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Report to Congressional Requesters

April 2004

TELECOMMUNICATIONS

Issues Related to Federal Funding for Public Television by the Corporation for Public Broadcasting

GAO-04-284

April 2004

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Highlights

Highlights of GAO-04-284, a report to congressional requesters

TELECOMMUNICATIONS

Issues Related to Federal Funding for Public Television by the Corporation for Public Broadcasting

Why GAO Did This Study

For fiscal year 2002 (the most recent data), the Corporation for Public Broadcasting provided about 16 percent of public television's revenues of $1.63 billion. GAO agreed to review the statutory allocations for federal funding of public television, the Corporation's distribution of funds through its Community Service Grant and Television Future Fund programs, its distribution of funds for the Public Broadcasting Service's National Program Service and for local programming, and its grant programs for assisting public television's transition to digital technologies and services.

What GAO Recommends

We recommend that the Corporation request specific statutory authority before making further Television Future Fund awards or expenditures if it intends to continue using funds that were designated for distribution among licensees. We also recommend that the Corporation broaden the scope of its digital grant programs to include support for digital production equipment and digital content. In response, the Corporation generally agreed with our recommendation on digital grants but disagreed with our recommendation on the Future Fund. We added a matter for congressional consideration that if the Congress supports using funds designated for distribution among licensees to finance the Future Fund, it should provide the necessary authority to do so.

www.gao.gov/cgi-bin/getrpt?GAO-04-284.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

What GAO Found

By statute, 75 percent of the Corporation's annual federal funding for public television is to be distributed among licensees of public television stations, and 25 percent is to be available to the Corporation for the support of national public television programming. In our survey of all 176 licensees, of which 85 percent responded, more than three-fifths favored maintaining the current allocations. Of those favoring a change, most proposed an increase in the allocation for distribution among licensees.

The Corporation uses Community Service Grants as the primary means of distributing funding to licensees. Most licensees were generally satisfied with the recent consultation process for reviewing the eligibility criteria for these grants. Another program, the Television Future Fund, awarded grants to projects designed to reduce licensees' operational costs and enhance revenues. Only about 40 percent of the licensees indicated that these projects had resulted in practical methods to help their stations, and only about 30 percent agreed with the Corporation's approach of using funds designated for distribution among licensees to partly support these projects. In our legal view, the use of such funds for this purpose is not consistent with the statutory authority under which the Corporation operates.

The Corporation provides an annual grant to the Public Broadcasting Service to help fund a package of children's and prime-time programming that make up the National Program Service. Most licensees favored continuation of the Corporation's funding, noting that this national programming helps them meet their educational and cultural missions and build community support for their stations. Licensees also indicated that local programming is important in serving their communities. However, most responded that they do not produce enough local programs to meet their communities' needs, and many cited a lack of funds as the reason.

About 85 percent of the licensees responding to our survey indicated that the congressionally mandated transition from analog to digital broadcasting will improve their ability to provide local services to their communities. The Corporation has received appropriations to help support this transition since fiscal year 2001. In consultation with licensees, the Corporation has used these funds to provide licensees with grants for acquiring digital transmission equipment. Some grantees, however, did not receive their awards in time to meet FCC deadlines for the construction of digital transmission facilities. In addition, the Corporation received only a few grant applications during the latter part of 2003. Our survey indicates that most licensees' priorities now involve other aspects of the transition, some of which (including digital production equipment and development of digital content) were not included in the scope of the grant programs. The Corporation is also seeking funds for digitally based infrastructure improvements for distributing public television programming to stations and is working with public television stakeholders to develop a strategic plan that includes the creation of digital content.

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Abbreviations

CEO	chief executive officer
CPB	Corporation for Public Broadcasting
CSG	Community Service Grant
DDF	Digital Distribution Fund
DUSF	Digital Universal Service Fund
FCC	Federal Communications Commission
NTIA	National Telecommunications and Information Administration
PBS	Public Broadcasting Service
RFP	Request for Proposal

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United States General Accounting Office
Washington, D.C. 20548

April 30, 2004

The Honorable Joe Barton
Chairman, Committee on Energy and Commerce
House of Representatives

The Honorable Fred Upton
Chairman, Subcommittee on Telecommunications
and the Internet
Committee on Energy and Commerce
House of Representatives

The Honorable Ralph Regula
Chairman, Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable W.J. "Billy" Tauzin
House of Representatives

The Honorable Richard Burr
House of Representatives

Created to harness the technology of broadcast television for the delivery of educational, informational, and cultural programming, noncommercial educational television—generally known as "public television"[1]—has evolved over the past half-century into a complex and uniquely structured broadcasting system. Since the first station went on the air in 1953 until today, the nation's 356 public television stations were built and have continued to operate as nonprofit, community-based organizations, offering a mix of broadcast programming and other outreach activities to serve their local communities. While public television stations themselves produce programming for local broadcast, programming is also created for national audiences and distributed through national station-based membership organizations, such as the Public Broadcasting Service (PBS),

[1]As used in this report, "public television" refers to noncommercial educational television. Specifically, this report focuses on entities that are licensed by the Federal Communications Commission to operate noncommercial educational television stations and receive grants from the Corporation for Public Broadcasting. This report does not address issues related to federal funding by the Corporation for public radio.

distributor of noted series such as *Sesame Street*, *Masterpiece Theatre*, and *Great Performances*. The funding of public television, also unique in form, has historically come from a multitude of sources, including foundations, corporations, colleges and universities, state and local governments, and individual viewers. For the past 35 years, the federal government has also provided funding to advance the mission of public broadcasting, principally through the Corporation for Public Broadcasting.[2] The Corporation was established in 1967 by an act of Congress as a nongovernmental, nonprofit corporation to facilitate—with federal funds—the availability and distribution of high quality educational and cultural programming to public broadcast stations. Since its founding, the Corporation has received an annual federal appropriation from the Congress and, more recently, additional funds have been made available to assist in public television's transition from analog to digital broadcast technology.

Because the House Energy and Commerce Committee could consider reauthorizing the Corporation for Public Broadcasting as early as this year, you requested that we review various programs and funding mechanisms utilized by the Corporation to support public television. Specifically, you asked us to review the Corporation's activities and obtain the views of public television station officials regarding: (1) the statutory allocations for federal funding of public television; (2) the distribution of funds by the Corporation through its Community Service Grant and Television Future Fund programs, including a legal analysis of whether the funding of the Television Future Fund program is consistent with the Corporation's underlying statutory authority; (3) the distribution of funds by the Corporation for PBS's National Program Service and for local programming; and (4) Corporation funding to assist public television stations in their transition to digital technologies and services. You also asked us to review the statutory and regulatory requirements, system policies and guidance, and licensees' views on underwriting acknowledgments (see app. V).

To respond to these objectives, we reviewed provisions of the Communications Act of 1934, as amended (Communications Act), and the processes of the Corporation for Public Broadcasting to allocate federal funding for public television and distribute grant funds to public television stations and for public television programming. We also interviewed

[2]The Corporation for Public Broadcasting is referred to in this report either by its full name or as "the Corporation."

officials of the Corporation and PBS, as well as the Association of Public Television Stations—a nonprofit organization that represents public television stations in legislative and policy matters and conducts planning and research activities on behalf its members. For the second objective, the distribution of funds among licensees, we reviewed the legal opinions of the Corporation's outside counsels as part of our legal analysis to determine whether the Corporation's approach to funding the Television Future Fund is consistent with the governing statute. For the third objective, national programming, we reviewed documents and interviewed officials of the Independent Television Service, a nonprofit corporation that receives federal funding support from the Corporation for distribution to independent producers of public television programming,[3] and from two other distributors of national public television programming—American Public Television and the National Educational Telecommunications Association. For the fourth objective, the digital transition, we interviewed officials of the National Telecommunications and Information Administration (NTIA) in the Department of Commerce, which makes grants to public television licensees for digital equipment. Officials of American Public Television, the National Educational Telecommunications Association, and the Federal Communications Commission (FCC) were also interviewed on issues related to underwriting acknowledgements on public television.

To obtain views on each of these objectives from the officials who operate the nation's 356 public television stations, we conducted a Web-based survey of all 176 entities that are licensed by the FCC to operate these stations and receive grants from the Corporation. We received 149 completed surveys—an overall response rate of 85 percent. (The number of responses to individual questions may be lower depending on the number of licensees who were eligible or chose to answer each question.) The survey consisted of objective questions and the option for licensees to add narrative comments in each section of the survey. The survey questions and aggregate responses appear in appendix VI. We also conducted interviews with officials of 16 public television station licensees to obtain general perspectives on the issues to be reviewed, and we conducted pretests with seven of these licensees to assist us in the development of the survey instrument.

[3]Independent producers of public television programming are generally not affiliated with a studio, a television station, or a major production company.

Our review was performed from April 2003 through February 2004 in accordance with generally accepted government auditing standards. For a more detailed discussion of our scope and methodology, see appendix I.

Results in Brief

The Corporation for Public Broadcasting allocates federal funding for public television under provisions specified in the Communications Act. Of the federal appropriation made annually to the Corporation, 75 percent of the funds allocated for public television are to be available for distribution among licensees of public television stations, and 25 percent are to be available for national public television programming. Based on our survey of licensees, more than three-fifths of the licensees indicated that these statutory allocations should stay the same, compared to about one-third who favored a change. Among the licensees favoring retention of the existing allocations, some stated that the current allocations have served the system well for many years and have provided the appropriate level of federal funding for both licensees and national programming. Of the licensees who favored a change, most proposed an increase in the allocation for licensees and a decrease for national programming. However, a couple of respondents expressed a preference for the reverse—a decrease in the allocation for licensees and an increase in the allocation for national programming.

The principal mechanism by which the Corporation provides federal funding among licensees of public television stations is the Community Service Grant program. In accordance with the statute, the eligibility criteria established by the Corporation for distributing Community Service Grants are periodically reviewed by the Corporation in consultation with licensees. Based on our survey, over 75 percent of responding licensees expressed overall satisfaction with the most recent consultation process. The Corporation also administers the Television Future Fund, which in past years offered grant support to projects to help licensees achieve operational cost reductions and revenue enhancements. The manner in which the Corporation administered this program raised concerns among a substantial percentage of licensees. Based on our survey, only about 40 percent of the respondents indicated that Television Future Fund projects had provided them with practical methods for reducing costs and/or enhancing revenues. Additionally, only 30 percent of the licensees agreed with the Corporation's approach of funding the program, in part, with funds that the Congress has made available for distribution to licensees of public television stations. Although the Corporation, as informed by outside counsel, contends that it has the authority to use these monies for the

Television Future Fund, we disagree. Based on our own legal review of this issue, we conclude that the Corporation's funding and distribution of grants under the Television Future Fund program is not in accord with the statutory authority under which the Corporation operates. Fundamentally, in the context of the entire statutory scheme, funds that the Congress has designated for distribution to public television licensees are not available for project-specific grants intended to have a systemwide benefit. The Corporation recently revised the Television Future Fund program to focus on a number of improvement initiatives to be funded from the Television Future Fund's account balance, which stood at $18.3 million on December 31, 2003. However, this account still includes about $10 million that the Congress made available for distribution to the licensees of public television stations, which the Corporation intends to use to fund additional Television Future Fund projects. Appendix III contains our legal opinion.

Provisions of the Communications Act also govern the Corporation's support for national public television programming. As a result of a statutory provision, the Corporation developed and implemented a plan that includes the awarding of an annual grant to PBS for a package of children's and prime-time programs broadcast by most public television stations, known as the "National Program Service." Nearly three-fourths of licensees responding to our survey support the Corporation's continued annual grant support for the National Program Service and believe that this programming helps them meet their mission and build underwriting and membership support. However, most licensees also indicated that the amount of local programming they currently produce is not sufficient to meet their local communities' needs, and about half favored the enactment of explicit statutory authority to enable the Corporation to provide federal grants for the production of local, as well as national, programming.

The Congress has mandated that television broadcasters transition from analog to digital transmission technology. The digital transition has the potential to expand the capabilities of public television and offer licensees' communities an array of new digital services that support educational, governmental, and cultural activities. In our survey of licensees, over 85 percent of the respondents indicated that successful completion of the digital transition will improve their ability to provide services to their local communities. However, licensees face funding challenges as they move to digital technology, with the total cost of the transition for public television estimated at $1.7 billion. For fiscal years 2001 through 2003, the Corporation was provided with appropriations totaling $93.4 million to assist public television licensees with the digital transition. However, the

Corporation was not always timely in getting grant support to stations to help them meet FCC digital construction deadlines, and about $24 million remained unobligated at the end of calendar year 2003. Furthermore, we found that by then most licensees' priorities for federal funding involved aspects of the transition not covered by the Corporation's current digital grant program, such as digital production equipment and digital content. Regarding systemwide digital transition issues, the Corporation is seeking additional federal funds for modernizing public television's program distribution infrastructure.

This report makes recommendations to the Corporation to (1) request specific statutory authority before making further Television Future Fund awards or expending any funds in the Television Future Fund account, if it intends to continue using funds that were designated for distribution among licensees, and (2) broaden the scope of its digital transition funding to include support for digital production equipment and digital content.

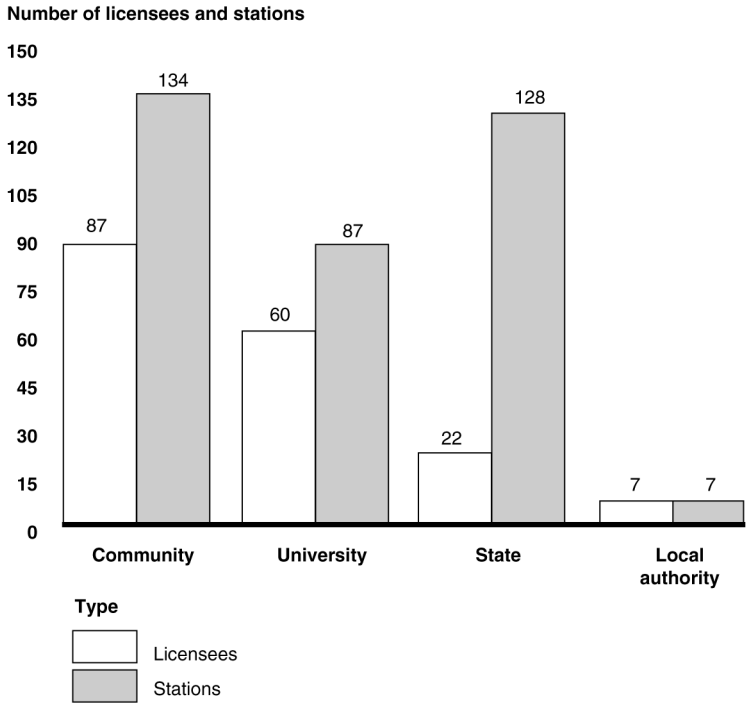
We provided a draft of this report to the Corporation, to PBS, and to FCC for their comments. The Corporation responded that it generally agreed with our recommendation on the digital transition funding. However, the Corporation disagreed with our findings and recommendation on the Television Future Fund, maintaining that it has acted consistently with the provisions of the Communications Act in establishing and administering the fund. Nevertheless, it is our view that the Corporation does not have the authority to fund the Future Fund program, in part, with monies that the Congress has designated for distribution among public television licensees. Accordingly, we have added a Matter for Congressional Consideration stating that the Congress may wish to provide the Corporation with the authority to use these funds to finance the Television Future Fund if the Congress supports the use of such funds for this purpose. PBS provided additional information and perspectives on issues raised in our report and highlighted planned actions to improve input from member stations on PBS's programming decisions. FCC provided comments on technical points that were incorporated where appropriate.

Background

Public broadcasting dates back to the 1920s, when the first radio stations devoted to instructional and cultural programming went on the air. With the advent of television broadcasting in the 1940s and a 1952 decision by the FCC to reserve channel allocations for noncommercial educational television, the first public television station—KUHT in Houston, Texas—began operations in 1953. Today, 356 public television stations are on the

air, each operating under the terms of a license granted by the FCC. These stations are owned and operated by 176 entities that, under FCC rules, must either be: (1) a nonprofit educational institution, such as a university or a local school board (shown separately below as "university" and "local authority"); (2) a governmental entity other than a school, such as a state agency; or (3) another type of nonprofit educational entity, such as a "community" organization. Among these 176 licensees, some operate a single station, such as the Detroit Educational Television Foundation, which operates WTVS public television; others operate multiple stations, such as the Kentucky Authority for Educational Television, which has 16 stations on the air throughout the state. Figure 1 provides a breakdown of the number of licensees and stations they operate (by type of licensee).

Figure 1: The Number of Noncommercial Educational Licensees and Stations by Type, as of February 2004



Source: The Corporation for Public Broadcasting (data); GAO (analysis).

Note: In May 2003, there were 89 community licensees operating 138 stations, 59 university licensees operating 85 stations, 21 state licensees operating 126 stations, and 7 local authority licensees operating 7 stations. Neither the total number of licensees (176) nor the total number of stations (356) had changed at the conclusion of our review in February 2004.

Licensees also differ by the size of their budgets, ranging from the smallest licensees, with total revenues below $3.5 million, to the largest, with total revenues exceeding $20 million.[4] A few of the largest licensees are also among the most prominent producers of public television programming, such as WGBH in Boston, producer of *Masterpiece Theatre*, *Arthur*, and other notable series. Other licensees also produce programming for national distribution, such as KUHT in Houston, producer of *The American Woodshop* and the children's program *Mary Lou's Flip Flop Shop*. Programs intended for local and regional audiences are produced by many licensees, such as KDIN public television in Johnston, Iowa, producer of *Iowa Press* and *Living in Iowa*. Finally, public television licensees provide numerous services to their communities, such as programming-related outreach, formal educational services, literacy services, Amber Alerts[5] for the abduction of children, and emergency weather information.

