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February 27, 2002

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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B 204
Washington, DC 20554

RECEIVED

FEB 27 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex parte presentation**
MM Docket No. 01-276

Dear Mr. Caton:

Pursuant to Section 1.1206(b) of the Commission's Rules, this is to provide notice of an *ex parte* meeting concerning the above-referenced proceeding. On February 26, 2002, W. Thomas McGough, Jr., George L. Miles, Jr. and B.J. Leber of WQED Pittsburgh; Diane Sutter of ShootingStar, Inc; and Steven A. Lerman and Barbara K. Gardner of Leventhal, Senter & Lerman P.L.L.C. met with Susan Eid, Legal Advisor to Chairman Michael K. Powell; Jane Mago, General Counsel of the Commission; and Joel Kaufman, Office of General Counsel.

At the meeting, representatives of WQED Pittsburgh and of ShootingStar, Inc. discussed the substance of their respective Comments and Reply Comments filed in the proceeding on December 18, 2001 and January 22, 2002, as well as WQED Pittsburgh's Petition to Delete Noncommercial Reservation filed on January 9, 2001. Representatives of both parties also explained the importance to their business plans of early action on the Petition.

In particular, representatives of WQED Pittsburgh detailed the company's continuing financial distress, and the resulting substantial impairment of its ability to provide the level of public television service that Pittsburgh deserves. They explained that Pittsburgh, the only market among the top 42 to experience a population decline in the last decade, cannot support—and indeed no longer needs—two noncommercial television stations, in light of new sources of educational programming and information such as cable TV and the Internet. WQED's representatives described the public interest benefits that will result from the dereservation of WQEX's frequency and the sale of the station to ShootingStar, Inc., and noted

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that neither the Communications Act nor FCC precedents require that a dereserved Channel 16 be opened to competing applications or to a spectrum auction.

WQED Pittsburgh's representatives also urged that granting their dereservation request will not set a precedent for other dereservation initiatives, given the following factors which in combination make WQED's situation absolutely unique: the company's fiscal distress, Congress' explicit recognition of that distress, the FCC's delays in acting on past efforts to sell WQEX, Pittsburgh's severe economic decline, the limited number of commercial television allotments in Pittsburgh, and the fact that Channel *16 was initially a commercial channel whose reservation was requested by WQED Pittsburgh itself.

Ms. Sutter stressed that permitting her company to acquire a dereserved Channel 16 would foster local female ownership by an experienced broadcaster while strengthening WQED, and thereby serve the public interest. Both parties urged that notwithstanding the requested decline in the number of reserved channels in Pittsburgh, the result would clearly be to benefit public television in the market, by permitting WQED to establish a permanent local programming endowment, retire its debt, complete the mandated DTV transition, and pay for overdue physical plant repairs. Although through prudent management (including by cutting its staff in half), WQED has curtailed its operating losses, without the requested relief the company will continue only to "tread water."

As to the purported "windfall" that WQED's opponents claim it would reap from the proposed sale of WQEX, WQED's representatives explained that all sale proceeds will redound to the benefit of the greater Pittsburgh community, by facilitating increased local programming and other educational initiatives, and permitting WQED's DTV transition to be completed. They further noted that contrary to claims that WQEX's unique programming has been lost, the best of that programming, as determined by a viewer survey, now airs on WQED.

A copy of the attached written presentation was provided at the conclusion of the meeting.

Pursuant to Section 1.1206(b) of the Rules, an original and one copy of this *ex parte* notice, including the attachment, are being filed with the Secretary.

Respectfully submitted,



Barbara K. Gardner

Attachment
cc with att.:

Susan Eid (by hand)
Jane Mago (by hand)
Joel Kaufman (by hand)

*Amendment of the Television Table of Allotments To Delete
Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania
MM Docket No. 01-276*

