



May 9, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Ex Parte Notice  
Docket 98-120

Dear Ms. Dortch:

The Association of America's Public Television Stations ("APTS") hereby notifies the Commission of the following ex parte meeting in the above-captioned proceeding. On April 15, 2002, John M. Lawson, President and CEO, APTS; Marilyn Mohrman-Gillis, Vice President, Policy and Legal Affairs, APTS; and Debbie Kilmer, Vice President, Government Relations, CPB, met with the following people: Commissioner Michael J. Copps and Jordan Goldstein. At this meeting, APTS and CPB discussed how the Commission's interpretation of the phrase "primary video" is inconsistent with the statute, Congress' intent and sound public policy. A copy of a hand-out summarizing what was said is attached to this letter.

Respectfully submitted,

/s/ Marilyn Mohrman-Gillis  
Marilyn Mohrman-Gillis  
Vice President, Policy and Legal Affairs



## **Carriage of Multicast Digital Services Position of Public Television**

The FCC's decision to require cable operators to carry only a single program stream on a public television station's digital channel is inconsistent with the statute, Congress' intent and sound public policy

I. The plain language and intent of the 1992 Cable Act is to require full and complete carriage of a local station's programming.

- The 1992 Cable Act requires that cable operators “retransmit in its entirety the primary video, accompanying audio” and program related materials. 47 U.S.C. § 535(g)(1).
- When applied in the digital context, this means a broadcaster's principal free, over-the-air service, not a single program stream. The 1992 Cable Act requires the Commission “to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of [advanced television] broadcast signals”. 47 U.S.C. § 534(b)(4)(B). The inclusion of multiple video streams in the conception of what constitutes primary video is one such change.
- The Commission should refer to the plain language of the statute, as applied in the context of digital multicasting.
- The word “primary” in the statute modifies the word “video,” and “video” is a collective noun.
- A collective noun is “[a] noun that denotes a collection of persons or things regarded as a unit.” [Webster's II New College Dictionary at 220]. E.g. “primary colors,” or “primary means.”
- “Primary video” therefore describes a collection of programming streams that may be regarded as a unit because they are all available free, over the air. “Primary video” may therefore include more than one programming stream.

II. The FCC's “primary video” interpretation will undermine public television stations' plans to provide a wide range of multicast educational services to their communities.

- Virtually every public television station plans to provide multicast digital services, particularly during the daytime hours. Each station has made a commitment to include at least one channel of formal educational services, and many are planning to provide two or more. Other multicast service plans include a 24-hour children's channel, coverage of state and local government proceedings, multicultural and foreign language services and other locally oriented services.

- Under the FCC's current rule, these services will never reach the American public.
- Cable controls the signals that reach 70% of American households
- Without guaranteed delivery of all their digital services to cable households, stations' efforts to raise funds from state, local government and local communities to support these services will be thwarted.

III. The FCC's decision is not consistent with sound public policy

- It prematurely builds in a regulatory disincentive to the development of the fullest and best use of digital technology.
- It delays the speedy transition to digital broadcast, and the return of the analog spectrum, by limiting access to multiple digital services that will encourage consumer acceptance of digital technology.

IV. The FCC's decision would lead to an irrational result.

- Carriage of the full range of digital services requires no more cable capacity than a full HDTV "primary video" program stream. Under the FCC's rule, cable systems must preserve 3 MHz of cable capacity for a full HDTV program stream; at the same time broadcasters will be using only .75 MHz capacity for a single multicast stream. As we understand it, cable operators cannot or will not dynamically reallocate the spectrum that is unused during a multicast period.
- This leads to the absurd and wasteful result that public television's educational multicast broadcast streams go uncarried while the cable capacity those streams would occupy goes unused.

V. There is no constitutional dimension to the primary video question.

- If the Commission is satisfied that carriage of a single stream of HDTV programming satisfies the constitutional requirements for must carry, the carriage of multiple streams of SDTV programming raises no additional constitutional question. Carriage of such streams fulfills the same governmental purpose and imposes no additional burden on cable.