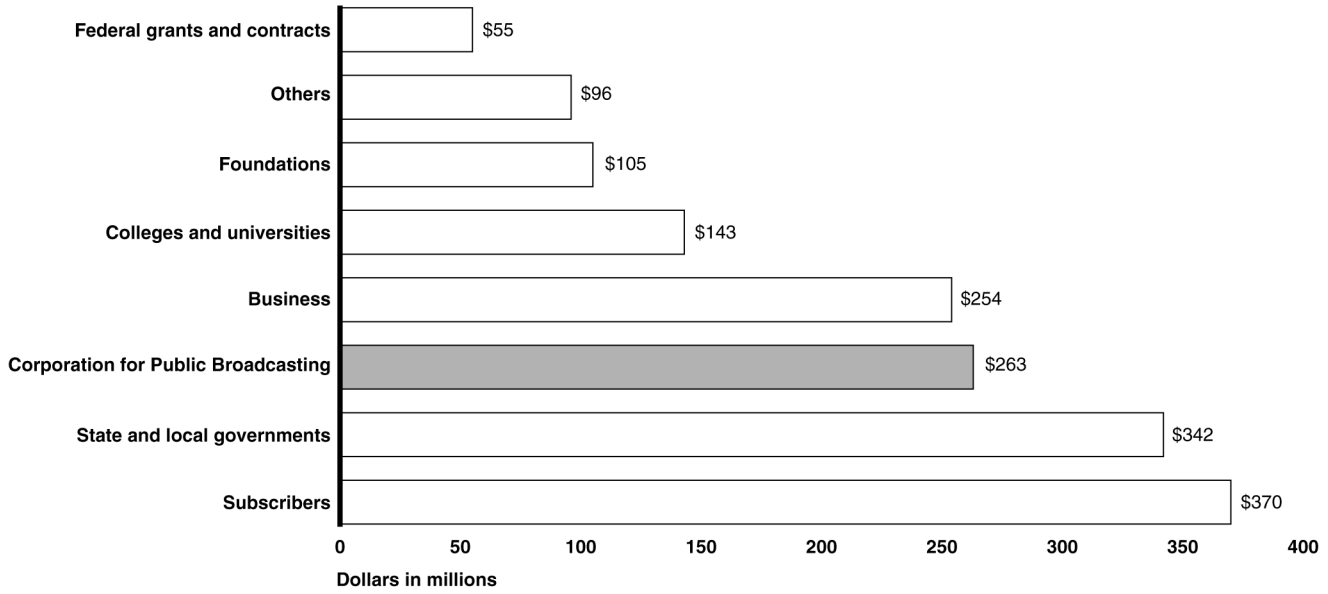
Public television is characterized as a decentralized system, with all licensees owned and controlled at the local level. Stations exercise substantial discretion over programming decisions. This structure is due, in part, to the institutional and financial factors that motivated the founding of each individual public television station. Unlike commercial television stations, which typically involve business-related investment decisions, establishing a public television station entails a local-level commitment to the education and cultural enrichment of viewers. Further, whereas advertising revenues finance commercial television, public television has always been financed by both public and private sources. For fiscal year 2002 (the most recent data available), public television generated $1.63 billion in revenues, which came from a variety of sources: federal, state, and local government; private foundations; corporations; and subscribers

[4]According to Corporation officials, the Corporation classifies licensees' size on the basis of total revenues—large licensees have total revenues of $20 million or more annually, medium-large licensees have total revenues between $9 million and $19.9 million, medium licensees have total revenues between $3.5 million and $8.9 million, and small licensees have total revenues below $3.5 million.

[5]An Amber Alert is a broadcast announcement that interrupts regular programming to relay information to the public about an abducted child. Amber Alerts are part of the Emergency Alert System, which is also used to notify the public about severe weather and other national emergencies.

(individual memberships) (see fig. 2). The Corporation's funding of $263 million provided about 16 percent of this total.[6]

Figure 2: Sources of Public Television Revenues, Fiscal Year 2002 ($1.63 billion)



Source: The Corporation for Public Broadcasting (data); GAO (analysis).

Note: These fiscal year 2002 data, the most recent data available, are derived from public television licensees' audited financial reports provided to the Corporation.

The Educational Television Facilities Act of 1962 authorized the first form of federal funding support for public television, establishing a program in the former Department of Health, Education, and Welfare to provide grants to public broadcasting licensees for equipment and facilities. Soon thereafter, the Carnegie Commission on Educational Television, a national commission formed in 1965 with the sponsorship of the Carnegie Corporation, studied educational television's financial needs. Based on recommendations in the Carnegie Commission's 1967 report, President Lyndon Johnson proposed and the Congress enacted the Public Broadcasting Act of 1967, amending the Communications Act of 1934 to

[6]The $263 million in public television revenues attributed above to the Corporation does not include funds provided to public television licensees from the $25 million in federal appropriations made to the Corporation for public television's digital transition.

reauthorize funding for facilities and equipment grants and, among other provisions, to authorize funding for public television programming through a new entity—the Corporation for Public Broadcasting.[7] The Corporation is organized under the act as a nongovernmental, nonprofit corporation to facilitate the growth and development of public television and radio broadcasting and the use of public television and radio broadcasting for instructional, educational, and cultural programming.[8]

In passing the 1967 act, the 90th Congress did not intend that annual authorizations and appropriations for the Corporation would serve as a permanent process for funding support of public broadcasting.[9] Rather, they were seen as temporary measures pending the development and adoption of a long-term financing plan for public broadcasting.[10] Although various financing proposals for public broadcasting have since been suggested,[11] the Corporation continues to receive nearly all of its budget in the form of an annual federal appropriation. Figure 3 illustrates the history

[7]Public Broadcasting Act of 1967, Pub. L. 90-129, 81 Stat. 365, codified as amended at 47 U.S.C. §396.

[8]The Corporation was established as a nongovernmental entity in part to safeguard the distribution of federal funding from government control. According to the Corporation, it began receiving an "advance" appropriation—provided 2 years in advance of a fiscal year—in the mid-1970s for the same reason.

[9]The legislative history of the Public Broadcasting Act of 1967 indicates that the question of permanent financing for the Corporation would be reserved for consideration at a later time. S. Rept. No. 90-222, reprinted in 1967 U.S.C.C.A.N. 1772, 1779; H. Rept. No 90-572 reprinted in 1967 U.S.C.C.A.N. 1779, 1810-1812. This legislative history was further explained in 1975.

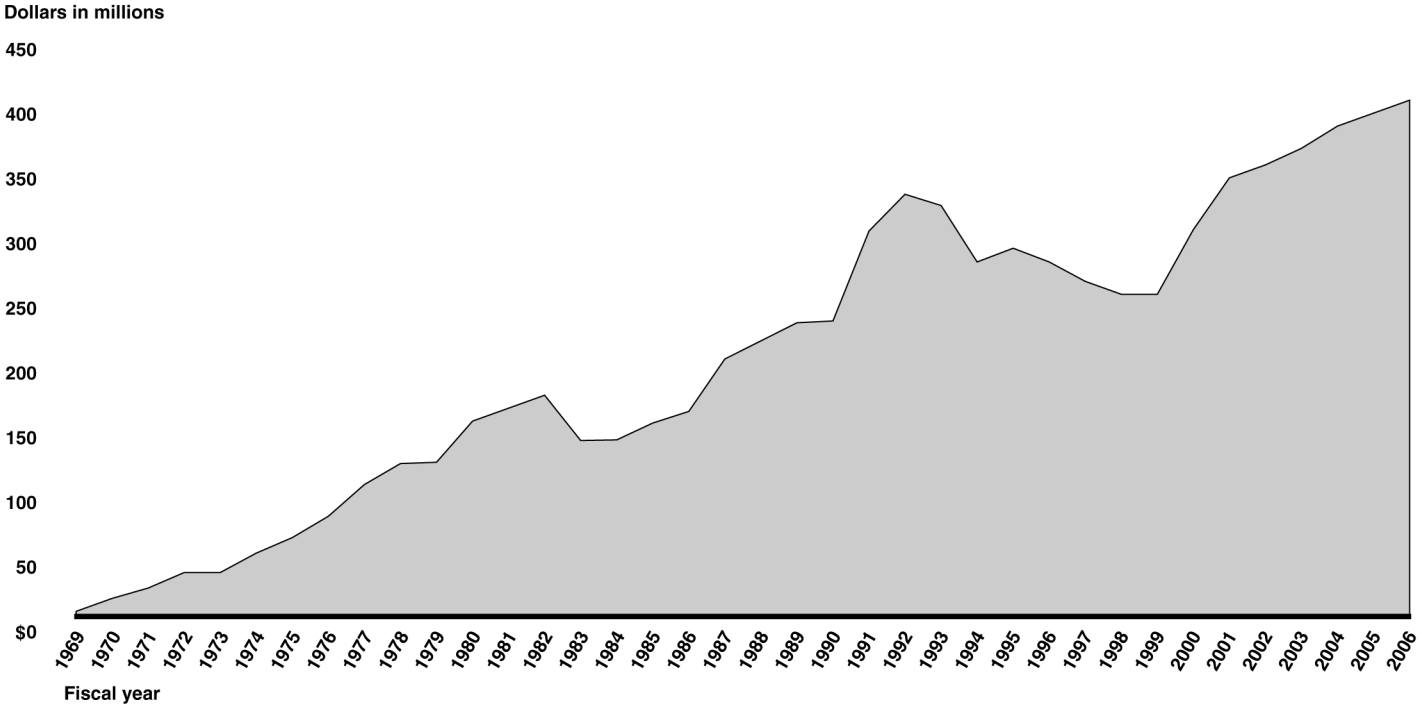
"The Congress did not intend for the Public Broadcasting Act of 1967 to impose annual authorizations and appropriations on the Corporation for Public Broadcasting as a permanent process. Rather, this was to be an interim procedure pending submission of a long-term financing plan by the Administrator to the Congress." S. Rept. No. 94-477 at 5, reprinted in 1975 U.S.C.C.A.N. 2206, 2210.

[10]The intention to develop a long-term plan for financing public broadcasting was announced by President Johnson upon signing the 1967 act. However, a plan was not produced prior to the end of his term of office in 1969.

[11]For example, a second commission formed by the Carnegie Corporation in 1977, known as Carnegie II, proposed that half of the financing for public broadcasting should come from the federal government, derived from general tax revenues and a fee for the use of the radiofrequency spectrum.

of annual federal appropriations made to the Corporation in current dollars.

Figure 3: Federal Appropriations for the Corporation for Public Broadcasting, Fiscal Years 1969-2006



Source: The Corporation for Public Broadcasting (data); GAO (analysis).

Note: Although established in November 1967 by enactment of the Public Broadcasting Act, with an authorization of $9 million to enable the Corporation to come into being, the Corporation was not incorporated until March 1968. The first federal appropriation ($5 million) made to the Corporation was enacted in October 1968. Figure 3 includes advance appropriations for fiscal years 2005 and 2006.

The Corporation is governed by a board of directors that is appointed by the President and confirmed by the Senate.[12] The Corporation's most recent mission statement, adopted by the board in July 1999, states that the Corporation is to facilitate the development of, and ensure universal access to, noncommercial high-quality programming and telecommunications

[12]By statute, the Corporation's board of directors is to consist of nine members. One director position was unfilled as of February 2004.

services in conjunction with licensees.[13] Reflecting the local and national characteristics of public television, the Corporation's current goals include: (1) strengthening the value and viability of local stations as essential community institutions by improving their operational effectiveness and fiscal stability and increasing their capacity to invest in and create services and content to advance their mission and (2) developing economically sustainable, high-quality noncommercial programming that inspires, enlightens, and entertains.

The most important work the Corporation has underway, according to a July 2003 memorandum to the board, is a systemwide planning study that addresses three facets of public television.[14] First, to improve the financial sustainability of public television, the Corporation has determined that improvements in public television's net revenues can occur by attracting increased financial support for stations from major donors and by developing new practices to improve the efficiency of stations' operations. Second, through a strategic assessment of the local services provided by public broadcasting stations, the Corporation seeks to "help stations chart the course ahead" and aid in efforts to improve the financial sustainability of public television, provide direction for efficiencies in station operations, and inform decisions on national programming. Systemwide efforts related to national programming, the third area of focus, will address the "wide disconnect between audience research, national commissioning and scheduling decisions, and local service strategy." According to the

[13]The mission statement also says that the Corporation has particular responsibility to encourage the development of programming that involves creative risks, and programming that addresses the needs of unserved and underserved audiences, particularly children and minorities.

[14]July 22, 2003, memorandum from Robert Coonrod, President and Chief Executive Officer of the Corporation, to the board of directors. The fourth focus of the systemwide planning effort is challenges affecting public radio.

Corporation, this will involve strategic analysis and reengineering of national programming.[15]

Public television also faces the challenge of transitioning its broadcast operations from analog to digital technology. Unlike analog broadcasting, which converts moving pictures and sound into a "wave form" electrical signal, digital technology converts pictures and sound into a stream of digits consisting of zeros and ones that are transmitted over the air. Digital technology has the potential to significantly enhance the capabilities and services of all television broadcasters and is viewed as critical to the broadcast television industry's ability to enhance its provision of communications services. The Telecommunications Act of 1996 established the framework for licensing digital television spectrum to existing broadcasters. Under FCC rules implementing this framework, public television licensees are required to

- complete the construction of digital station facilities by May 1, 2003;
- broadcast in digital a minimum of 50 percent of the programming that they broadcast in analog—known as "simulcasting"—as of November 1, 2003,[16] simulcast 75 percent by April 2004, and simulcast 100 percent by April 2005; and

[15]The systemwide planning effort was informed by the Corporation's 2002 to 2003 study, entitled "Developing a Sustainable Economic Model for Public Television," and facilitated under contract with McKinsey & Company. The study addressed the severity and length of financial pressures on the system, the most promising performance improvement opportunities available to the system, and implementation of initiatives to effect lasting change. As part of the key challenge identified by the study—that the core broadcasting service of public television is under "real threat" by economic pressures at both the local and national levels—the study found a decline, in real terms, in station membership revenues since 1990 and the likely continued decline in membership support due, in part, to declining viewership.

[16]FCC granted a 6-month waiver of the simulcast requirement for noncommercial educational stations, extending the date for achieving 50 percent simulcasting from May 1, 2003, to November 1, 2003. However, such stations were required to air a digital signal for an amount of time equal to at least 50 percent of the time they aired an analog signal as of May 1, 2003, increasing to 75 percent as of April 1, 2004, and 100 percent by April 1, 2005.

- by December 31, 2006, return their analog (or digital) spectrum to FCC for reallocation.[17]

In response to the difficulties faced by public television licensees in financing expenses related to the digital transition, the regulatory deadline for the construction of digital public television stations was set for May 1, 2003, a year later than the deadline for commercial stations. Further, eligible licensees were allowed to request extensions of time to meet the construction requirement if they had good cause for failing to meet the requirement.

A Majority of Licensees Favor the Current Statutory Allocations for Public Television Funding through the Corporation

Provisions of the Communications Act, as amended, specify the allocation of federal funds appropriated to the Corporation for Public Broadcasting. Of the federal funds provided for public television, the Corporation is directed to distribute 75 percent of such funds among licensees of public television stations and 25 percent for support of national public television programming. Based on responses to our survey, more than three-fifths of licensees indicated that these statutory allocations for funding support of public television should stay the same, compared to about one-third that favored a change.

The Communications Act Specifies the Allocation of Federal Funds for Public Television Licensees and National Programming

Federal funds appropriated to the Corporation must be allocated in accordance with provisions of the Communications Act, as amended.[18] As shown in figure 4, the act directs the Corporation to allocate 6 percent of its federal appropriation for various expenses incurred by public

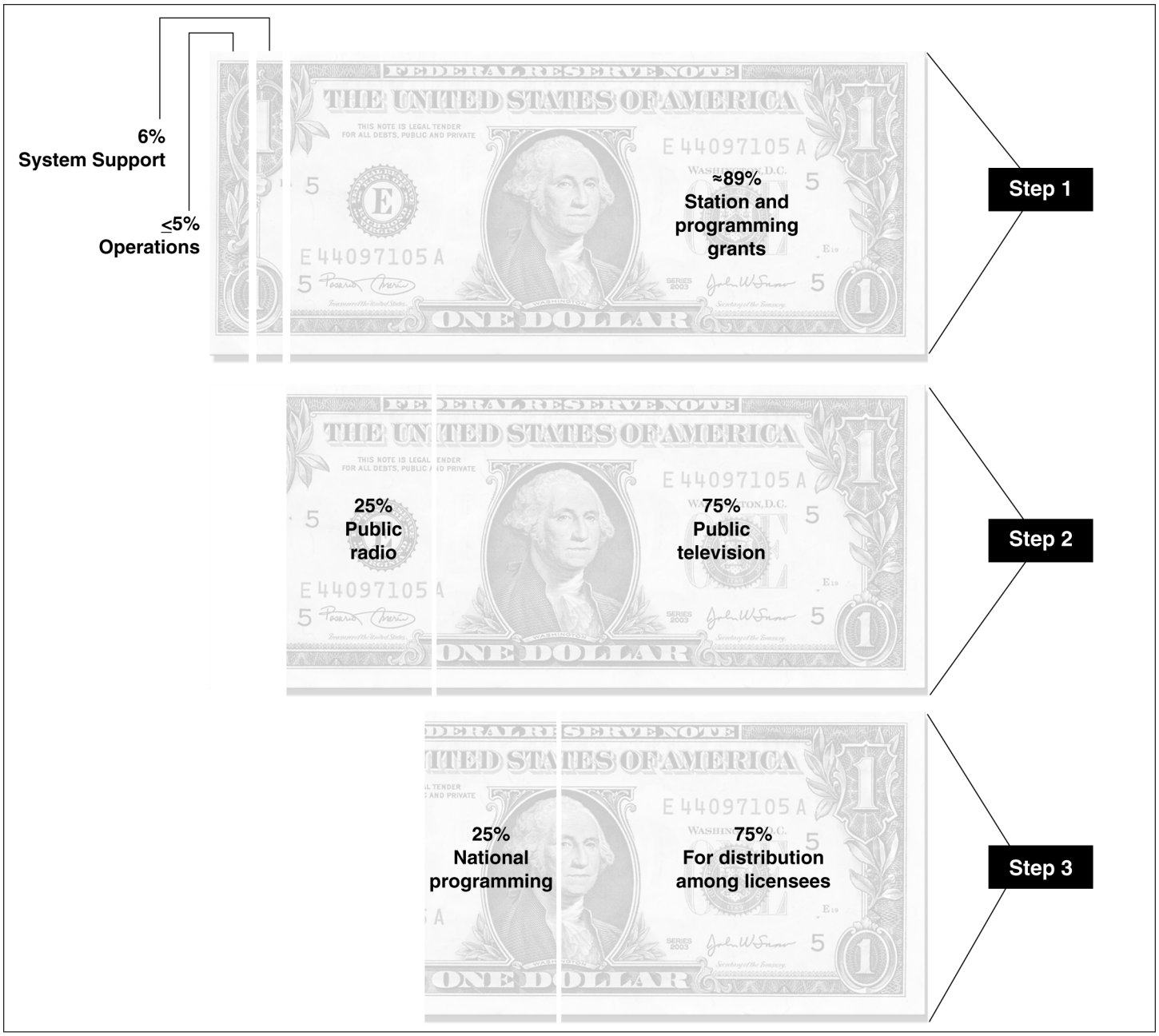
[17]When the Congress passed the Balanced Budget Act of 1997, it adopted the target transition date of December 31, 2006, for the digital transition but specified that broadcasters could keep their analog service beyond this date on a market-by-market basis under certain conditions. *See*, 47 U.S.C. §309(j)(14). To help broadcasters meet the 2006 transition date, FCC developed a schedule for the introduction of digital television. *See* U.S. General Accounting Office, *Telecommunications: Many Broadcasters Will Not Meet May 2002 Digital Transition Deadline*, GAO-02-466 (Washington, D.C.: Apr. 23, 2002); and U.S. General Accounting Office, *Telecommunications: Additional Federal Efforts Could Help Advance Digital Television Transition*, GAO-03-7 (Washington, D.C.: Nov. 8, 2002).

