



December 19, 2002

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

Re: Ex Parte Presentation, MM Docket No. 95-31

Dear Ms. Dortch:

On December 19, 2002, Lonna Thompson and Andrew Cotlar of APTS met with Susan Eid of Chairman Powell's office to discuss the position of public television in the above captioned proceeding. At the meeting we distributed the following document that summarizes the points raised in the discussion.

Sincerely,

/s/ Andrew D. Cotlar  
Andrew D. Cotlar  
Senior Staff Attorney

# Reexamination of the Comparative Standards for Noncommercial Educational Applicants

## Summary of Public Television Position

- Scope of the legislative exemption from auctions at 47 U.S.C. 309(j)(2)(C).
  - Quite narrow: only applies where a non-profit entity has made a showing that it intends to use the spectrum (reserved or unreserved) to
    - (a) serve the educational needs of the community,
    - (b) for the advancement of educational programs, and
    - (c) to furnish a nonprofit and noncommercial television service.  
47 C.F.R. § 73.621(a).
  - Exemption is based on the nature of the station that ultimately receives the license—not on the spectrum in which the station operates.
  
- Proposals to bar NCE entities from applying for unreserved channels, or to bar them from applying for channels for which commercial stations have applied, is contrary to congressional intent and an unwarranted departure from FCC policy
  - Thirteen full-power stations, and all NCE TV translators, operate on unreserved spectrum.
  - Congressional intent:
    - “[I]t is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications service available to all citizens of the United States.” 47 U.S.C. § 396(a)(7). See also 47 U.S.C. § 396(a)(9).
    - Congressionally established exemption from auction would make no sense if Congress intended for NCEs to be excluded from unreserved spectrum.
  - FCC policy
    - Unreserved spectrum is not “commercial spectrum.”
    - Five decades of FCC precedent allowing NCE operations on unreserved spectrum.
  
- PTV full power service. The Commission’s existing reservation policy provides adequate opportunities for public television for allotted TV/DTV channels to preserve access to spectrum it needs going forward.
  
- TV NCE translators.
  - APTS’s underlying goals are two-fold:
    - To preserve existing noncommercial educational television service (including service provided by NCE TV translator stations) both during and after the digital television transition, and

- To ensure future opportunities for NCE stations to obtain TV translator licenses so that NCE service can be provided to unserved and underserved areas.
  - Facts about NCE TV translators.
    - Approximately 700 NCE TV translators.
    - NCE TV translators have been encouraged, and funded, in part, by CPB, PTFP, and by state or local public or charitable funds.
    - CPB estimated in 1998 that over 12 million Americans are served by public television translators. Of these, over two million Americans receive no other public television service.
    - Translators also feed local rural cable systems.
  - NCE TV translator stations should be exempt from auctions.
    - Section 309(j)(2)(C) exempts all stations described in Section 397(6) from auctions.
    - Section 397(6) defines NCE broadcast stations but is silent regarding NCE TV translators.
    - Subsequent legislation makes it clear NCE TV translators are NCE broadcast stations.
      - Section 615(l)(1), which defines “qualified noncommercial educational television stations” for purposes of cable must-carry, includes NCE TV translators.
    - FCC policy makes it clear that NCE TV translators are NCE broadcast stations
      - By definition, TV translators do not originate programming.
      - Thus a TV translator that rebroadcasts the signal of a main NCE station is also providing a NCE service (even if not licensed “as such”).
      - The NCE status of a TV translator is easily discernable and can be tracked by the FCC: FCC licenses for TV translators identify the primary stations licensed as NCEs, and Form 346 requires certification of operation as NCE service to qualify for waiver of application fee.
  - NCE TV translators should be entitled to a more flexible first-come, first-served application processing.
    - To preserve existing service, the Commission should establish first-come, first-served priority processing on a rolling basis for NCE TV translators that “fill in” gaps in coverage over other translators and LPTV entrants.
    - Where NCE TV translators that seek to extend service to new areas are MX’d with other, non-NCE applicants, the Commission should conduct a simple needs-based analysis.
      - Spectrum awarded to NCE TV translator if it would provide 1<sup>st</sup> or 2<sup>nd</sup> NCE TV service to 10% of the population covered within the translators protected contour.
    - Where NCE TV translators are MX’d with other NCE applicants, the FCC should use the established comparative point system.