, without opening the channel to competing applications.

II. THE COMMISSION SHOULD DENY THE PENDING PETITION FOR RECONSIDERATION OF THE WQEX LICENSE RENEWAL.

Before addressing the substance of the NPRM, Alliance/CIPB asserts that, as a threshold matter, the Commission should rule on its pending Petition for Reconsideration ("Petition") of the license renewal grant of Channel *16.³⁶ The Petition claims that simulcasting Channels *13 and *16 warrants a reversal of the Mass Media Bureau's renewal grant of December 30, 1999.

The Petition is plainly without merit and should be summarily denied. The Commission is obligated under the Act to grant an application for the renewal of a broadcast station license if it finds that, in its preceding license term, (i) the station has served the public interest, convenience, and necessity; (ii) there have been no serious violations by the licensee of the Act or the FCC's rules; and (iii) there have been no other violations by the licensee of the Act or the FCC's rules that, taken together, would constitute a pattern of abuse.³⁷ Alliance/CIPB offers no evidence – nor can it – that QED has acted contrary to this statutory renewal standard.

Alliance/CIPB decries simulcasting,³⁸ but as the full Commission itself found in previously rejecting Alliance's claim that WQED's simulcasting disserved the public

³⁶ Alliance/CIPB Comments at 2.

³⁷ 47 U.S.C. § 309(k).

³⁸ Alliance/CIPB states, without support or attribution, that three cable systems serving the greater Pittsburgh area have removed WQEX from their channel line-ups due to its duplicated programming. Alliance/CIPB Comments at 5, 30. Alliance/CIPB does not identify the cable systems allegedly responsible for removing WQEX, but if the channel has indeed been removed, the action by these cable systems is likely illegal under Section 76.56(a)(1)(iii) and/or Section 76.56(a)(5) of the Commission's rules. QED is currently in the process of enforcing its carriage rights in this regard.

cont'd

interest, the FCC does *not* require that commonly owned noncommercial educational television stations be separately programmed.³⁹ Neither the Act, nor the FCC's rules, nor any Commission or judicial precedent bars simulcasting by noncommercial educational television licensees. Indeed, the Communications Act expressly contemplates that there will be substantial duplication among noncommercial television stations located in the same market.⁴⁰

In addition, the claims of Alliance/CIPB notwithstanding, simulcasting is neither inherently wasteful of spectrum, nor functionally equivalent to going "dark."⁴¹ In eliminating its prior limits on program duplication by co-owned, co-located AM and FM stations more than a decade ago, the Commission stated that it could not, and would not in the future, presume that duplication was an inefficient use of the spectrum.⁴² Far from

Alliance/CIPB also claims that simulcasting has led to a loss of popular "alternative programming" formerly available on WQEX, Alliance/CIPB Comments at 4, and later implies that, as a licensee, it will offer a "greater diversity of cultural and public interest programming" on the station. *Id.* at 30. The Commission should be wary of both claims. First, Alliance/CIPB fails to mention that the most popular programming formerly aired on WQEX (as determined by a survey of the station's viewers) was transferred to, and is currently available on, Channel *13, including "AgeWise," "Sit and Be Fit," "Lawrence Welk," several British sitcoms, and shows devoted to cooking and crafts. In addition, the programming that Alliance/CIPB can be expected to air will likely focus less on issues with genuine or broad community appeal and more on issues consistent with its narrow political point of view. See discussion of "Ready For PBS" documentary series, pp. 3-4 *supra*.

³⁹ Application of WQED Pittsburgh (Assignor) and Cornerstone TeleVision, Inc. (Assignee), Memorandum Opinion and Order, 15 FCC Rcd 202, 207 (1999).

⁴⁰ See 47 U.S.C. § 535(e) (stipulating that certain cable operators required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations whose programming substantially duplicates the programming broadcast by a carried station). See also 47 U.S.C. § 338(c)(2) and 47 C.F.R. § 76.66(h)(1), (7) (containing direct broadcast satellite ("DBS") "must carry" provisions for duplicative same-market noncommercial television stations).

⁴¹ Alliance/CIPB Comments at 4, 5.

⁴² Amendment of Section 73.242 of the Commission's Rules and Regulations in Regard to AM-FM Program Duplication, Report and Order, 103 F.C.C. 2d 922, 927 n.7 (1986) ("[W]e believe it is inconsistent to assume that program duplication is presumptively inefficient and will not do so in the future.").

wasting spectrum, WQED is attempting instead to conserve its scarce resources.⁴³

Moreover, if by duplicating WQED, WQEX is deemed to be “dark,” then so must every AM station that duplicates a co-owned FM station, and every TV translator or satellite TV station that duplicates a co-owned full service television station. Finally, it bears noting that noncommercial television broadcast stations, unlike their commercial counterparts, have no minimum operating hours.⁴⁴

In sum, Alliance/CIPB seeks the unprecedented relief of denial of a license renewal application in the complete absence of any violation of the Communications Act, or of the FCC’s rules or policies. To the best of QED’s knowledge, the Commission has never in its history designated a broadcast license renewal application for hearing, or even conditioned a license renewal grant, where the licensee was not even accused of violating the Act or the FCC’s rules or policies. Accordingly, should the Commission accede to the request of Alliance/CIPB to act on the Petition prior to ruling on the dereservation request, it should summarily deny the Petition.

III. THE COMMENTS OF ALLIANCE/CIPB FAIL TO REBUT QED’S SHOWING THAT DERESERVATION OF THE WQEX FREQUENCY IS IN THE PUBLIC INTEREST.

Alliance/CIPB’s comments attempt without success to attack the showing made by QED in its Dereservation Petition that deleting the reservation of the WQEX

⁴³ In a mistaken attempt to portray simulcasting as wasteful, Alliance/CIPB asserts that \$425,000 in annual grant money lost to QED due to the Pennsylvania Public Television Network’s policy of not funding stations with duplicative programming “may” exceed the amount of annual savings QED announced it would realize from simulcasting. Alliance/CIPB Comments at 5. This assertion, however, overlooks the fact that the savings figure cited by Alliance/CIPB (\$300,000 to \$500,000) already accounted for the loss of the \$425,000 grant. *Id.* The approximate savings figure can be derived by subtracting the grant amount from the annual out-of-pocket cost to operate WQEX (about \$1 million) cited by Alliance/CIPB. *See id.* at 13 n.46. However, as QED has noted, even the \$1 million figure is understated since it does not include administrative or production costs, or other back-office savings resulting from WQEX’s collocation with WQED. QED Comments at 10 n.22.

⁴⁴ Compare 47 C.F.R. § 73.1740(b) with 47 C.F.R. § 73.1740(a)(2).