[18]47 U.S.C. §396(k). As originally enacted, these amendments to the Communications Act did not specify allocations for the distribution of federal funding among licensees and for national public television programming.

broadcasting, an account the Corporation identifies as "System Support;"[19] not more than 5 percent is to be allocated for the Corporation's administrative expenses; and of the remaining funds (about 89 percent), the act specifies that 75 percent is to be allocated for public television and 25 percent for public radio. Of the funds allocated for public television, 75 percent is to be made available for distribution among licensees of stations and 25 percent for national public television programming.

[19]System Support is largely used to pay royalty fees, interconnection operating costs, and other expenses and, if available funding levels permit, for projects and activities that will enhance public broadcasting. 47 U.S.C. §396(k)(3)(A)(i)(II).

Figure 4: Federal Funding Allocations by the Corporation, as Required by the Communications Act



Source: GAO analysis of Communications Act provisions and information provided by the Corporation for Public Broadcasting.

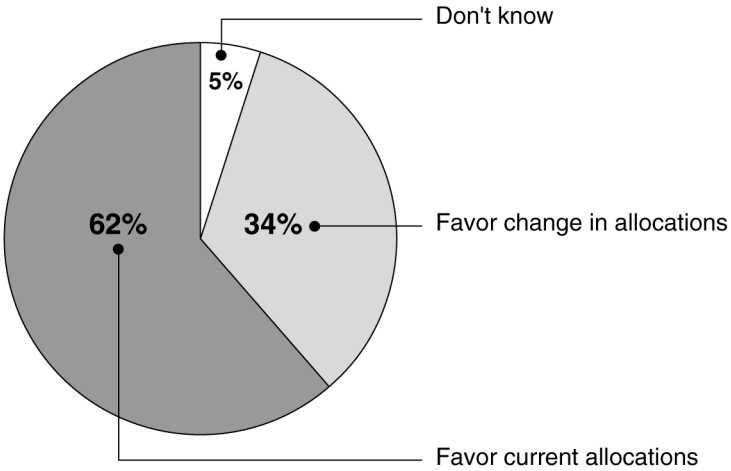
For example, with a federal appropriation of $380 million for fiscal year 2004, the Corporation made the following allocations to its budget: $24 million (6 percent) for System Support; $17.8 million (5 percent) for administrative expenses; and of the remaining $338.2 million, $253.7 million (75 percent) for public television. Of these funds, $190.2 million (75 percent) is allocated for distribution among station licensees, and $63.4 million (25 percent) is allocated for support of national public television programming.[20]

A Majority of Licensees Favor the Current Statutory Allocations of Federal Funding for Public Television

We asked public television licensees in our survey whether the statutory allocations for federal funding support of public television by the Corporation—the 75 percent allocation for distribution among licensees and the 25 percent allocation for national programming—should remain the same or be changed. Overall, 62 percent of licensees responded that these statutory allocations should stay the same, and 34 percent responded that the allocations should be changed (see fig. 5).

[20]Dollar figures have been rounded. In addition to the $380 million appropriation, the Corporation's fiscal year 2004 budget includes an estimate of $5.5 million in interest. As directed by the statute, these funds are allocated between public television (75 percent, or $4.125 million, specified for national programming) and public radio (25 percent, or $1.375 million). 47 U.S.C. §396(k)(3)(A)(v). $49.7 million in federal funds was also provided to the Corporation for fiscal year 2004 to support public broadcasting's transition to digital.

Figure 5: Percentage of Licensees that Favor Either the Current Allocations or a Change in the Allocations

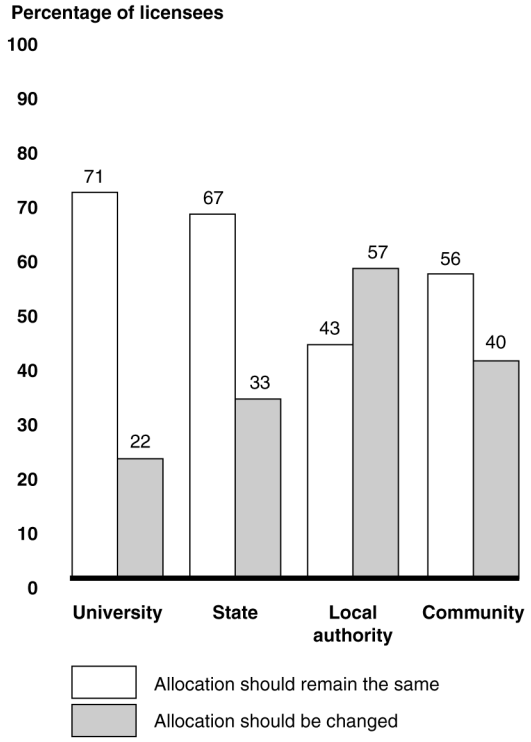


Source: GAO survey responses of public television station licensees.

Note: N=148 licensees. Percentages have been rounded and do not equal 100 percent.

We further analyzed responses to this question factoring in the type (e.g., state, university, community, and local authority) and size (based on total revenues) of licensees, to determine whether the views of licensees on the statutory allocations vary on the basis of these characteristics. Our analysis indicates that the current allocations were favored by a majority of licensees of each type, with the exception of local authority licensees (see fig. 6) and by each size, based on total revenues (see fig. 7). Among the various types and sizes of licensees, those that most favored the current allocations were university licensees (71 percent of the 51 university licensees responding) and large licensees by total revenues (80 percent of the 20 large licensees responding).

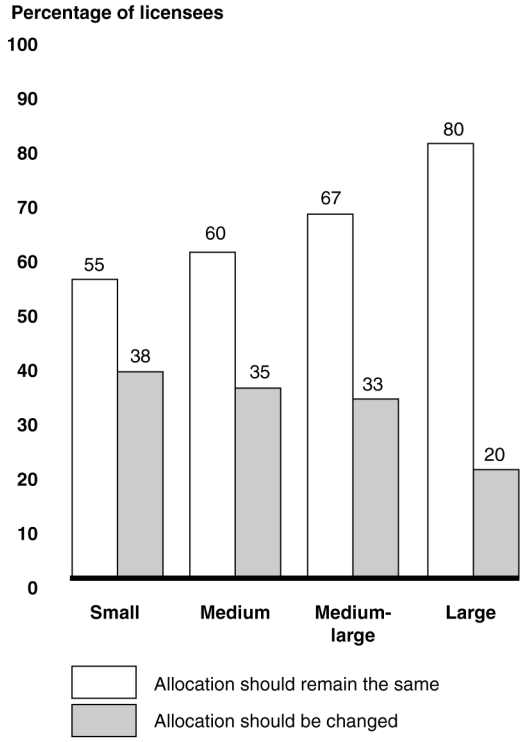
Figure 6: Percentage of Licensees by Type that Favor Either the Current Allocations or a Change in Allocations



Source: GAO survey responses of public television station licensees.

Note: N=51 “university” licensees; N=15 “state” licensees; N=7 “local authority” licensees; and N=75 “community” licensees. Percentages have been rounded and may not equal 100 percent due to respondents answering “don’t know.”

Figure 7: Percentage of Licensees by Size (total revenue) that Favor Either the Current Allocations or a Change in Allocations



Source: GAO survey responses of public television station licensees.

Note: N=58 small licensees, 52 medium licensees, 18 medium-large licensees, and 20 large licensees. Percentages have been rounded and may not equal 100 percent due to respondents answering "don't know." As noted earlier, large licensees have total revenues of $20 million or more annually, medium-large licensees have total revenues between $9 million and $19.9 million, medium licensees have total revenues between $3.5 million and $8.9 million, and small licensees have total revenues below $3.5 million.

Among the licensees favoring retention of the existing allocations, some stated that the current allocations have served the system well for many years and provide the appropriate level of federal funding for both licensees and national programming. For example, one licensee noted that the allocations provide a balance between supporting station operations—referred to as "the crucial local infrastructure" of public broadcasting—and "high profile" national programming (i.e., programming that is generally recognizable to television viewers) created for distribution to, and for the benefit of, local stations. An official of another licensee, described as a small rural licensee that relies heavily on funds received through the 75

percent allocation, commented that even though additional federal funding for station operations would be useful, quality national programming is also important to support the station's fundraising efforts.

Of the respondents favoring a change in the allocations, most proposed that the allocation for support among licensees increase above the current level of 75 percent and the allocation for national programming decrease below 25 percent. In fact, several of these respondents suggested that all of the public television funds should be allocated among licensees, with no funds for national programming. Among the reasons cited for an increase in the allocation for licensees was the view that providing more of these funds to licensees, rather than to national programming entities, would advance the "local" quality of public television. Another reason given was that distributors of national programming would be more accountable and responsive to licensees' local needs if more funds were allocated to licensees. In addition, one licensee noted that by placing the funds in the hands of licensees, a greater degree of insulation from political influence over national programming would be likely.

However, a couple of licensees suggested that the 25 percent allocation for national programming should be increased and the 75 percent allocation for licensees decreased. One licensee suggested, for example, that despite the need for national programming, licensees would likely not pool funding necessary to produce national programming if all funds were distributed to licensees. Another licensee noted that funding for costly, high-quality, national programming should occur at the national level, and that local stations should obtain most of their financial support from their local communities.

Most Licensees Were Generally Satisfied with the Process for Determining Community Service Grants, but Many Expressed Concerns about the Television Future Fund

Community Service Grants, the principal mechanism by which the Corporation provides federal funding among licensees of public television stations, are to be awarded in accordance with applicable statutory provisions. Among these provisions is a requirement that the Corporation periodically review, in consultation with licensees, the eligibility criteria established by the Corporation for distribution of funds among public television stations. More than three-fourths of the licensees responding to our survey expressed overall satisfaction with the most recent consultation process. Another grant program, the Television Future Fund, was created by the Corporation to support projects to help public television achieve greater economic self-sufficiency. However, over 40 percent of licensees in our survey responded that the projects have not resulted in practical methods for reducing costs or enhancing revenues in their own operations. Moreover, our legal review of this program determined that the Corporation's approach of supporting these projects, in part, with funds designated for distribution among licensees is not consistent with the statutory authority under which the Corporation operates. In September 2002, the Corporation temporarily suspended the awarding of further Television Future Fund grants pending the outcome of a review. The program has recently been reactivated under different procedures but continues to be funded, in part, with funds that the Congress has made available for distribution among licensees of public television stations.

Most Licensees Were Satisfied with the Review and Consultation Process for Determining Community Service Grants

The Community Service Grant program is the principal mechanism by which the Corporation currently distributes federal funding among licensees of public television stations.[21] Although not expressly established by the act, the Community Service Grant program is administered by the Corporation under the provisions of the act that provide for the allocation of funds for distribution among public television licensees. Statutory provisions requiring that the Corporation distribute funds directly among

[21]The 75 percent allocation is generally referred to as the Community Service Grant (CSG) "fund" or "pool." In addition to the Community Service Grant program, the CSG pool also funds the *Television Future Fund*, discussed later in this report; the *Collaboration Fund*, a competitive grant program providing assistance for collaborative relations among stations, and between stations and other community-based organizations; and the *Small Station Fund*, providing grants to stations facing "extreme" financial hardship and those not able to raise the minimum level of nonfederal financial support to receive the base grant portion of a Community Service Grant.

licensees were first enacted in 1975.[22] Of the $190.2 million allocated for distribution among licensees in fiscal year 2004, the Corporation's budget for the Community Service Grant program is $181.2 million.[23]

The Corporation currently administers the program by providing each licensee that operates an on-air public television station with a "basic" grant, as specifically required by the act. The $10,000 in funds awarded to each eligible licensee currently as the basic grant component of a Community Service Grant predates the establishment of the program and began soon after establishment of the Corporation. In addition to the basic grant, eligible licensees also receive two additional component grants in their Community Service Grant—a "base" grant and an "incentive" grant.[24] Base grant funds are determined on the basis of the statutory allocations, the Corporation's total annual appropriation, the number of licensees eligible for grants, and a fixed grant funding level set by the Corporation's board of directors. Incentive grant funds depend largely on each individual licensee's share of the combined amount of revenues generated from nonfederal sources. (See app. II for detailed information on the grant components of Community Service Grants.)

The act specifies that the funds distributed through the 75 percent allocation may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming.[25] According to officials of the Corporation, this provision is generally

[22]*See* Public Broadcasting Financing Act of 1975, Pub.L. 94-192, 89 Stat. 1099. 47 U.S.C. §§396(k)(5), (6) and (7).

[23]Of the fiscal year 2004 federal appropriation made to the Corporation, the 75 percent allocation for distribution among licensees of public television stations totaled $190.2 million. Of these funds, the Corporation budgeted $181.2 million for Community Service Grants; $1 million for the Small Station Fund; $4 million for the Television Future Fund; $1 million for the Collaboration Fund; and $3 million for Local Service Grants. Funds sets aside for Local Service Grants assist licensees that generate less than $2 million in nonfederal financial support in order to strengthen local services provided by these licensees.

[24]The act requires that after the basic grant is made, the balance of the funds reserved for television stations is to be distributed to licensees in accordance with *eligibility criteria* that "promote the public interest in public broadcasting" and on the basis of a *formula* designed to—(a) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve and (b) maintain existing, and stimulate new, sources of nonfederal financial support for stations by providing incentives for increases in such support. 47 U.S.C. §396(k)(6)(B).

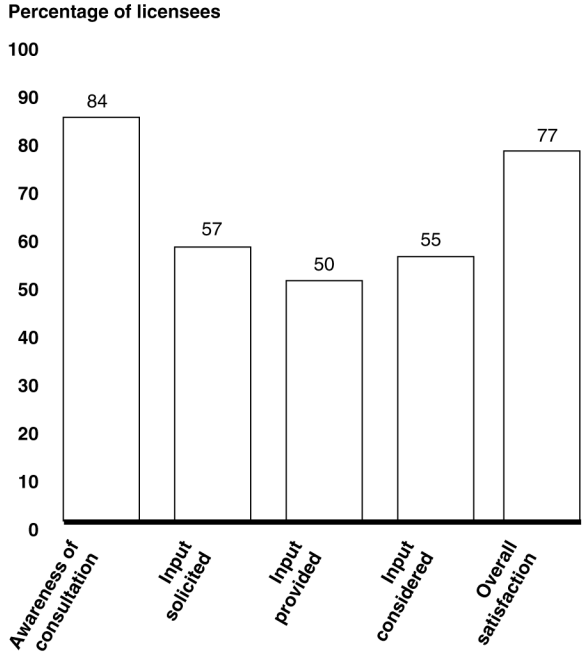
[25]47 U.S.C. §396(k)(7).

understood to provide licensees with discretion to use such funds for any expenses incurred.

In tandem with the act's requirements setting forth the basis for distributing funds, the Corporation is required to review periodically the eligibility criteria for distributing these funds in consultation with licensees or their designated representatives. In practice, the Corporation has undertaken a review and consultation of the Community Service Grant program every 2 to 3 years. According to Corporation officials, a review and consultation consists of polling licensees and other public broadcasters to identify issues of concern regarding the distribution of funds and convening an advisory panel that broadly represents licensees to facilitate the review. Further, the Corporation develops and analyzes numerical models to assess likely impacts of recommended policy changes in the distribution of funds and disseminates information to licensees for further advice and consultation. Ultimately, the advisory panel's recommendations are presented first to licensees and the Corporation's management and then to the Corporation's board, with any exceptions or refinements proposed by management for its vote of approval.

In our survey, we asked licensees several questions about the Corporation's most recent consultation on the eligibility criteria for distributing Community Service Grants, conducted in 2001. Over 80 percent of licensees responding said that they were aware of the 2001 consultation process. Slightly more than half of the respondents said the Corporation solicited input from them to a great or moderate extent. Half of the licensees said they provided input to the Corporation to a great or moderate extent. Overall, more than three-fourths of all licensees said they were either basically satisfied with the consultation process, or that only minor changes were needed (see fig. 8).

Figure 8: Favorable Responses of Licensees on the Corporation's 2001 Consultation Process



Source: GAO survey responses of public television station licensees.

Note: N=148 licensees for "awareness of consultation"; N=126 licensees for "input solicited"; N=125 licensees for "input provided"; N=97 licensees for "input considered"; and N=125 licensees for "overall satisfaction." Favorable responses were those answering "yes" on our question regarding awareness of the consultation process; "to a great extent" or "to a moderate extent" on questions regarding input solicited, input provided, and input considered; and "basically satisfied" or "only minor changes needed" on our question about the process overall.

In commenting on changes needed in the consultation process, some licensees noted the importance of the process and the Corporation's effectiveness in conducting reviews of the eligibility criteria for distributing Community Service Grants in consultation with licensees. For example, one licensee indicated that the review is important in light of changes occurring within the public television community and that a review by a panel of peers helps to ensure that public funds are appropriately administered. Another licensee said the consultations used by the Corporation have successfully solicited input from licensee officials and that despite the wide variety of views within the community, the process allows for deliberation and consensus building. However, other licensees were critical of the consultation process and offered suggestions for

changes. For example, several licensees indicated their belief that the Corporation predetermines the desired outcome of modifications to the Community Service Grant eligibility criteria and is not responsive to licensees. With regard to the make-up of the review panel, suggestions were made to rotate panel members, involve licensee officials that have not previously served on a review panel, and make the review panel more representative of the licensee community. One perspective highlighted by a few licensees was that small stations do not have adequate representation on the Corporation's review panels. For example, one licensee said that small rural station licensees only have "token" representation on the Corporation's review panels, and another noted the difficulty for officials of small station licensees to participate in review panels given the costs and time commitments for participating in the panel meetings.

In both our survey and in interviews we conducted with licensees and officials from the Corporation, PBS, and the Association of Public Television Stations, specific factors in the eligibility criteria for grant award determinations were noted as causing some licensees to perceive disparities in the distribution of funds through the Corporation's Community Service Grants. Among such factors were the policy which specifies that licensees operating stations in the same market (known as an "overlap" market) share a single base grant component of their Community Service Grants, the provision of supplemental funds in the incentive grant portion of the Community Service Grant for licensees that operate multiple public television stations, and an insufficient level of Community Service Grant funds provided to licensees to cover PBS membership assessment for access to PBS's national programming.[26]

However, we were told that while modifying the eligibility criteria for establishing the base and incentive grant portions of Community Service Grants may result in an increase in the grant funds awarded to some licensees, it would also likely reduce the grant amounts awarded to others. Further, we were told that the Corporation makes every attempt to ensure that these grant funds are distributed fairly among public television licensees. For example, as a result of the 2001 review, the Corporation revised a policy previously adopted to increase the minimum level of

[26]The basis for grant amounts provided to licensees through Community Service Grants does not include costs for membership in, or other costs related to the acquisition of programming from, PBS or other national programming distributors. However, the assessment paid by a licensee for PBS membership includes a factor based on the Community Service Grant funds awarded to the licensee by the Corporation.

nonfederal financial support that licensees must raise to $1 million beginning in fiscal year 2003 in order to receive the incentive portion of the Community Service Grant. As revised, the minimum level was set at $800,000.