*

Presented by WQED Pittsburgh and ShootingStar, Inc., February 26, 2002

- **Citizens for Independent Public Broadcasting, created by Jerold Starr, an ex-member of QED's Community Advisory Board, and Alliance for Progressive Action ("Opponents") advance several baseless and misdirected arguments.**
 - Opponents attack current QED management for mistakes of prior management a decade ago, ignoring the fact that QED today is headed by seasoned public television professionals with outstanding records of public service. Opponents also accuse QED management of seeking a "windfall" and putting its private interests ahead of the public interest – an offensive and totally false claim. All monetary benefits of the contemplated dereservation/sale will redound to the benefit of the public.
 - Opponents claim broad community support, but in reality the opposition is principally a one-person vendetta by a disgruntled ex-QED Community Advisory Board member who has attacked PBS and the entire structure of public broadcasting. Opponents have used the Internet to orchestrate what appears to be public support for its position, but Opponents conspicuously fail to identify even one Pittsburgh area college or university, theater, museum or other cultural or civic institution that supports their efforts.
 - Opponents incorrectly assert that WQEX's local and unique programming has been lost; in fact, the best of that programming now airs on WQED. The record also reflects that QED produces "a lot of quality with a little," winning more regional Emmys for local programming than any other Pittsburgh broadcaster, despite its fiscal constraints.
- **QED's financial distress is genuine and severe, and can be adequately addressed only by the commercial sale of a dereserved WQEX.**
 - QED remains burdened by \$9 million in debt inherited from prior management. In addition, QED faces digital conversion costs of \$8.6 million to transition WQED and WQEX, plus \$3 million in now unavoidable costs to repair and upgrade its physical plant.
 - QED's financial constraints have forced the company to reduce the size of its workforce by one-half (from 188 employees in 1993 to 99 in 2001), postpone or shelve development of numerous programming and community outreach initiatives, and delay making long overdue physical plant repairs and upgrades.
 - None of Opponents' "solutions" – including selling Pittsburgh Magazine, generating revenues in the distant future from excess digital spectrum, or declaring bankruptcy – will advance the public interest, makes business sense or will alleviate QED's financial constraints.

- **Pittsburgh has changed and can no longer support – and indeed no longer needs – two noncommercial television stations.**
 - The facts show that Pittsburgh has a shrinking population base and falling worker wages, and a massive loss of major area corporations.
 - QED depends heavily on local funding, unlike the noncommercial television licensees in many markets that Opponents focus on, which rely on support from state governments or universities.
 - A second noncommercial station is no longer needed in Pittsburgh because a wealth of educational and cultural programming is universally available on cable, DBS, the Internet, videotapes, and, soon, through DTV multicasting.
 - The Commission, as it has in other contexts, should recognize that its rules and policies must be flexible to adapt to technological and marketplace changes.
- **Granting QED's request will not be a precedent for other dereservation initiatives.**
 - QED's fiscal constraints, Congress' explicit recognition of QED's situation, unfortunate administrative delays in acting on past efforts to sell WQEX despite explicit promises of expedited action, and Pittsburgh's continuous economic decline combine to make QED's situation unique, realistically eliminating any risk that its case will serve as precedent for any future dereservation initiative.
 - Fears that the sale of WQEX will lead to a flood of dereservation requests are totally unfounded given the handful of commonly-owned community licensee duopolies that exist which are analogous to QED's situation.
- **The Commission should dereserve WQEX's frequency without opening the channel up to competing applications.**
 - Commission precedent has effectively overturned any historical "uncodified rule" – although QED would respectfully take issue with that characterization – purportedly requiring that a newly dereserved channel be made available to competing applications; if there ever was such a "rule," it is surely a vestige of a bygone era.
 - The Commission's action dereserving Channel *16 would of necessity be based on a finding that doing so, and thereby facilitating an arm's length sale of the channel, would alleviate QED's financial distress and that the public would ultimately benefit from the consequent financial strengthening of QED and from the activation of a new, local, female-owned commercial television operation in Pittsburgh. Thus, if the Commission is inclined to grant the requested relief, opening the channel to competing applications is inherently illogical.
 - QED would have no choice but to withdraw its dereservation petition if the WQEX frequency is opened to competing applications.

- **The expedited dereservation of WQEX's frequency and the sale of the station to a commercial buyer are now called for and will serve the public interest in many ways.**
 - Proceeds from the sale will retire QED's debt, establish a permanent local programming endowment, complete the mandated transition to digital technology, and pay for overdue repairs to the QED physical plant. The sale of WQEX will also introduce a female-owned independent broadcast voice, ShootingStar, to a market underserved by commercial broadcast stations.
 - It is respectfully requested that QED's request should be given expedited treatment by the Commission because it has already endured years of processing delays. Any further delay will jeopardize both QED's and ShootingStar's ability to plan for and effectuate the purchase and sale of WQEX.