

**DISSENTING STATEMENT
OF COMMISSIONER MICHAEL J. COPPS**

Re: Report and Order in MM Docket No. 98-203 In the Matter of the Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

This is a difficult issue. I've talked to many people about it, pro and con; I've read the pro-public TV press release that's going out today; I've tried to come at it from every perspective I can. But I just cannot convince myself that this is what we ought to be doing.

I am impugning no one's commitment to public television today. I believe that each of the Commissioners wants public television to succeed. We differ on strategy.

For my part, I am deeply troubled by this proposal. I think it is in some respects contrary to law. Additionally, it has the potential to warp the nation's image of public television and to endanger the identity and even the viability of a national treasure. Public television is the gem of broadcast television. It has a rich record of program success, a clearly identifiable niche in our national life, and unmatched credibility thanks to the tireless work of thousands of dedicated Americans.

I begin with the premise that Congress did not establish public television to be the same as commercial television, nor even to be a little different than commercial television. Public broadcasting was to be what commercial broadcasting was not. Commercial television is about appealing to and entertaining the broadest possible market. Public television is about serving the better angels of our nature. It is about sustaining the virtues of education, civic involvement and American democracy. It in no way denigrates commercial television to say that public television is supposed to be, and is, different. When it begins to lose this different identity, it begins to lose its soul.

In establishing the Corporation for Public Broadcasting, and public television as we know it, Congress reported that public broadcasters "will not be in economic competition with commercial broadcasters. [They] will be filling the gaps that commercial broadcasters do not fill. As Dr. Frank Stanton, president of CBS, observed: They will do special things that we don't do in quantity at the present time...they will appeal at certain times of the day to very small parts of the total audience. Because we are organized as a mass medium, because we have to serve the greatest number of people in order to do our job, they will be able to do special interest kinds of programming that we can't do."¹

Here at the FCC, we are talking quite a lot about convergence – convergence of technologies, convergence of capital, convergence of regulatory schemes. We need to deal with convergence. But there may be some convergences that are neither inevitable

¹ P.L. 90-129, Public Broadcasting Act Of 1967 House Report No. 90-572 Aug. 21, 1967

nor good. The sort of convergence we *don't* want to see is convergence of our public and commercial television services until they become indistinguishable one from another.

It's advertising that has me upset. The sale of advertising puts on the block one of the very things that makes public television special and different from commercial broadcasting. I believe that permitting advertisements on the digital spectrum of public television is contrary to statute, contrary to the will of Congress and contrary to the mission of public television.

Section 399B of the Communications Act prohibits public television stations from using any of their facilities for the broadcast of advertisements.² This section defines "advertisement" for the purposes of the section as "material which is broadcast or otherwise transmitted in exchange for any remuneration." That the Commission today may determine that this prohibition does not apply to advertisements carried on the non-broadcast portion of the bitstream – the spectrum used for subscription or data services – seems to me to contravene the clear language of the statute. And it is certainly inconsistent with the heritage, and indeed the integrity, of public television.

I agree with the apparent majority in its conclusion that non-commercial educational television stations should devote the majority of their capacity to the provision of non-commercial educational programming. That is consistent with the mission of public broadcasting and with the goals of Congress in establishing and funding the Corporation for Public Broadcasting.

I am mindful of the argument that public television needs these dollars in order to transition to digital. I support giving public television the opportunity to avail itself of the tremendous potential of digital technology, to give public broadcasters the opportunity to use their digital spectrum flexibly, for creative, innovative and even remunerative services. Some of the proposed uses I have been told about are quite impressive. Some stations intend to allow college students in rural areas to enroll in courses and subscribe to televised lectures on their local public television station. Others intend to bring up-to-the minute classroom materials to children through the transmission of data over public television stations' bitstream. These are creative and remunerative uses of public television's capacity – and they further the mission of public television to serve the public interest. I want these stations to be able to collect subscription or lease fees for these services. What we must avoid, however, is turning this national treasure into just another commercial broadcast service.

Because public television stations *are* different, they should be able to use every penny they collect for the development of new and innovative programming. I would

² 47 U.S.C. § 399b. ((b)(2) "No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement." (a) "For the purposes of this section the term "advertisement" is defined as a message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration and which is intended (1) to promote any service, facility or product offered by any person who is engaged in such offering for profit; (2) to express the views of any person with respect to any matter of public importance or interest; or (3) to support or oppose any candidate for political office.")

hope that, consistent with the law, public television could be exempted from the five per cent federal government fee for such services.

But it is also true that we have not heard from many public broadcasters about how they plan to use their digital spectrum. And I have even heard one or two schemes that I think would be counter-productive. So I am fearful that once we start down the road of commercialization, the Law of Unintended Consequences will kick in and ere long we will be dealing with revenue-raising schemes that will detract from and endanger the integrity of public television.

One of these unintended consequences could be the endangerment of current public television funding. If people see public television making money through advertising, what happens to their receptivity to appeals for contributions from the stations? What happens to foundation support and corporate contributions? Do the people's elected representatives begin to look differently at the levels of support they provide? And what about our commercial broadcast friends? Won't they take a jaundiced, although understandable, view against multiple revenue streams flowing to public television? Should we expect them to sit idly by while this happens?

I don't know the answers to these questions. I do know that it would be a shame if today's action undermines support for this precious national resource.

I am also troubled by the lack of consensus from the public television community. Some are full speed ahead. Some are clearly worried. Some, I think, sense danger but are reluctant to express it. I hope that there was, and will continue to be, at least a sustained dialogue among the friends of public television on this important issue.

While there are parts of the Report and Order that I support, I don't see this as the time for a mixed message. When the vote is called, I am going to dissent.