Many Licensees Expressed Concerns About Aspects of the Television Future Fund

Concerned in the mid-1990s over the prospect of declining revenues from public television funding sources, including federal funding, the Corporation created the Television Future Fund in 1995 as a means of helping public television licensees achieve greater economic self-sufficiency. The program provided grants to projects aimed at reducing stations' operating cost and enhancing their revenues. Prior to the end of fiscal year 2003, the Television Future Fund awarded grants to licensees, consortia of licensees, and non-licensee entities (e.g., consultants) on the basis of project-specific criteria. Grant proposals were to

- show clear evidence that the project would meet a demonstrated need;
- actively involve a number of stations, have benefits beyond one individual station, offer economic returns that could be widely shared, and/or act as a model that could be widely replicated;
- prove, through feasibility studies, that concepts could be widely implemented, thus demonstrating that the effort can lead to economies of scale;
- be envisioned as long-term efforts, sustainable after the Corporation's funding for the project concluded; and
- reflect a shared risk through funds provided by the applicant, thereby demonstrating an institutional commitment.

In addition, all proposals were to demonstrate an awareness of systemwide efforts already under way and make use of existing resources, whether from public television or the private sector.[27]

To provide funding for Television Future Fund projects, the Corporation annually pooled funds from two separate sources: funds from its System

[27]*See* Request for Proposals, Television Future Fund and Television Transition Fund, Fiscal Year 2002, Corporation for Public Broadcasting.

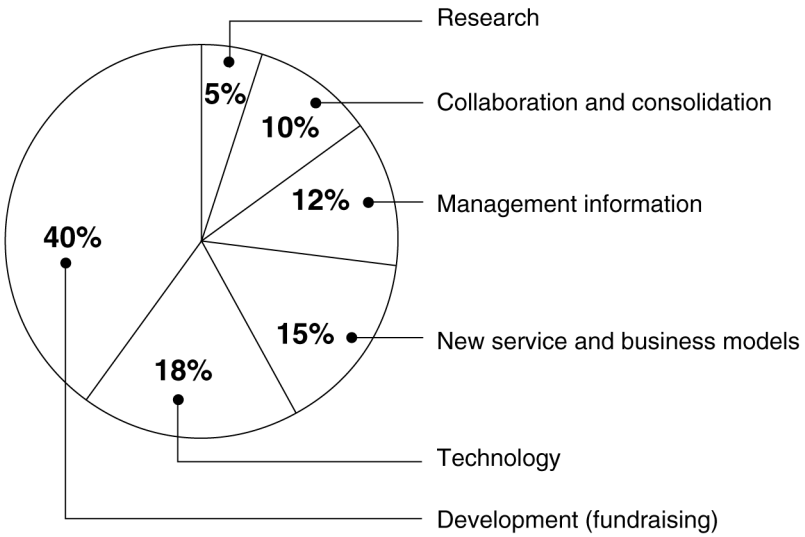
Support account and funds from the 75 percent allocation for distribution among licensees. Between 1996 and 2004, $30.5 million came from the System Support account and $28.5 million from the licensee allocation.[28] Based on recommendations of advisory panels comprised of station and system representatives, the Corporation awarded 204 Television Future Fund grants through September 2002 for a broad range of projects, including

- development projects aimed at improving fundraising through local, regional, and national underwriting efforts, strengthening pledge practices, and studying financial contributions given via the Internet;
- technology projects designed to increase the public television community's knowledge of its digital capabilities, including developing interactive television programming;
- new service and business models projects aimed at forging links between the public television community and other entities, such as licensee and university partnerships;
- management information projects to improve efforts to manage and disseminate relevant data, such as a database used by licensees to compare their programming and fundraising activities with other licensees and a section of the Association of Public Television Stations' Web site that contains information for both licensees and the public about the digital transition;
- collaboration and consolidation projects designed to support the development of back office operations that could be used by more than one station; and
- research projects aimed at improving the public television community's understanding of viewers and the public television industry, such as updating the handbook for television programmers and a viewer panel study.

Figure 9 illustrates the distribution of the types of Television Future Fund projects.

[28]Since fiscal year 2001, $4 million annually from each source has been used to fund the Television Future Fund program.

Figure 9: Distribution of Television Future Fund Grants by Project Type

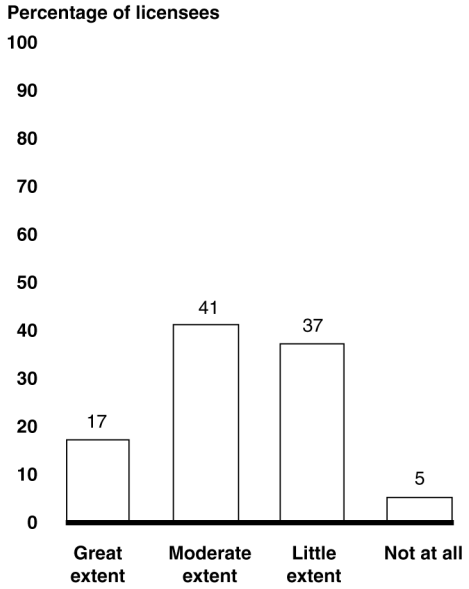


Source: The Corporation for Public Broadcasting (data); GAO (presentation).

According to Corporation officials, some licensees raised issues regarding how the program is funded and what benefits are being derived from it. We heard similar concerns while interviewing several licensees. To evaluate these concerns, we asked licensees in our survey to indicate the extent to which they knew about the findings and outcomes of Television Future Fund projects, whether any such projects resulted in practical methods for enhancing revenues or reducing costs in licensees' own operations, and whether they supported the way in which the Television Future Fund is funded.

The extent of the licensees' knowledge of Television Future Fund projects varied significantly. Of licensees responding to our survey, 58 percent stated that they knew about Television Future Fund projects to a great or moderate extent, but the other 42 percent indicated that they knew about the findings and outcomes of Television Future Fund projects to little or no extent (see fig. 10).

Figure 10: Extent of Licensees' Knowledge of Findings and Outcomes of Television Future Fund Projects



Source: GAO survey responses of public television station licensees.

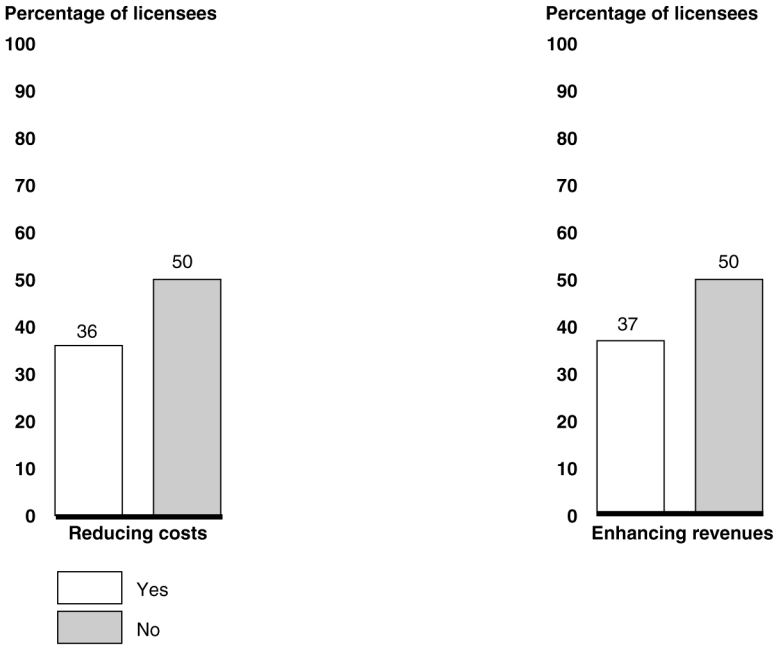
Note: N=148 licensees. Percentages have been rounded.

Several licensees noted that they did not know about the findings and outcomes of Television Future Fund projects because of inadequate efforts by the Corporation to distribute information about the projects. For example, the Corporation did not compile and distribute to licensees, or release publicly, a list of the findings and outcomes of Television Future Fund projects until November 2001, 5 years after the first grants were awarded. One licensee stated that although there has always been sufficient information about the awarding of Television Future Fund grants, there has been little information on the outcomes of the projects supported by those grants.

We asked licensees in our survey to indicate whether Television Future Fund projects had provided their stations with practical methods for either reducing costs or enhancing revenues. A little over one-third of the responding licensees indicated that Television Future Fund projects had provided them with practical methods for reducing costs. About the same percentage of licensees indicated that projects had provided them with

practical methods for enhancing revenues. In cross-tabulating these responses, we determined that, overall, only 41 percent of licensees responded that Television Future Fund projects had provided them with practical methods for reducing costs and/or enhancing revenues (see fig. 11).

Figure 11: Licensees' Responses on Whether Television Future Fund Projects Provided Them with Practical Methods for Reducing Costs and Enhancing Revenues



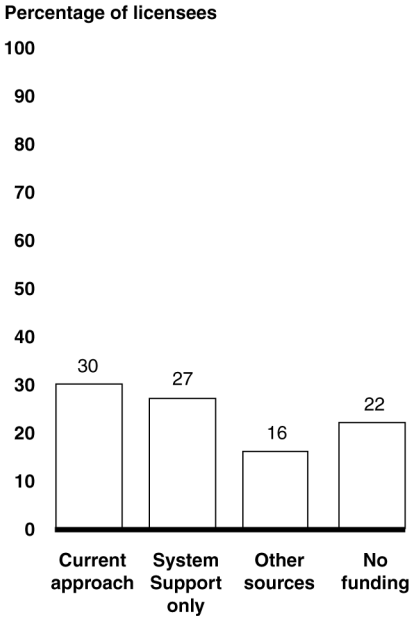
Source: GAO survey responses of public television station licensees.

Note: N=143 licensees. Percentages have been rounded and do not equal 100 percent due to respondents answering "don't know."

The Corporation's approach for funding Television Future Fund projects was another area of concern for licensees. Only 30 percent of the responding licensees in our survey indicated that they favored the current approach of funding the projects, in part, with funds from the 75 percent allocation for distribution among licensees (see fig. 12). Altogether, over 40 percent indicated their preference for funding the program only from system support funds or from other sources. In their survey comments, a number of licensees suggested that other sources of funding could come from an additional appropriation from the Congress or from funds provided

by philanthropic foundations. Over one-fifth of our survey respondents, however, indicated that the Corporation should cease all funding for the Television Future Fund.

Figure 12: Licensees' Responses on Favored Approach for Funding the Television Future Fund



Source: GAO survey responses of public television station licensees.

Note: N=148 licensees. Percentages have been rounded and do not equal 100 percent due to respondents answering "don't know."

In September 2002, the Corporation suspended the award of further Television Future Fund grants pending a review of the program to (1) assess the consistency between the planning and execution of the program in relation to the Corporation's goals and (2) determine how the program could address concerns that the public broadcast mission and business models were no longer adequate in the digital era. In the course of its review, the Corporation's Future Fund Advisory Panel[29] concluded that while a majority of the projects had yielded the results anticipated, some

[29]The panel included representatives of public television stations, PBS, and the Association of Public Television Stations, as well as consultants.

were not successful for reasons that included an inability to achieve appropriate scale or significant economic benefit, inadequately defined objectives and poor execution, and inadequate marketing of results to stations. The panel solicited comments from the public television community on how the Future Fund could best be used to help stations maximize their financial resources and invest these resources in new and strengthened service to their local communities. Based on input from public television stakeholders and its own deliberations, the panel developed four new criteria to guide the investment of funds. Specifically, Television Future Fund initiatives should have

- the potential to change systemwide decision making and transform current approaches to achieving system and station goals,
- measurable and sustainable outcomes,
- strong and verifiable support of key advocates and participants, and
- consistency with the Corporation's legislative mandate.

In addition, the panel recommended changes in how Television Future Fund initiatives are developed and supported. Rather than continuing to invite proposals on a broad array of themes, as had been done in the past, the panel recommended that the solicitations more directly define the initiatives' intended outcomes for participants, the station community, and the system overall. The panel also recommended that funding commitments be made over longer time frames at higher monetary levels in order to focus on fewer initiatives that have greater impact. The panel called for improved project management, with clearly defined expectations and performance measures and a clear definition of success. To evaluate and monitor the progress of the initiatives, the panel recommended that the membership of the Future Fund Advisory Panel include greater representation from across the station community.

The Corporation's board adopted these recommendations in April 2003. During the remainder of the year, the panel continued work to translate its recommendations into practices and processes. This included reaching agreement on a clearly defined review process for making Television Future Fund investment decisions, a plan for determining the representation and terms of the members, and priorities for Future Fund investment. During the time that the Corporation was reviewing the Television Future Fund program, it was also engaged in the systemwide

planning study discussed earlier. According to Corporation officials, it was anticipated that the Future Fund program would help support some of the new initiatives and projects stemming from the planning study.

The Television Future Fund was reactivated in November 2003 with the advisory panel endorsing several funding grants. In a December 2003 memorandum to station managers, the Corporation outlined the new Television Future Fund review and selection process and described three Future Fund projects that were in progress: (1) the Major Giving Initiative aimed at helping stations attract financial support from major donors—an area of opportunity identified in the Corporation's systemwide planning study; (2) the Education Leadership Academy, a pilot effort to identify opportunities for improved community partnership in elementary and secondary school education; and (3) an online knowledge base to improve public television's fundraising potential, strategies, and practices. Corporation officials noted that 90 of the 176 licensees have signed up to participate in the first Major Giving Initiative workshop, and they expect licensees to participate in another workshop to be held later this year. In addition, they noted that the Future Fund was used to cover the participation of about 110 station personnel in a 2-day concentrated track of sessions for the Education Leadership Academy.

Corporation's Approach to Funding the Television Future Fund Is Not Consistent with Its Underlying Statute

The advisory panel's recommendations on the Television Future Fund did not, however, include changes to the program's funding mechanism. As noted earlier, the Corporation has supported the program with funds taken annually from the Corporation's System Support funds and from funds designated for distribution among licensees. The Corporation's funding approach has been challenged by some station executives, who maintain that it is inconsistent with the Corporation's underlying statute. For example, in an August 2003 letter to the Corporation, four station executives expressed the view that the Corporation's use of funds designated for distribution to licensees for other purposes was not consistent with congressional intent. Both the licensees' letter and the Corporation's reply pointed to legal opinions from their respective outside

counsels to support their differing positions on this issue.[30] As part of our review, we examined the Corporation's statutory authority to use funds allocated for distribution among public television licensees to support the Television Future Fund. Although our legal review focused on the program as it was constituted prior to its recent revisions, the recent changes made do not appear to have solved the legal deficiencies that we identified. As reconstituted, the Future Fund program still is funded, in part, with funds designated by the Congress for distribution among public television licensees.

According to the Corporation, its authority to establish "eligibility criteria," and the formula under which the funds are disbursed, is broad enough to allow the Corporation to take a portion of the funds allocated for distribution among licensees, pool them with System Support funds, and use this aggregated pool of money to make selective grants only to applicants submitting project proposals acceptable to the Corporation after being reviewed and recommended by a review panel.[31] We disagree. The difference between our view and that of the Corporation rests on whether the eligibility criteria the Corporation may adopt include project-focused criteria that govern the selective award of funds for a particular project (as the Corporation maintains) or whether eligibility criteria the Corporation may adopt include only station-based criteria that distinguish among public television licensees on the basis of such factors as financial needs, audience satisfaction, or fundraising effectiveness. It is our view that the phrase "eligibility criteria" should be read in the context of the distribution mechanism to mean criteria focusing on the eligibility of the licensees,

[30]Letter from four station executives to Mr. Robert T. Coonrod, President and Chief Executive Officer, Corporation for Public Broadcasting, dated August 8, 2003. The letter expressed concerns about the potential use of monies designated by the Congress for distribution to public television licensees to fund the initiative and projects stemming from the systemwide planning study and attached a legal opinion from outside counsel which concluded that the expenditure of these funds for any purpose other than distribution to public television stations was inconsistent with restrictions placed by the Congress on the use of these funds. The Corporation's August 21, 2003, response maintains that the Corporation has allocated and distributed all funds in a fashion fully consistent with statutory directives and has been so advised by outside legal counsel. This debate surfaced in 1995 when the program was established. At that time, the Corporation was advised by outside legal counsel that it had authority to create the fund and use funds allocated for distribution among public television licensees for Future Fund grants. In July 2003, the Corporation's current outside counsel reviewed this issue and reached the same conclusion.

[31]The Corporation's views are consistent with the interpretations articulated by its outside counsel in 1995 and 2003.

rather than the eligibility of the projects. Although we often defer to an agency's interpretation of a statute it is charged to administer, we cannot do that here because the Corporation's interpretation of its authority is neither consistent with the statutory language nor the Congress' policy choice favoring local, not Corporation, control of the expenditure of the funds allocated for licensees.

Fundamentally, we believe that the Corporation's interpretation of the statutory language changes the basic nature and control over the expenditure of the funds allocated for licensees. First, the language of the distribution provision makes no reference to funding specific projects. By contrast, the Congress has provided the Corporation with specific authority to fund projects using system support funds. Second, the statute and its legislative history reflect a clear division of roles vis-à-vis the Corporation and the licensees and permittees of public television stations. Under the statutory scheme, it is the Corporation that is responsible for distributing funds to the licensees, and it is the recipients of these funds that are granted the discretion over how they are to be used. Thus, in the context of the entire statutory scheme, these funds would not be available for project-specific systemwide grants.

Moreover, as implemented by the Corporation, the Television Future Fund grants are available to nonstation entities. We believe this is inconsistent with the direction in the statute regarding the fact that the funds are to be distributed among licensees of public television stations. For example, an award was given to a consultant to conduct studies to identify skills that will be needed by chief executive officers of public television stations in the next decade. Another award was given to a consultant group to study the perception of public television by its current and potential financial supporters. In our view, the funds allocated by statute for distribution among licensees are not available to nonstation entities. Appendix III presents our legal opinion in detail.

In January 2004, a month after the Corporation's announcement to the public television community of the changes being made to the Television Future Fund and ongoing and planned initiatives that were to be funded, there was a new development in the issue of how to fund the Television Future Fund. At its January meeting, the Corporation's board, expressing its recognition that system resources were scarce and local needs were great, directed the staff to develop a comprehensive plan for returning Television Future Fund dollars to stations. Corporation officials told us in February that what is under consideration is that beginning in fiscal year

2005 monies designated for distribution among licensees would no longer be used to support the Future Fund. The officials said that they would be developing a proposal for the board's vote before the end of fiscal year 2004.

Meanwhile, the ongoing and planned projects will continue to be supported from the balance in the Television Future Fund account, which amounted to about $18.3 million as of December 31, 2003. According to the Corporation, $10.1 million of this balance came from funds designated for distribution among licensees from fiscal year 2004 and previous fiscal years; the remaining $8.2 million came from System Support funds. Approximately $8.4 million of the $18.3 million in the account balance has been committed for ongoing projects, mostly for the Major Giving Initiative ($6.6 million). The remaining $9.9 million has been "earmarked" by the Future Fund Advisory Panel for several other major initiatives that are under development.[32]

Most Licensees Favor Continued Federal Funding Support for the National Program Service, as Well as Additional Funding to Produce More Local Programming

Provisions of the Communications Act govern the Corporation's support for the production and distribution of national programming. The Corporation provides PBS with an annual grant to help support its National Program Service, a package of children's and prime-time series that are broadcast by most public television stations. In response to our survey, most licensees expressed support for continuation of the Corporation's annual grant to PBS for the National Program Service and held the view that the Service's programming enables them to meet their mission and build underwriting and membership support. Many licensees also emphasized the importance of producing their own programs to meet the needs of their local communities, suggesting that federal funds should be made available for the production of local programming.

[32]The Corporation refers to these committed funds as being "obligated," by which they mean that the Future Fund Advisory Panel has agreed to specific projects with a budget, that the Corporation has committed funds to the project, and that the contracting process is under way. By "earmarked," they mean that the Future Fund Advisory Panel has designated that funds be directed toward major initiatives that are in development, but as yet have no specific project budget and workscope to which the funds may be specifically allocated. In February 2004, Corporation officials told us that there would be a request for proposals in March 2004 for conducting Major Giving Initiative workshops; they said that the request for proposals would be open to public television licensees and stations, consultants, and others.

Most Licensees Favor Having the Corporation Continue Funding for the National Program Service

Expressly prohibited from producing or distributing public television programming,[33] the Corporation is authorized by provisions of the Communications Act to provide federal funding for national public television programming.[34] Under the act, the Corporation is directed to distribute a substantial amount of available programming funds to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities.[35] In fulfillment of this mandate, the Corporation provides programming support through three mechanisms—the General Program Fund, the Program Challenge Fund, and an annual grant to PBS for the production and distribution of some of public television's best known or "signature" series, a package known as the "National Program Service" (see fig. 13). Some of the productions supported through the Program Challenge Fund and the General Program Fund are broadcast as part of the PBS National Program Service.[36]

[33]47 U.S.C. §396(g)(3).

[34]47 U.S.C. §396(k)(3)(A)(ii)(II).

[35]47 U.S.C. §396(k)(3)(B)(i). The Congress has also provided that it is in the public interest to encourage the development of programming that involves creative risks and addresses the needs of unserved and underserved audiences, particularly children and minorities. 47 U.S.C. §396(a)(6).

[36]According to Corporation officials, approximately $20 million of these additional national programming funds support productions that are included in PBS's National Program Service.

Figure 13: The Corporation's Distribution of Funding in Support of National Programming

Fund/program	Distribution in FY 03 (total = $65,409,375)	Program description
National Program Service	**$22,520,000**	The Corporation provides annual funding for the PBS National Program Service, which consists of television programming fed by satellite to member stations across the country.
Program Challenge Fund	**$7,000,000**	The Program Challenge Fund is jointly managed and funded equally by the Corporation and PBS. Decisions are based on mutually established programming goals and objectives. The fund was created in 1987 to support high-visibility, prime-time limited series appropriate for the national public television schedule.
General Program Fund	**$35,889,375**	The General Program Fund is divided among the organizations and projects described below.
Independent Television Service (ITVS)	$9,500,000	ITVS funds independently produced programs that engage creative risks, advance issues, and represent points of view not usually seen on public or commercial television. ITVS also provides services including scheduling, press/promotion, community outreach campaigns, and station relations.[a]
Minority Consortia	$3,181,815	The Corporation funds the Minority Consortia, which function as developers, producers, and distributors of radio and television programming that appeals to diverse audiences and harnesses the creative talents of minority communities.[b]
Outreach	$2,097,865	In addition to outreach efforts that help stations increase the reach and impact of their programs, the Corporation provides annual support to the National Center for Outreach, which serves as a national programming information clearinghouse, creates professional development opportunities, and administers station grants to foster participation in community events.
Carlton Fund	$2,000,000	Managed by the Corporation, PBS, and Carlton Television International, the Carlton Fund provides full financing and sales support to high-impact series and specials that feature international topics appealing to a worldwide audience and are available for international television distribution.
Digital Incubation R&D	$1,000,000	The Digital Incubation R&D Fund supports projects testing out public television's digital capabilities to create content and services that fulfill public television missions. Projects supported from this fund explore and exploit new platform applications that will be sustainable in the digital broadcasting environment.
Education and Prime-Time Projects	$18,109,695	The Corporation provides grants to producers for special projects that meet a particular need of the public television system.

Sources: The Corporation for Public Broadcasting and the Independent Television Service.

[a]The Independent Television Service was founded in 1988. *See*, 47 U.S.C. §396(k)(3)(B)(iii).

[b]The Minority Consortia consist of the following organizations: National Black Programming Consortium, Native American Public Telecommunications, Latino Public Broadcasting, National Asian American Telecommunications Association, and Pacific Islanders in Communications.

The $65 million in funds distributed by the Corporation in fiscal year 2003 through these three mechanisms made up a relatively modest portion of the total revenues used for the production and distribution of national public television programming. According to the Corporation, its funding support

amounted to only 14 percent of the $450 million in total funds used for such programming in fiscal year 2003.

Many of the best-known programs associated with public television are part of PBS's National Program Service. The Service currently includes miniseries, specials, and children's and prime-time series—including *Sesame Street*, *NOVA*, *The NewsHour with Jim Lehrer*, and *American Experience*—providing PBS member-stations with approximately 2,100 hours of programming in 2003. The Corporation's annual grant of $22.5 million to PBS makes up only a small portion of the funds that finance the National Program Service; a large source of the Service's financing comes from public television station licensees that collectively paid $126 million in 2003 membership assessments to PBS for programming and related broadcast rights to the Service's programs. In 2003, 171 of the 176 public television licensees were PBS members. The National Program Service is distributed to PBS member-stations for broadcast either at the time of their delivery or at a time of the licensees' choosing. Member-stations are free to choose which of the Service's programs to broadcast, although PBS officials stated that licensees receive no reduction or rebate in their assessment for programming that is not broadcast.

Our survey asked a series of questions about the National Program Service. In response to our question on whether the Corporation should continue to provide direct funding for the Service at its current level, 72 percent of the responding licensees answered "yes." Some licensees stated that the quality of the programs included in the Service would suffer without continued funding from the Corporation. Of the 19 percent of the licensees who indicated that a change was needed, most suggested that the funding be reduced or eliminated and be given instead to the licensees.

Concerns with the process that PBS uses to choose the programs selected for the National Program Service were also noted in some of our interviews with officials of public television licensees. The Corporation's annual grant to PBS for the National Program Service was instituted as a result of a statutory provision enacted in 1988 requiring that the Corporation study and submit a plan to the Congress for funding support of national public television programming.[37] Prior to the establishment of the National

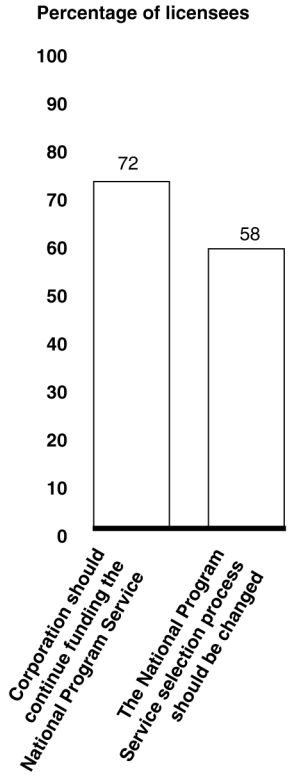
[37]47 U.S.C. §396(k)(6)(A). See *Meeting the Mission in A Changing Environment: A Comprehensive CPB Plan for Public Television's National Program Financing in the 1990s*, A Report to Congress from the Corporation for Public Broadcasting, January 1990.

Program Service, grants were awarded by the Corporation directly to several of the producers of programming included on the PBS national schedule. Other programs were made part of the national schedule through a mechanism known as the "Station Program Cooperative." Through the Cooperative, officials from public television stations would vote on which individual programs to include on the national schedule and participate in a "group buy"—combining their funds for the purchase of programming for distribution by PBS. However, concerns arose that the Station Program Cooperative model was not effective in the establishment of programming priorities, the production of minority programming, or the ability of producers to effectively attract underwriters. In 1989, a National Program Funding Task Force—comprised of representatives from the Corporation, public television stations, PBS, independent producers, and other stakeholders—was formed to review the method of funding national programming. This review led to the replacement of the Station Program Cooperative with a new model for selecting PBS programming. Under this new model, PBS created the position of chief programming executive to make programming decisions. Currently, two chief programming executives located on the East and West coasts, respectively, select programs for the National Program Service with input from licensees, internal PBS programming staff, and PBS management. This approach was designed to facilitate the centralized development and purchasing of programming for the National Program Service and for other programming distributed nationally under the PBS logo—including children's, prime-time, and syndicated programs.

Our survey of licensees found that only a small percentage expressed a desire to reinstate the former Station Program Cooperative or a similar model to select programming for PBS's National Program Service. However, a majority of the survey respondents, 58 percent, indicated that changes were needed in the process for selecting programs for the Service. Specifically, respondents suggested that PBS solicit more input from licensees in making the selections. Some licensees we interviewed commented that the strong relationship between PBS and producers has created an entrenched system that limits the ability of new producers to get their programs on the National Program Service.

Figure 14 highlights the licensees' views on the Corporation's funding of the PBS National Program Service and the process used to select the programs that are included in the Service.

Figure 14: Licensees' Views on the Corporation's Funding of the PBS National Program Service and the Service's Selection Process



Source: GAO survey responses of public television station licensees.

Note: N=144 licensees for "Corporation should continue funding the National Program Service" and N=143 licensees for "the National Program Service selection process should be changed." Percentages have been rounded.

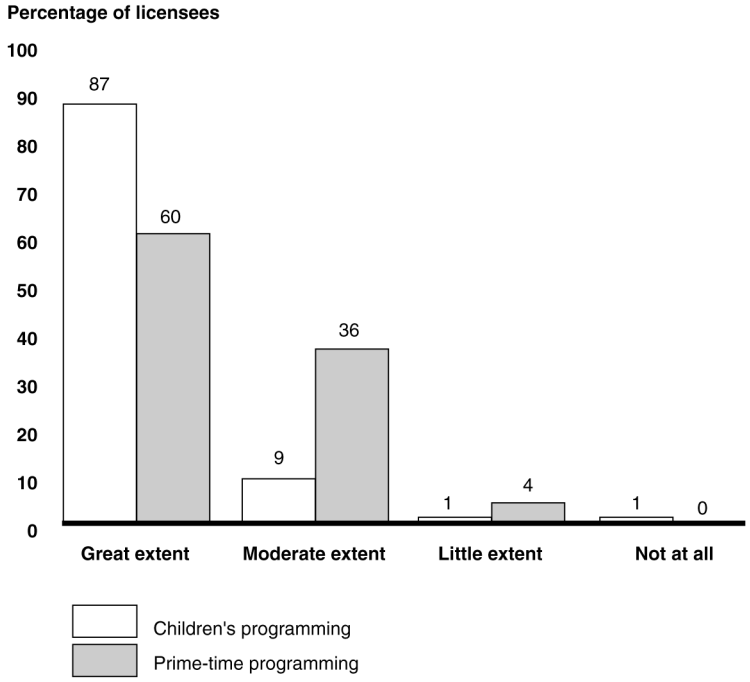
While our survey shows that over half of the licensees indicated that changes are needed in the selection process for the PBS National Program Service, most respondents nevertheless indicated satisfaction with the extent to which the Service's programming helps them meet the missions of their stations.

Ninety-six percent of the licensees we surveyed said that the children's programs included as part of the National Program Service enable them to meet their mission to a great or moderate extent. As described by some respondents, the noncommercial, nonviolent, educational content of children's programming makes it the cornerstone of public television. A

few licensees also noted that PBS provides a "safe harbor" of children's programs that are distinct from their commercial counterparts. Children's programming was viewed as more important to licensees' missions than to building underwriting and membership support because only 23 percent of the licensees responding to our survey indicated that they rely to a great extent on children's programming to build such support, and 39 percent said they rely on such programming to a moderate extent. Many licensees stated that they do not rely on children's programming for underwriting support because of content restrictions and because underwriters do not see a strong market in the viewers of such programs. However, a few licensees stated that some underwriters support children's programs because of their high quality and their educational and social value. Several licensees stated that they do not rely on children's programming to generate membership support because families with young children often do not have the economic means to contribute financially.

Licensees also indicated that they value the prime-time programs on the National Program Service, with 96 percent of the respondents indicating that prime-time programs help them meet their mission to a great or moderate extent. As noted above, some licensees criticized the programs for having become less unique, less innovative, and less willing to explore controversial issues in recent years. However, most licensees stated that they rely on the prime-time programs included in the National Program Service to meet their mission of providing quality life-long educational content for adults of all ages. Many licensees added that the prime-time programs allow them to compete with commercial stations, attract new audiences, and retain existing viewers. Our survey also showed that 91 percent of the licensees believe that prime-time programs help them build local underwriting and membership support to a great or moderate extent. According to the licensees, some of the reasons that the prime-time programs are helpful in attracting local underwriters are that audience numbers are higher, the program titles are familiar, and the programs themselves are of high quality and are well promoted. Figures 15 and 16 summarize the responses of licensees to questions regarding the National Program Service's children's and prime-time programming.

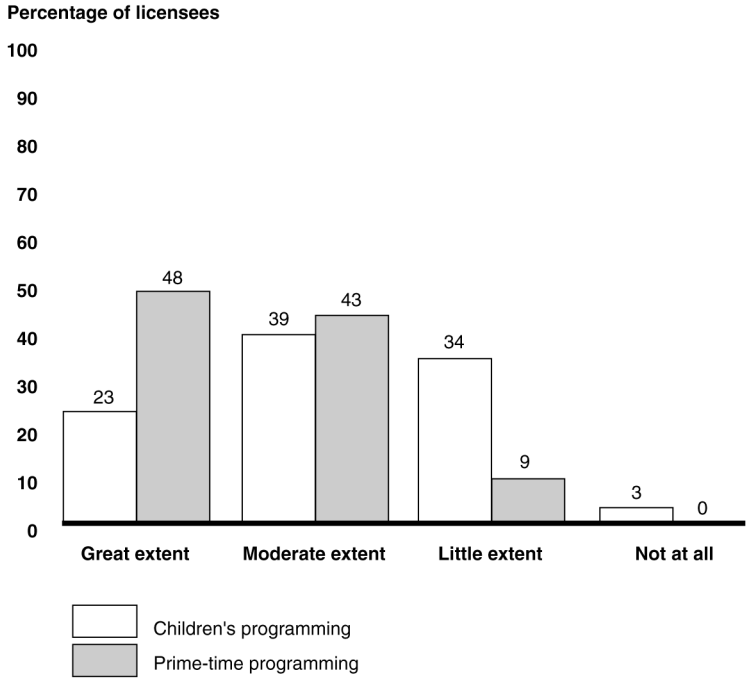
Figure 15: Licensees' Views on the Extent to Which the National Program Service's Children's and Prime-Time Programming Helps Them Meet Their Mission



Source: GAO survey responses of public television station licensees.

Note: N=149 licensees for "children's programming" and N=144 licensees for "prime-time programming." Percentages have been rounded and may not equal 100 percent due to respondents answering "don't know."

Figure 16: Licensees' Views on the Extent to Which the National Program Service's Children's and Prime-Time Programs Help Them Build Membership and Underwriting Support



Source: GAO survey responses of public television station licensees.

Note: N=144 licensees for "children's programming" and N=144 licensees for "prime-time programming." Percentages have been rounded and may not equal 100 percent due to respondents answering "don't know."

Most Licensees Indicated that They Would Produce More Local Programming if Additional Funding Resources Were Available

Although the Corporation does not currently provide or have explicit authority to make grants for the production of local programming, Corporation funding can indirectly support local programming productions through two sources: (1) Community Service Grants, which may be used at the discretion of licensees to produce their own programming, and (2) grants made by the Corporation to the Independent Television Service and the National Center for Outreach, both of which fund some local productions. Local stations produce their own programming to fill out their broadcast schedules by covering issues and events that are of special interest to their communities. However, cost is a major challenge facing licensees in the production of local programming. As a result, some producers of local programming have focused on productions that tie into a

national program. This method allows individual licensees the possibility of extending the value of national promotions to such local programs. For example, local stations in several cities took advantage of the popularity of the PBS series *Jazz: A Film by Ken Burns*, broadcast in 2001, by producing local programs that featured local and regional jazz musicians and cultural influences.

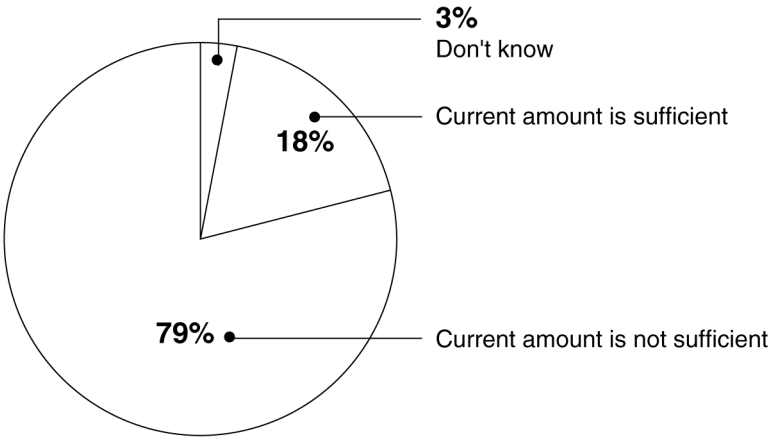
Previously, the Corporation funded regional organizations that provided licensees with specialized content for their areas. In 1961, the Eastern Educational Network began as a collaboration of public television stations in the northeastern United States that produced regional programs for its member stations. Other regional collaborations were formed to provide similar functions, such as the Southern Educational Communications Association, the Central Educational Network, and the Pacific Mountain Network. However, over the last decade, almost all of these regional organizations have changed their focus to provide quality national programming to members nationwide.[38] In 1997, the Southern Educational Communications Association and the Pacific Mountain Network joined to form the National Educational Telecommunications Association, a membership organization that offers a library of national programs to licensees. Rather than paying for or obtaining the rights to programs, public television producers give to the National Educational Telecommunications Association the rights to distribute the programs; in return, the association provides producers with basic promotion of programming on its Web site and a forum for licensees to exchange products. In 1998, the Eastern Educational Network became American Public Television, which acquires finished programs and develops and coproduces original programming in a variety of genres, including documentaries, biographies, and instructional programs, among others.

In our survey, some licensees indicated that public television stations are rapidly becoming the only locally owned and operated television broadcast medium. They stated that the consolidation of local media outlets and expanding national cable and satellite networks have resulted in less local programming on commercial television, creating a void in their communities. They believe that their locally produced programs set them apart from commercial television and allow them to provide their

[38]The Central Educational Network continues to provide services to member stations in the midwestern and northeastern regions under their parent organization, the American Television Group.

communities with a unique product that contributes to the civic and cultural lives of their viewers. However, 79 percent of the licensees responding to our survey indicated that the amount of local programming they currently produce is not sufficient to meet local community needs (see fig. 17). Moreover, of the 139 licensees that provided narrative comments regarding this issue, 85 stated that they do not have adequate funds for local programming or that they would produce more local programming if they could obtain additional sources of funding. Several licensees stated that they have had to ignore local issues and turn away programming opportunities because they lacked the financial resources to produce them.

Figure 17: Licensees' Views on Whether the Amount of Local Programming That They Produce is Sufficient to Meet the Needs of Their Communities



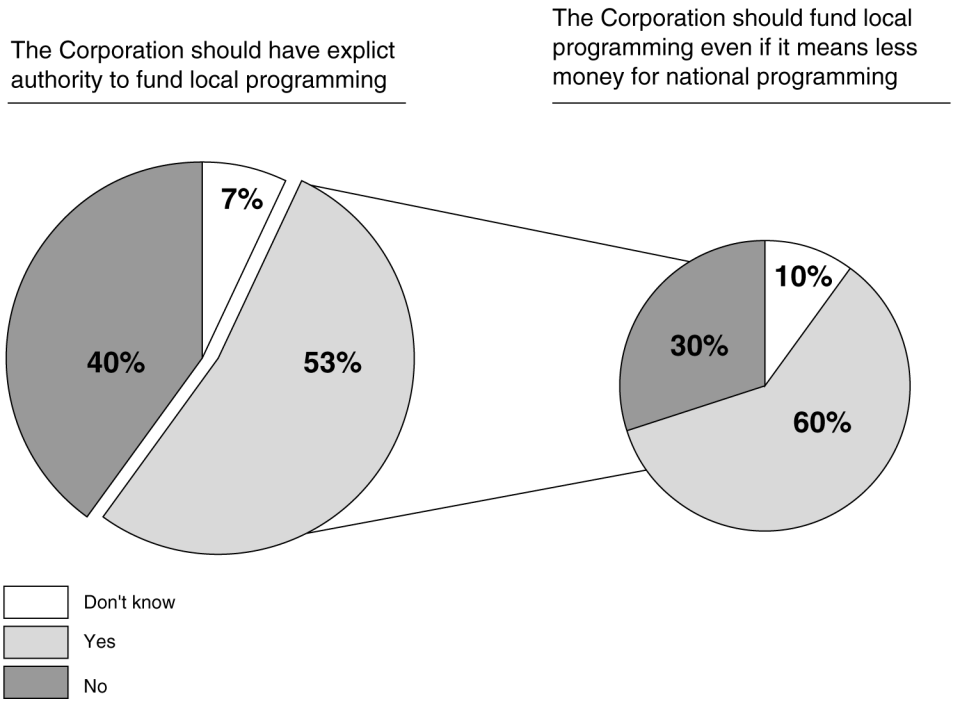
Source: GAO survey responses of public television station licensees.

Note: N=148 licensees. Percentages have been rounded.

Many licensees suggested that federal funds should be made available to support the production of local programming, with more than half responding that the Corporation should have explicit authority to award grants for the production of local programming (see fig. 18). Approximately 60 percent of those licensees favoring this authority also favored sacrificing some of the Corporation's funding support for national programming in order to establish direct funding support of local programming productions. Some of these licensees indicated that the Corporation's funds would be better spent on local programming because such programming has been and will continue to be a unique asset of public

television and has more of a direct impact on the community. However, among the licensees who expressed a willingness to sacrifice funding for national programming to fund local productions, some warned that taking too much from national programming would be harmful to the entire system.

Figure 18: Licensees' Views on the Need for the Corporation to Have Explicit Authority to Fund More Local Programming



Source: GAO survey responses of public television station licensees.

Note: N=149 licensees for "The Corporation should have explicit authority to fund local programming" and N=79 licensees for "The Corporation should fund local programming even if it means less money for national programming." Percentages have been rounded.

Corporation Has Funded Digital Transmission Equipment, but Other Digital Infrastructure and Content Needs Remain

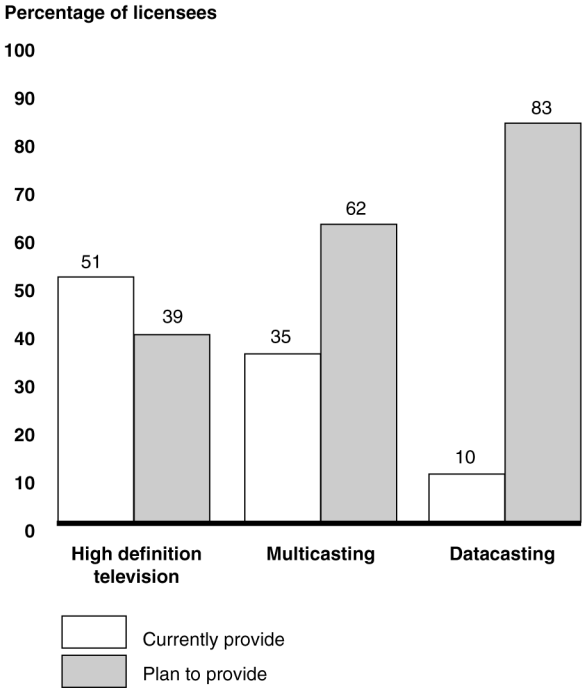
Digital technology offers public television licensees opportunities to provide innovative services to their communities. The Corporation received additional funding of $93.4 million for the digital transition for fiscal years 2001 through 2003. After consultation with representatives of the public television community, the Corporation directed these funds toward providing grants to licensees for acquiring digital transmission equipment. However, some licensees did not receive their grants in a timely manner and cited this as contributing to their failure to meet FCC's initial May 2003 deadline for constructing digital transmission facilities. At the systemwide level, the Corporation is seeking funding for infrastructure improvements to fully leverage the potential benefits of the digital transition. In addition, the Corporation, licensees, and other public television stakeholders have emphasized the importance of support for the production of digital content as part of the transition. Various mechanisms, including additional federal funding, have been suggested to address these needs.

Licensees See the Digital Transition as an Opportunity to Provide Innovative Services

The Corporation, licensees, and other public television stakeholders have emphasized that the future of public television depends on the successful rollout of digital services. Such services would, in the view of public television stakeholders, help public television realize the full potential of digital technology, solidify existing audiences, and reach new viewers in an era of increased competition from cable and satellite television providers.[39] Nearly all of licenses in our survey reported that they either now have, or plan to have, key digital capabilities to produce sharper television pictures and CD-quality sound (high-definition), offer multiple channels for programming and data services ("multicasting"), and transmit text and other data in a digital format ("datacasting") (see fig. 19).

[39]In a report on broadcast television, FCC notes that between 1984 and 2001, public television's prime-time viewing shares declined 30 percent. Federal Communications Commission, *Broadcast Television: Survivor in a Sea of Competition* (Washington, D.C., Sept. 2002).

Figure 19: Public Television Licensees that Currently Provide or Plan to Provide Digital Services



Source: GAO survey responses of public television station licensees.

Note: N=148 licensees for "High definition television"; N=147 licensees for "multicasting"; and N=146 licensees for "datacasting." Percentages have been rounded and do not equal 100 percent due to respondents answering "don't know," "don't provide," or "don't plan to provide."

About 85 percent of the licensees responding to our survey indicated that successful completion of the digital transition would improve their ability to serve their communities to a great or moderate extent. Many of the digital-based services mentioned by licensees involve supporting educational, governmental, and cultural activities. Educational services include the delivery of on-demand instructional content material to teachers and students in K-12 classrooms, higher education institutions, and libraries. Local and state governmental services include emergency response services and alerts, such as Amber Alerts for child abductions. In addition, licensees noted that multicasting would allow for an increased range of cultural content, such as programs that highlight local arts or serve minority populations.

Many licensees also indicated their intention to use digital technology to provide "ancillary and supplementary" services.[40] These are nonbroadcast services, such as subscription-based video services, paging services, and computer software distribution, offered by stations to generate revenue. Fifty-one percent of the licensees indicated they are offering or would offer these services to nonprofit entities, while slightly more than one-third of licensees indicated they would offer these services to for-profit entities.

Corporation Has Assisted Licensees in Acquiring Digital Transmission Equipment, Though Its Support Has Not Always Been Timely

The Corporation, licensees, and other public television stakeholders have identified the importance of federal and nonfederal support for the digital transition that enables public broadcasters to provide a full range of digital services to their communities.[41] In 1997, the Corporation and other public television stakeholders estimated the costs of the digital transition for public television stations to be approximately $1.7 billion, largely for transmission equipment.[42] At that time, the Corporation, PBS, and other stakeholders proposed a plan under which the majority of this cost would be funded by nonfederal sources, such as state governments, foundations, and corporations, and about $771 million (45 percent) would be funded through federal funds. In the plan, the Corporation also requested an increase of $100 million in its regular fiscal year 2000 appropriation for the acquisition, enrichment, and production of digital programming and services. For fiscal years 2000 and 2001, the Clinton administration proposed a funding approach whereby the National Telecommunications

[40]In a 2001 Order, FCC clarified the manner in which public television licensees could use excess digital television capacity for remunerative purposes. Under the Order, public television stations are required to use their entire digital capacity primarily for nonprofit, noncommercial educational broadcast services, but are allowed to use some of their capacity to offer ancillary and supplementary services and to advertise on those services when they did not constitute broadcasting. Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees, 16 FCC Rcd 19042 (2001). The U.S. Court of Appeals, D.C., denied a petition for review of this Order. *Office of Communication, Inc. of the United Church of Christ v. FCC*, 327 F.3d 1222, (D.C. Cir. 2003).

[41]In addition to funding, public television stakeholders have expressed concerns about regulatory issues associated with the transition involving the carriage of public television stations' digital signals by cable and satellite providers. See appendix IV for a brief discussion of these issues.

[42]The PBS Engineering Committee, in consultation with Andersen Consulting, developed and implemented a comprehensive survey of stations used by the Corporation and other public television stakeholders to refine their estimate of the digital transition costs. The $1.7 billion estimate includes $50 million for digital radio. The estimate was subsequently revised to $1.8 billion for increases related to digital radio and other expenses.

and Information Administration's (NTIA) Public Telecommunications Facilities Program, a source of financial support for public television infrastructure, would provide federal funding for licensees to acquire digital equipment.[43] The Corporation, for its part, would provide federal funding to support digital programming production, development, and distribution.

Although this initial funding approach included federal funding for both digital equipment and digital programming, most of the federal funds that have been awarded through fiscal year 2003 have been for digital equipment.[44] NTIA began awarding grants to public television licensees for digital transmission equipment in fiscal year 1998. Although specific appropriations for the digital transition were made for the Corporation in fiscal years 1999 and 2000—at $15 million and $10 million, respectively—both were contingent on the enactment of an authorization which did not occur. The Corporation received its first specific digital appropriation ($20 million) in August of fiscal year 2001 after the enactment of both an appropriation and an authorizing provision. A second digital appropriation ($25 million) was received in February 2002. The Corporation, relying on report language accompanying its fiscal year 2002 appropriation and considering the limited funds available to licensees from NTIA, determined that the highest priority for its digital funds was to assist as many licensees as possible in meeting FCC's May 2003 deadline for constructing digital transmission facilities.[45] Accordingly, the Corporation developed two grant programs to help licensees acquire basic digital transmission equipment—the Digital Distribution Fund and the Digital Universal Service Fund.

- The Digital Distribution Fund, established in January 2002, offers grants to both individual stations and collaborations of multiple stations for

[43]The Public Telecommunications Facilities Program is the successor to the equipment and facilities grants program originally authorized by the Educational Television Facilities Act of 1962. The program was transferred to NTIA in 1978. In addition to public broadcasting stations, the program also awards grants to state and local governments, Indian tribes, and nonprofit organizations. Between 1998 and 2003, NTIA's funding for the digital transition has totaled $125 million through the award of digital grants to 129 licensees.

[44]A limited number of digital, interactive, and multimedia projects have received support through the Corporation's Program Challenge Fund, which is jointly funded by the Corporation, through its regular annual appropriation, and by PBS.

[45]H. Conf. Rept. 107-342 (2001). The conference report directed that the funds be used for "equipment and facilities to enable public broadcasters to meet the statutory deadline for the digital conversion. . . ."

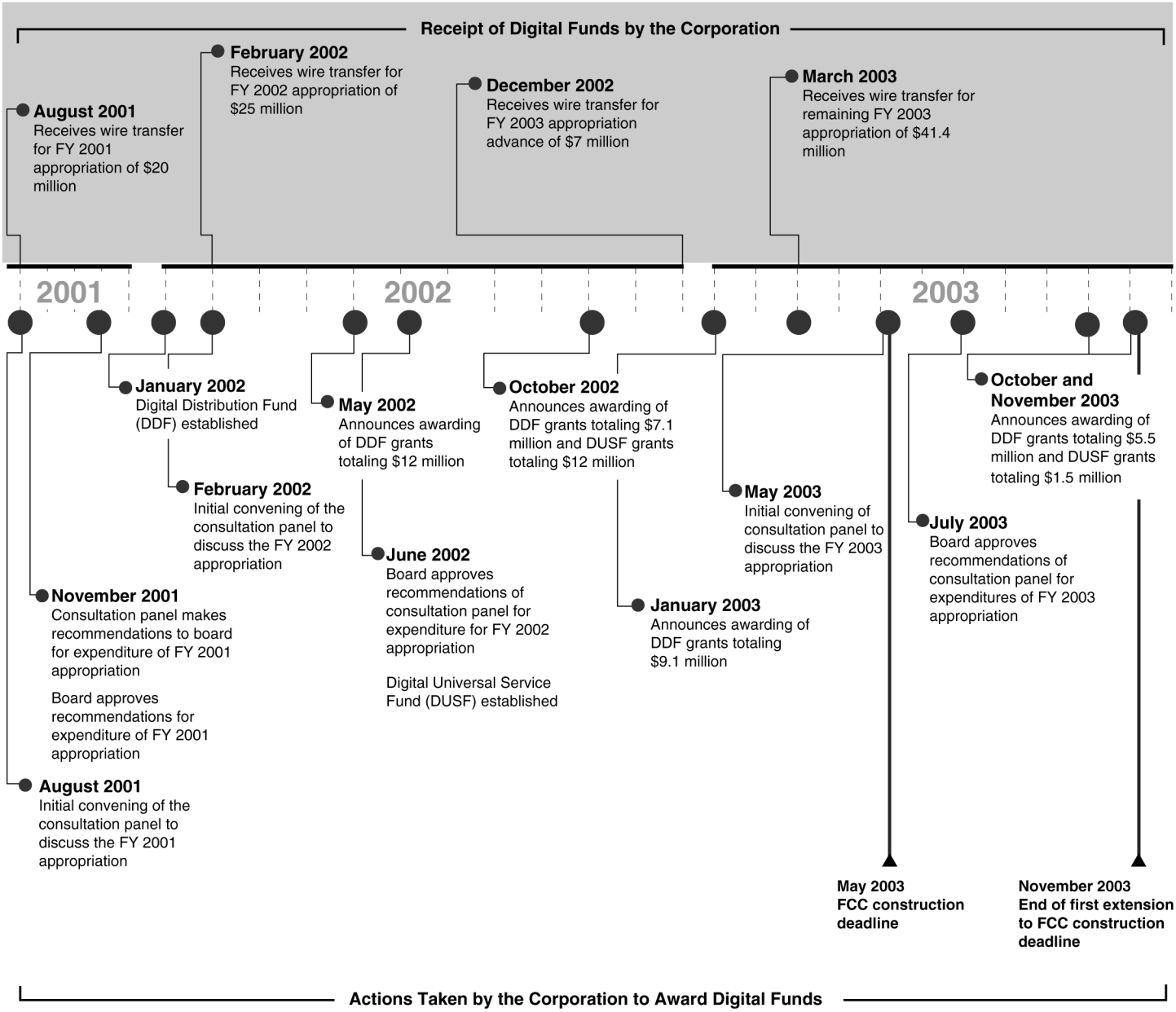
digital transmission equipment; the Corporation provides 50 percent matching funds to the nonfederal funds raised by grantees.

- The Digital Universal Service Fund was established in June 2002 to take advantage of FCC's 2001 decision permitting licensees to satisfy the May 2003 construction deadline by initially constructing digital facilities that use power levels that are lower than what is needed to fully cover their service areas. Stations can then increase their power levels over time to full-power operation.[46] This program is designed to provide grant recipients with a standard package of equipment for use in constructing a low-power digital facility. The Corporation funds up to 75 percent of the cost of the equipment packages, with the remaining cost covered by grant recipients with nonfederal funds.

Both Corporation and NTIA officials told us they coordinate their grant programs to ensure that there is no duplication in the types of transmission equipment purchased by licensees with funds from their respective programs. Figure 20 provides a time line of the Corporation's activities up to November 2003 for awarding funds through these two digital grant programs.

[46]Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 20594 (2001). Fewer viewers are served by a low-power broadcast signal than a full-power one. The construction of a low-power facility is less costly than a full-power one and, therefore, potentially less of an initial financial burden for licensees.

Figure 20: Time Line of Activities for the Corporation's Digital Grant Programs, August 2001 through November 2003



Source: The Corporation for Public Broadcasting (data); GAO (analysis).

The Corporation used its fiscal year 2001 and 2002 digital appropriations to award grants to 96 stations for digital transmission equipment prior to FCC's May 2003 construction deadline. However, the Corporation was not always timely in getting the awarded equipment packages or funds to the grantees. Specifically, 30 stations did not receive their equipment packages or funds by the deadline. Most of these stations were recipients of equipment package grants from the Digital Universal Service Fund. Public television stations that did not expect to meet the construction deadline had to apply to the FCC for a 6-month extension. In requests to FCC for extensions, 28 of the 30 stations cited the delay in receiving their digital grant from the Corporation as a contributing factor, among others, as to why they filed for an extension.[47]

We identified two reasons for the Corporation's lack of timeliness in distributing its fiscal year 2001 and 2002 digital appropriations. First, the Corporation took several months after receiving its digital funds to (1) convene consultation panels comprised of licensees (or their designated representatives) to develop recommendations for the use of those funds and (2) obtain approval of the panels' recommendations by the Corporation's board.[48] Second, the Corporation had to devise grant programs for the distribution of its digital appropriations. When the Corporation's board initially approved the use of the funds for transmission equipment in November 2001, the Corporation did not have any equipment-related grant programs in place. Due to its inexperience in this area, the Corporation contracted with PBS (which had staff with expertise in transmission technology) for assistance in developing and administering these programs.

As a result, the first Digital Distribution Fund grants were not awarded until 9 months after the first digital appropriation was received by the Corporation in August 2001. With regard to the Digital Universal Service Fund, the administration contract between the Corporation and PBS and

[47]Other contributing factors mentioned included weather-related problems that delayed construction and difficulties in obtaining the necessary level of nonfederal matching funds.

[48]Specifically, the consultation process took 3 months for fiscal year 2001 funds and 4 months for fiscal year 2002. The appropriations provision for both fiscal year 2002 and 2003 specified that the digital funds "be awarded as determined by the Corporation in consultation with public radio and television licensees or permittees, or their designated representatives." Pub. L. 107-116, 115 Stat. 477 (2002). Pub. L. 108-7, 117 Stat. 11 (2003). A consultation requirement was not included in the 2001 fiscal year appropriation. Pub. L. 106-554, 114 Stat. 2763 (2000).

the equipment contracts negotiated between PBS and 2 manufacturers for low-power transmission equipment were not finalized until 2 months before the May 2003 construction deadline. Only 15 of the 43 stations that were awarded a Digital Universal Service Fund grant received their equipment package by the May deadline.

The Corporation also had difficulties distributing its fiscal year 2003 digital appropriation of $48.4 million, of which $37.4 million was allocated for public television.[49] Having received all of its 2003 funds by March 2003, the consultation panel process again took several months to develop recommendations for the use of these funds and obtain the approval of the Corporation's board. In July 2003, the panel recommended two phases of grant awards for these fiscal year 2003 funds, the first of which was to continue funding for licensees' digital transmission equipment. The application period for this first phase extended from August to October 2003.

Although 201 stations had filed for a 6-month extension to FCC's May 2003 construction deadline, only 26 stations applied to the Corporation for a digital grant during this first phase. Of these 26 applicants, 23 stations received grants from the Corporation, totaling $7 million. None of the new grantees, however, received its funds or equipment package prior to the end of the 6-month extension period in November 2003. As of December 2003, $24 million of the Corporation's fiscal year 2003 digital appropriation—more than two-thirds of the total fiscal year 2003 amount for television—remained unobligated, with 126 stations operating under a second 6-month extension for meeting FCC's digital construction requirement.

In a survey commissioned by the Corporation and PBS of licensees with stations that had not met the May 2003 deadline or previously applied for a Corporation grant, the most common response for why a station had not or was not planning to apply for this phase of funding was because they had been able to secure funding through other sources.[50] Survey respondents suggested that they would consider applying for future grant rounds of the Digital Distribution Fund if it awarded funding for transmission equipment

[49]The Corporation received an advance transfer of $7 million in December 2002, and the remainder was received in March 2003. $11 million of the total $48.4 million for fiscal year 2003 was allocated for public radio.

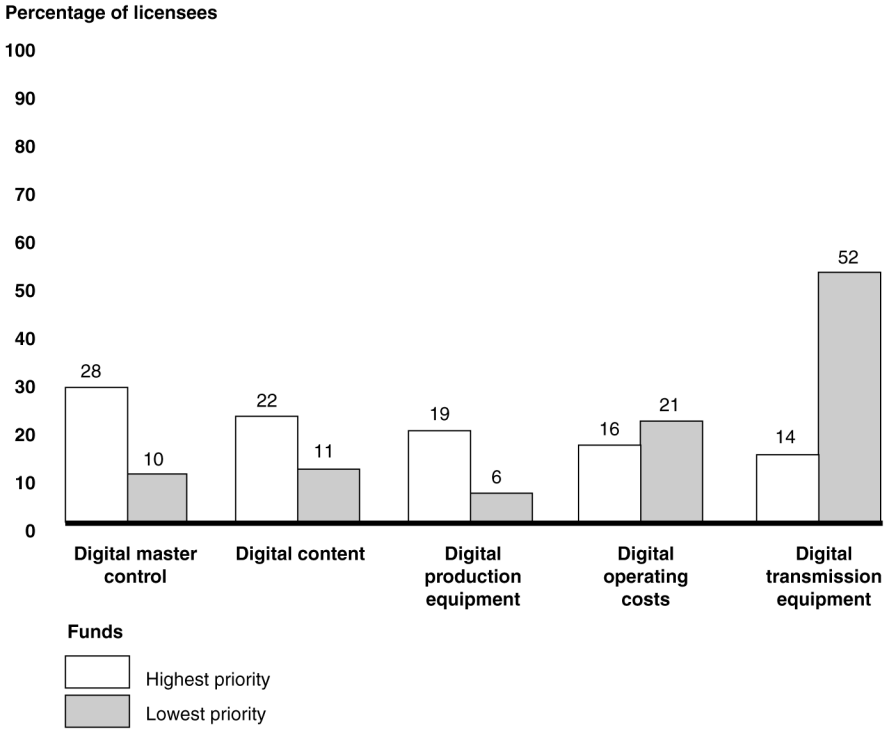
[50]The Corporation's survey universe was 140 stations, of which 95 responded (68 percent).

upgrades from low to full power, digital master control facilities that control broadcast management, and studio and production equipment to create digital content.

Because many of these licensees were able to secure funding from other sources, funding priorities for these licensees and for those that met the May 2003 deadline had shifted from transmission equipment to other digital transition needs not included in the scope of the grant programs. In our survey, we, too, found that licensees' priorities for additional federal funding of the digital transition were in areas other than transmission equipment. Only 14 percent of the respondents indicated that digital transmission equipment was their top priority for additional federal funding and over half indicated that it was their lowest (see fig. 21).[51] Digital master control, digital content, digital production equipment, and digital operating costs were all named more frequently as the highest priority.

[51]As of late January 2004, 233 PBS member stations were on the air with a digital signal. According to PBS, when the Corporation's digital grants that have been awarded are fully executed and the equipment is implemented and turned on, there will be more than 300 public television stations on the air in digital. As noted earlier, there is a total of about 350 public television stations.

Figure 21: Licensees' Highest and Lowest Priorities for Use of Additional Federal Funds to Support the Digital Transition



Source: GAO survey responses of public television station licensees.

Note: N=140 licensees. Percentages have been rounded and do not equal 100 percent.

With $24 million of its fiscal year 2003 appropriation available for the second phase of grant awards, Corporation officials told us that they are developing new guidelines for Digital Distribution Fund grants. Although the Corporation intends to continue funding digital transmission equipment for the second phase of grant awards with its remaining fiscal year 2003 digital funds, it will also fund digital master controls and digital translators

and repeaters.[52] At the time we concluded our audit work in February 2004, Corporation officials indicated that applications were due in March and that a digital review panel was scheduled to meet at the end of that month to review the applications. Corporation officials also indicated that the digital consultation panel would meet in early March to provide guidance on allocating the $49.7 million made available to the Corporation in fiscal year 2004 appropriations for the digital transition.

System Infrastructure Improvements and Digital Content Identified as Important to Leveraging Benefits from the Digital Transition

In addition to supporting licensees in constructing their digital transmission facilities, the Corporation and PBS have identified systemwide infrastructure improvements as important in maximizing the benefits of the digital transition. The development of digital content and production is also becoming more important as more public television stations become digital ready.

Under the Communications Act, the Corporation is to assist in the establishment and development of an interconnection system to facilitate the distribution of public television service.[53] The current interconnection system, which is managed by PBS under agreement with the Corporation, uses satellites to distribute PBS and other programming to stations and is scheduled for replacement by the time the current leases for satellite capacity expire in 2006. As proposed by the Corporation and PBS, a new system, called the "Next Generation Interconnection System," would replace the current system with a digital one that distributes programming in real-time and nonreal time to licensees. Licensees can then store these programs for later broadcast, which in turn allows PBS to become more efficient by broadcasting these programs to licensees once instead of

[52]This is consistent with a recommendation of the July 2003 consultation panel on the fiscal year 2003 appropriation. Similar to its analog counterpart, digital translators receive a signal on one channel, amplify the signal, and then transmit it on another channel. Translators are especially important to stations located in the western mountainous regions that need to transmit their signals over long distances in order to reach their viewers. Of the 4,900 translators in operation in the United States, 450 are assets of public broadcasting licensees. The cost of migrating these 450 translators from analog to digital is estimated at between $60 million and $70 million. FCC has initiated a proceeding on eligibility requirements to receive a digital translator license. See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations, and To Amend Rules for Digital Class A Television Stations, 18 FCC Rcd 18365 (2003) (Notice of Proposed Rulemaking).

[53]47 U.S.C. §396(k)(10).

multiple times. The Corporation and PBS have estimated that it will cost $177 million to replace the interconnection system. The Corporation has requested that the cost be covered by federal appropriations during fiscal years 2004 through 2006. The Corporation received an initial $10 million appropriation for fiscal year 2004 for this purpose.

In addition, PBS is separately seeking funds from the Corporation for a project to provide enhancements to the new interconnection system. This effort, known as the Enhanced Interconnection Optimization Project, is designed to allow licensees and PBS to schedule and manage the digital broadcasting of public television programs through the use of automated channel operations and monitoring. According to PBS, this system will cost approximately $12 million to $15 million to implement at its facilities. PBS told us that approximately $8 million is still needed, half of which it is seeking from the Corporation. The individual stations will also need to implement the interconnection project at their ends. PBS has estimated that a typical station-side installation costs between $1 million and $1.2 million. The Corporation's consultation panel for digital funds recommended in July 2003 that PBS receive $4.1 million for the project from the Corporation's fiscal year 2003 digital transition funds.

While some licensees noted that this project has potential to bring about substantial savings and improved operations for licensees, others expressed concerns about increased maintenance costs, stranded investments in digital master control equipment bought before the project was announced, and a lack of detailed information to assess the costs and usefulness of the project. For example, in our survey, about 25 percent of the licensees responding said that they have already acquired some types of digital equipment (master control, production, or storage) that are not fully compatible with the project, which may limit the capabilities and usefulness of the project to them. New equipment may need to be acquired in order to obtain the full benefits of the project. In response to concerns about the potential incompatibility of some licensees' existing digital equipment with the project, the Corporation has conditioned the award of its $4.1 million grant to PBS on an independent review of the project.

In addition to systemwide infrastructure improvements, the Corporation, licensees, and other public television stakeholders have also identified digital content as essential to ensure the success of public television's digital transition. The Corporation testified before the House Energy and Commerce Committee in July 2002 that digital content, along with digital equipment, is a primary element of the digital transition. Additionally, a

working group—funded by the Corporation and comprised of Corporation and PBS officials, as well as public television licensees—highlighted this need in a 2003 report, which stated that the digital transition provides public television with an opportunity to reposition itself to carry out its mission if it is willing to create digital services that are "more responsive to the needs of our constituents and cheaper, simpler, smaller, and more convenient to use."[54]

Noting that 2 years' advance time may be needed to plan, develop, and launch digital services, and that digital production costs are generally higher than the costs of creating analog programming, the Corporation has characterized the need for digital content and research as "even more pressing" due to the limited availability of past federal funding for the digital transition. Corporation officials told us that licensees and other national public television organizations, including the Corporation, are developing a systemwide strategic plan on the future of public television that includes the creation of digital content. As part of this planning, the Corporation is in discussions with PBS on the need to develop a new national programming plan to support digital content needs.

Some Public Television Stakeholders Have Suggested Funding Alternatives for the Digital Transition

Many public television stakeholders have indicated a need for additional federal funds to support the digital transition and fully utilize the potential of digital television. Several licensees in our survey, however, suggested changes to some of the Corporation's existing funding mechanisms to help manage such needs. Among the suggested changes were limiting the Corporation's digital grants to one licensee in a market served by multiple licensees; offering grants to support shared operations, such as digital master control equipment, among public television stations in the same market; and eliminating duplication of public television stations in markets served by multiple licensees. However, several licensees in markets with multiple stations believe that they provide valuable services and unique programming to their communities.

In addition, some public television stakeholders have observed that Corporation funds should be repositioned in order to achieve the benefits

[54]Digital Distribution Implementation Initiative, *Sustaining the Mission: Television Strategic Investment Scenarios*, http://technology360.org/DDII-Scenarios-Television-Fall03.htm (last accessed February 10, 2004).

of the digital transition.[55] According to these stakeholders, the Corporation should foster new collaborative services by supporting the provision of digital content favoring alternative distribution platforms such as the Internet over the traditional medium of over-air broadcasting. These services include interactive Web sites that provide audio and video content on subjects such as history, science, and literature. Unlike over-air broadcasting, interactive Web sites would allow people to access this content regardless of their location. Stakeholders have noted that such services would encourage collaboration of licensees without diminishing their local presence and that this approach may help public television strengthen its mission to provide high-quality noncommercial programming and services.

Conclusion

A long-standing issue for the pubic television community is how best to distribute the Corporation's funds among local station operations, national programming, and infrastructure support. Most licensees responding to our survey supported the existing statutory allocation of the Corporation's television funds between licensees and national programming and were generally satisfied with the Corporation's process for periodically reviewing the eligibility criteria for distributing funds through Community Service Grants. In addition, most licensees expressed their support for the Corporation's continued funding for PBS's National Program Service, which nearly all see as helping them meet their missions for providing quality children's and prime-time programming. As for local programming, most licensees indicated that the amount of local programming they produced was not sufficient to meet their communities' needs, largely due to their limited financial resources.

The Corporation's approach for funding its Television Future Fund program is a concern for many licensees. As our survey shows, only 30 percent of respondents agreed with the Corporation's current approach of using funds designated for distribution among licensees to support Television Future Fund projects. The Corporation, as informed by counsel, contends that it has the authority to use these funds to support the Television Future Fund program. It is our view that the Corporation may not take a portion of the funds designated by the Congress for distribution

[55]Digital Distribution Implementation Initiative, *Sustaining the Mission: Television Strategic Investment Scenarios*, http://technology360.org/DDII-Scenarios-Television-Fall03.htm (last accessed February 10, 2004).

among public television licensees, pool them with System Support funds, and use them to make competitive grants only to applicants submitting project proposals acceptable to the Corporation after review and recommendation by an advisory panel. Although our legal analysis focused on the Television Future Fund program as it existed prior to the end of fiscal year 2003, we note that under the revised program, the Corporation is still aggregating the funds and using them for projects that benefit the entire system rather than giving the monies directly to the individual licensees. Moreover, it appears that the majority of the funds will be going to vendors rather than the stations. Accordingly, we continue to question whether the Corporation has the authority to utilize in this fashion the $10.1 million of the $18.3 million currently in the Television Future Fund account that came from funds designated for distribution among licensees.

The Corporation's support for the digital transition is another area of concern. As shown by our survey, the priorities of most licensees in 2003 shifted beyond the digital transmission equipment supported by Corporation grants. This contributed to a low application rate for the Corporation's digital grants in the latter half of that year and a carryover of $24 million in digital transition funds into calendar year 2004. While the Corporation is broadening the scope of its digital transition grants in 2004, the licensees' priorities for digital production equipment and digital content still are not included in the Corporation's digital transition funding.

Recommendations for Executive Action

We recommend that the Corporation for Public Broadcasting take the following two actions regarding the Television Future Fund and its digital transition funds:

- Before making further Television Future Fund awards or expending any funds in the Television Future Fund account, the Corporation should request specific statutory authority to do so, if it intends to continue using funds that were designated for distribution among licensees. Should this specific authority not be obtained, the Corporation should return to the licensees such funds remaining in the Television Future Fund account that came from the funds designated for distribution among licensees.

- The Corporation should broaden the scope of its digital transition funding support to include digital production equipment and digital content.

Agency Comments

We provided a draft of this report to the Corporation for Public Broadcasting and to the Public Broadcasting Service for their review and comments. The Corporation agreed with our recommendation to broaden the scope of its digital funding to include production equipment and content, consistent with congressional directives and station needs after consultation with licensees or their designated representatives. The Corporation stated that it recognizes that stations are at various stages in the conversion process and that all station needs are being given careful consideration in consultations on the distribution of fiscal year 2004 digital transition funds. The Corporation did not agree with our recommendation that the Corporation should request specific statutory authority before making further Television Future Fund awards or expending any funds in the Television Future Fund account. The Corporation's comments include a legal memorandum from its outside counsel which concludes that the Television Future Fund is fully consistent with the Communications Act of 1934, as amended. For the most part, the legal memorandum raises the same arguments that we have addressed in our opinion. However, one argument raised for the first time involves the "doctrine of ratification." The Corporation cites to cases holding that when the Congress reenacts, without change, statutory terms that have been given a consistent judicial or administrative interpretation, the Congress has expressed an intention to adopt that interpretation. The Corporation uses this doctrine to support its contention that the Congress has consistently replenished funds designated for distribution among licensees knowing that a portion of these funds are being used for Future Fund projects. Thus, the Corporation contends that the Congress has, in essence, ratified by appropriation the Corporation's interpretation of the statute. However, as recognized by GAO opinions summarizing the test that courts have used to find ratification by appropriation, three factors generally must be present to conclude that the Congress, through the appropriations process, has ratified agency action. First, the agency takes the action pursuant to at least arguable authority; second, the Congress has specific knowledge of the facts; and third, the appropriation of funds clearly bestows the claimed authority. None of these factors is present here. The Corporation's comments and our response to points raised by its attached legal memorandum are included in appendix VII.

The Public Broadcasting Service's comments are included in appendix VIII. Noting our finding that over half of the survey respondents indicated a need for changes in the process for selecting programs for the National Program Service, PBS stated that it will analyze its current mechanisms for

generating program input from member stations and will seek counsel from the Content Policy Committee of its board on how best to improve its systems for securing member input. PBS also provided additional information to clarify the respective funding needs of the Enhanced Interconnection Optimization Project and the Next Generation Interconnection System.

We also provided a draft of the report to FCC and have incorporated FCC's technical comments where appropriate.

Matter for Congressional Consideration

If the Congress supports the concept of using funds that were designated for distribution among licensees to finance the Television Future Fund program, it should provide the Corporation with the authority to use the funds for this purpose.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We will then send copies of this report to the appropriate congressional committees, the President and Chief Executive Officer of the Corporation for Public Broadcasting, the President and Chief Executive Officer of the Public Broadcasting Service, the Chairman of the Federal Communications Commission, and others who are interested. We also will make copies available to others who request them. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov. If you or your staff have questions concerning this report, please contact me on (202) 512-2834 or at goldsteinm@gao.gov. Key contacts and major contributors to this report are listed in appendix IX.

Mark L. Goldstein
Director, Physical Infrastructure Issues

Scope and Methodology

Our objectives were to review the Corporation's activities and obtain the views of public television station officials regarding: (1) the statutory allocations for federal funding of public television; (2) the distribution of funds by the Corporation through its Community Service Grant and Television Future Fund programs, including a legal analysis of whether the funding of the Television Future Fund program is consistent with the Corporation's underlying statutory authority; (3) the distribution of funds by the Corporation for PBS's National Program Service and for local programming; and (4) Corporation funding to assist public television stations in their transition to digital technologies and services. We also reviewed the statutory and regulatory requirements, system policies and guidance, and licensees' views on underwriting acknowledgments.

To respond to these objectives, we gathered information from a variety of sources, including a survey of all public television licensees receiving funds from the Corporation for Public Broadcasting. To respond to the first and second objectives, we reviewed provisions of the Communications Act, as well as documents and records used by the Corporation to implement and administer programs supporting public television stations. We also interviewed officials of the Corporation, PBS, and the Association of Public Television Stations, a nonprofit organization whose members include nearly all of the licensees of public television stations.

To respond to the third objective on Corporation funding for national programming, we reviewed provisions of the Communications Act and documentation on funding for national programming obtained from the Corporation, PBS, and the Independent Television Service, a nonprofit corporation that receives federal support from the Corporation for distribution to independent public television producers. We also interviewed officials from all of these organizations, the Association of Public Television Stations, and two additional distributors of national programming that do not receive funding from the Corporation—American Public Television and the National Educational Telecommunications Association.

To respond to the fourth objective on assisting in the transition to digital technologies and services, we reviewed statutory provisions, documents, and records from the Corporation and PBS, which is under contract to the Corporation to administer the Corporation's digital grant programs. We also interviewed officials of the Corporation, PBS, the Association of Public Television Stations, and the National Telecommunications and Information Administration in the Department of Commerce that also

awards grant funds to public television stations for digital equipment costs. To further our understanding of public television's progress in the digital transition, we requested and received data from the FCC on its June 2003 survey of public television licensees that are PBS-affiliates in the top 100 television markets.

For our objective on underwriting acknowledgments, we reviewed statutory and regulatory documents and interviewed officials of FCC, which enforces acknowledgment requirements, and obtained guidance provided by and interviewed officials of the primary national programming distributors—PBS, American Public Television, and the National Educational Telecommunications Association.

We also reviewed the legal opinions of the Corporation's outside counsels as part of our legal analysis to determine whether the Corporation's approach to funding the Television Future Fund is consistent with the governing statute. Our legal review focused on the program as it existed prior to the end of fiscal year 2003.

We responded to all of these objectives by conducting interviews with 16 licensees of public television stations and deploying a Web-based survey of public television licensees. As the scope of our work was limited to an evaluation of the Corporation's activities, we only surveyed entities licensed by FCC to operate one or more public television stations that received funds from the Corporation as of mid-August 2003. We identified the population of public television licensees from the *Public Broadcasting Directory* published by the Corporation and verified this information with a database provided by the Association of Public Television Stations, as well as with FCC's database of public television licensees. This information included names, addresses, and other contact information of public television licensees, as well as licensee type and size. We acquired data on public television licensee market size and station revenues from an online Station Activities and Benchmarking Survey and Station Grant Making System, both developed by the Corporation and to which all recipients of Corporation grants contribute data. To assess the reliability of this licensee data, we reviewed these documents and discussed the data with knowledgeable agency officials. As a result, we determined that the data were sufficiently reliable for the purposes of this report. We surveyed 178 licensees and subsequently excluded the surveys of two licensees: (1) one licensee who did not meet the aforementioned criteria and (2) another licensee who holds two licenses, but who completed only one survey rather than two. Our resulting population consisted of 176 licensees.

To develop our survey, we interviewed officials at the Corporation, PBS, the Association of Public Television Stations, the Independent Television Service, American Public Television, the National Educational Telecommunications Association, and several licensees of public television stations. We also conducted an interview with an official of and obtained documents from Citizens for Independent Public Broadcasting, a national membership organization dedicated to addressing public broadcasting issues. We then conducted pretests with seven public television licensees to help further refine our questions, develop new questions, clarify any ambiguous portions of the survey, and identify any potentially biased questions. These pretests were conducted in person and by telephone with licensees of various types, sizes, and regional locations across the country.

We began our Web-based survey on August 21, 2003, and included all useable responses received as of September 22, 2003. Log-in information to the Web survey was e-mailed to officials of public television licensees, which included general managers and presidents. We sent two follow-up e-mails, and after the survey was online for 3 weeks, we attempted to contact all those who had not logged into the survey. The Corporation and the Association of Public Television Stations coordinated with us to encourage station licensees to complete the survey. Of the population of 176 public television licenses, we received 149 complete surveys, for an overall response rate of 85 percent. However, the number of responses to individual questions may be fewer than 149, depending upon how many licensees were eligible to or chose to respond to a particular question.

All completed surveys were reviewed, and we contacted respondents to obtain information where clarification was needed. Because the survey was made accessible to all public television licensees in the appropriate population, percentage estimates do not have sampling errors. The practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted, the sources of information available to respondents, or the types of people who do not respond can introduce unwanted variability into the survey results. We included steps in both the data collection and data analysis stages for the purpose of minimizing such nonsampling errors. In addition to pretesting the questions with members of the population, we performed computer analyses to identify inconsistencies and other indications of error. We also conducted analyses on available licensee characteristics to evaluate the possibility that the respondents might differ from the nonrespondents. Although there is some evidence of differences, these are not large enough

to provide a basis for adjusting survey responses. Distributions by type of licensee (community, local authority, state, university) and numbers of stations operated by licensees were not significantly different. Licensees operating large stations were somewhat more likely to respond and those operating smaller stations were somewhat less likely to respond, but the differences were not significant.

The following data is used only as background information in the report; therefore, the data was not verified for data reliability purposes: (1) the digital television cost estimate developed by the Corporation and PBS; (2) the sources and percentages of public television revenue provided by the Corporation; (3) the number of Television Future Fund and digital television grants awarded by category; (4) and the distribution of funds by the Corporation for programming.

Our review was performed from April 2003 through February 2004 in accordance with generally accepted government auditing standards.

Components of the Corporation's Community Service Grants

On the basis of statutory provisions and the receipt of an annual federal appropriation from the Congress, the Corporation for Public Broadcasting makes an annual Community Service Grant award to each eligible licensee of one or more noncommercial educational public television station(s). Figure 22 summarizes the factors upon which funds are awarded through each of the three component grants of a Community Service Grant.

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Figure 22: Components of the Corporation's Community Service Grants

	Eligibility Criteria
Basic grant	
	● The entity must operate a full-power noncommercial educational television station licensed by the FCC. ● The public television station must be "on the air."
Base grant	
	Same criteria as for the basic grant plus:[a] ● The licensee must receive a minimum level of nonfederal financial support during a designated previous fiscal year. ● The licensee must maintain transmission and production capabilities that meet FCC requirements for a noncommercial educational television station. ● The licensed station must have broadcast 365 days during a designated previous fiscal year and for a specified minimum number of programming hours. ● The station's daily broadcast schedule must be devoted to programming that is responsive to the "demonstrated needs of the community" and is noncommercial and educational, informational, or cultural in nature.
Incentive grant	
	Same criteria as for the base grant.

Source: The Corporation for Public Broadcasting (data); GAO (presentation).

Grant Amount Determination	Exceptions	FY 2004 Grant Amount
• $10,000 is awarded to each licensee.	Not applicable	$10,000
• Based on the amount of the total appropriation received by the Corporation from the Congress. • Based on the act's allocation of 75 percent of public television funds intended for distribution among licensees of stations. • Based on a predetermined amount for each grant set through the Corporation's periodic review of the Community Service Grant program.	The Base Grant will be modified if: • More than one licensee has a station operating in the same market (known as an "overlap" market). • A licensee generates less than $2 million in nonfederal financial support (known as a "Local Service Grant" taken out of $3 million set aside for such stations). • A licensee raised nonfederal financial support in excess of a maximum-specified level.	$418,000 (This amount could be modified for some licensees based upon a specified exception identified in the previous column. As administered by the Corporation, this sum includes the $10,000 basic grant.)
• The total of all nonfederal financial support raised by public television station licensees is determined. • The percentage share of total nonfederal financial support is determined for each licensee. • Of the funds not already distributed through the basic and base grants, each licensee receives a percentage of remaining funds that match the licensee's share of total nonfederal financial support raised.	The Incentive Grant will be increased if: • A licensee that operates a station in an overlap market differentiates their programming. • A licensee operates multiple transmitters (known as a "Distance Service Grant" which awards additional monies based on the number of transmitters operated and a designated percentage of the base grant).	A Grantee's FY 2002 weighted nonfederal financial support, multiplied by a predetermined factor (.085488). (This amount could be increased based upon a specified exception identified in the previous column.)

[a]Nine other eligibility criteria for the base grant are specified by the Corporation, including licensees' compliance with regulations on equal opportunity employment, Internal Revenue Service requirements, provisions of the Communications Act, and regulations on the use and control of donor names and lists.

Legality of the Corporation for Public Broadcasting's Television Future Fund Program

The Corporation for Public Broadcasting (the Corporation) established the Television Future Fund in 1995 for the purpose of investing in projects that would reduce costs, facilitate collaboration, and increase revenue across the public television system. The Television Future Fund is funded, in part, by monies designated by the Congress to be distributed among public television licensees. As part of our review of the Corporation, we were asked to determine the legality of this funding practice. Specifically, the issue is whether the Corporation may use funds designated by the Congress for distribution among public television licensees to support a competitive grant program, the Television Future Fund program. As explained more fully below, the Corporation's funding and distribution of grants under the Television Future Fund program are not in accord with the underlying statutory authority under which the Corporation operates.[1]

Background

The Congress established the Corporation in 1967 as a nonprofit corporation to facilitate the development of public radio and television broadcasting. 47 U.S.C. §396. To ensure insulation from government control or influence over the expenditure of federal funds, the Congress provides funds directly to the Corporation. Although not a federal agency, the Corporation receives an annual appropriation from the Congress, which is its primary source of funding and is deposited into the Public Broadcasting Fund. The 2004 fiscal year appropriation was $380 million.[2] In turn, the Corporation supports local television and radio stations, programming, and improvements to the public broadcasting system as a whole. According to the Corporation, its support represents approximately 15 percent of public broadcasting's revenues. Other support for the public broadcasting system comes from such sources as membership, businesses, college and universities, and state and local governments.

[1]This opinion analyzes the Television Future Fund program as it operated prior to the end of fiscal year 2003. The Corporation has recently reactivated funding of the Television Future Fund under procedures different than those previously in effect. This opinion does not analyze the new procedures. The Corporation also has a Radio Future Fund program, as well as other competitive grant programs. The Corporation refers to the Television Future Fund program as a "selective" grant program. However, we use the more common terminology "competitive" grant program to refer to the Television Future Fund program.

[2]Fiscal Year 2004 advance appropriation of $380 million was provided in Pub. L. No. 107-116, 115 Stat. 2177 (2002).

The Corporation funds more than 350 locally operated public television stations across the country.[3] Prior to the establishment of the Television Future Fund, the Corporation distributed available monies among licensees of public television stations through the Community Service Grant mechanism.[4] Community Service Grants (CSG) are unrestricted general operating grants provided by the Corporation directly to qualified public television stations according to a mathematical formula.[5] As required by 47 U.S.C. §396(k)(6)(B), the Corporation established eligibility criteria and a formula for distributing these funds and has periodically reviewed them in consultation with the public television station community. All qualified licensees receive a CSG, although the amount varies. A full-power station operating under a noncommercial, educational Federal Communications Commission (FCC) license qualifies for a CSG if it meets minimum requirements including a minimum level of nonfederal financial support, a minimum broadcast schedule, and bookkeeping and programming standards.[6]

[3]The Corporation provides grants to 176 licensees of public television stations. The licensees represent 356 stations.

[4]Funds available under 47 U.S.C. §396(k)(6)(B) are generally referred to as CSG funds.

[5]The statute requires that funds from the CSG pool be distributed in two parts. 47 U.S.C. §396(k)(6)(B). First, a basic grant must be provided to "each licensee and permittee of a public television station that is on the air." Id. Second, the remaining fund must be distributed in accordance with eligibility criteria and on the basis of a formula. Id. Since the late 1960s the Corporation has provided a $10,000 basic grant to each licensee. The Corporation then provides a base grant and an incentive grant to qualified licensees. The base grant is a percentage of the total appropriation and is set by the CSG Review Process. Three factors may alter the base grant portion a licensee may receive. Stations exceeding a certain revenue level will not receive base grants (only basic grants). Stations in overlap markets share a single base grant on a percentage of market basis. Waivers for special circumstances (such as mergers) may alter the base portion. For fiscal year 2003, the base grant totaled approximately $401,500 for each eligible licensee. The incentive grant is a match based on a percentage of the amount of nonfederal financial support that a station raised. (This is also subject to adjustment based on station revenues, overlap market policies (including program differentiation), and special circumstances). For fiscal year 2003, the incentive grant was calculated by multiplying the Grantee's fiscal year 2001 nonfederal financial support by .078242.

[6]For example, the Corporation requires stations to certify that they are in compliance with the statutory requirements involving: meetings which must be open to the public (47 U.S.C. §396(k)(4)); financial information which must be made available to the public (47 U.S.C. §396(k)(5)); and community advisory boards which must be established by certain stations (47 U.S.C. §396(k)(8)). The statute also requires the station grant recipients to certify to the Corporation that they have complied with equal employment opportunity related requirements (47 U.S.C. §396(k)(11)).

The Corporation established the Television Future Fund in 1995. At that time, the Corporation had growing concerns about declining federal support, as well as diminished revenues from other sources. The Corporation saw a need to establish and maintain a pool of money, aggregating funds from two different sources, to fund projects to address systemwide concerns. According to the 1995 Public Television Issues and Policies Task Force, the Future Fund was established to

- provide seed capital or short-term financing for projects that can significantly reduce costs, increase efficiency, provide economies of scale, or generate incremental gains in membership, underwriting, or other sources of income;
- fund station proposals to explore opportunities to achieve new operating efficiencies through collaborative efforts, partnerships, joint operating agreements, consolidations, and other arrangements resulting in significant annual savings; and
- fund extraordinary efforts and new initiatives to raise nonfederal income, in anticipation of reduced federal funding, with a goal of stimulating an increase in annual nonfederal revenue.

According to Corporation officials, the Corporation had previously funded similar projects on a smaller scale through the use of system support funds.[7] However, since, under the statutory allocation formula, these funds are relatively limited, the Corporation felt a larger pool of funds was

[7]Specifically, under the statutory allocation formula:

"6 percent of such amounts [appropriated to the Corporation and available for allocation for any fiscal year] shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the cost of interconnection facilities and operations . . . and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English or for assistance in the provision of affordable training programs for employees at public broadcast stations, and <u>if the available funding level permits, for projects and activities that will enhance public broadcasting</u>." 47 U.S.C. §396(k)(3)(A)(i)(II). (Emphasis added.)

needed.[8] Accordingly, the Corporation's board, after what it terms extensive consultation with the public television station community, approved the funding of the Television Future Fund using monies from the system support and the CSG pools.[9]

The Corporation views Television Future Fund awards as a special category of grant that is neither exclusively a CSG grant nor a System Support expenditure. The Corporation notes that while CSGs typically are utilized only as determined by an individual station recipient for its own benefit, Television Future Fund grants can be used as determined or directed by more than one station for the benefit of multiple stations and, potentially, for the benefit of public television as a whole. Under procedures in place prior to the end of fiscal year 2003, the Corporation solicited interest in Future Fund grants by issuing a Request for Proposal (RFP) and would evaluate applicants for grants on the basis of RFP funding criteria.[10] Not all applicants received funding.

Since its creation and through May 2003, the Corporation has allocated a total of $51 million to the Television Future Fund. Of this amount, $24.5 million is from CSG funds—in other words, from funds that are available for distribution among licensees of public television stations. Approximately $41.3 million has been awarded through the Television Future Fund program.[11] Prior to the end of fiscal year 2003, the Corporation

[8]The Future Fund grew out of a recommendation by the TV Issues & Policies Task Force. In explaining the need for the Fund, the task force stated: "We saw a clear need for a significant pool of money to invest in systemwide efforts to reduce costs and increase net revenues. Unfortunately, there was no way to create a pool of any significant size solely with CPB discretionary funds [system support funds]." Status Report from the Public Television Issues and Policies Task Force, September 12, 1995.

[9]According to the Corporation, supporters of the Television Future Fund greatly outnumbered opponents. The Corporation states that 30 to 40 stations considered to be leaders in public broadcasting expressed strong support, and agreement existed throughout the station community at large. The Corporation contends that active opposition to the Television Future Fund was confined to fewer than a dozen station licensees.

[10]The Corporation utilized a review panel, made up of representatives of diverse types of public television stations, to assist in reviewing and recommending which projects should be awarded Future Fund grants.

[11]In September 2002, the Corporation temporarily suspended the awarding of any new Television Future Fund grants and set aside fiscal year 2003 funding pending the outcome of a review. The Television Future Fund grant program was recently reactivated. Fiscal year 2004 funding was added to the Television Future Fund account.

has made 204 grant awards, of which 39 percent of the grants have gone to stations, 30 percent have gone to stations paired with consultants, and 31 percent have gone to third-party awardees. The nature of the projects funded with Television Future Fund grants has varied greatly and included Web site experiments and marketing projects. The grant amounts have varied from a few thousand dollars to hundreds of thousands of dollars.

Issues

From its inception, the Corporation always envisioned that monies from two sources—the System Support and CSG pools—would support the Television Future Fund program. We are not aware of any concerns that have been raised about the Corporation's use of System Support funds to support the Television Future Fund. Because the statute provides that System Support monies may be used, if available funding levels permit, for projects and activities that enhance public broadcasting, the Corporation is clearly permitted to so use such funds. 47 U.S.C. §396(k)(3)(A)(i)(II). The primary question concerning the legality of the Television Future Fund program involves the use of CSG funds.[12] Specifically the issue is whether the Corporation may use CSG funds to support the Television Future Fund, a competitive grant program that awards grants on the basis of selective, project-specific criteria. As explained more fully below, we have determined that the statute does not authorize the Corporation to use these funds in this manner.

The Statutory Framework

A statutory allocation formula governs how the Corporation distributes appropriated funds to support public television stations.[13] 47 U.S.C. §396(k). Under this formula, after administrative costs and System Support funds are allocated (about 11 percent of the annual appropriation), the

[12]We met on several occasions with Corporation officials to discuss these issues. The Corporation provided us with three memorandums responding to questions raised. Additionally, the Corporation provided us with supporting documentation, including a 1995 legal opinion prepared by its then outside counsel, as well as the views of its current outside counsel, to help us understand their perspective on this issue.

[13]The Corporation receives a lump sum appropriation. See, e.g. P.L. 108-7, 117 Stat. 11 (2003). Typically, the appropriation provides that the amounts available must be used "within limitations" specified by the Communications Act of 1934. The appropriation act may also specify some deviations from the formula. For example, Public Law 108-7 required: "That in addition to the funds provided under this heading in Public Law 106-554, $183,000 shall be available for administrative costs for fiscal year 2003, notwithstanding section 396(k)(3)(A) of the Public Broadcasting Act."

remaining funds are divided between television and radio, with 75 percent earmarked for television, and 25 percent for radio. 47 U.S.C. §396(k)(3)(A). Of the monies reserved for television, "75 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations pursuant to paragraph (6)(B)." 47 U.S.C. §396(k)(3)(A)(ii)(I). For these "(3)(A)(ii)(I) funds," paragraph (6)(B) specifically provides that the Corporation "shall make a basic grant . . . to each licensee and permittee of a public television station that is on the air." 47 U.S.C. §396(k)(6)(B). Paragraph (6)(B) then provides:

"The balance of the portion reserved for television stations . . . shall be **distributed** to licensees and permittees of such stations in accordance with eligibility criteria (which the Corporation shall review periodically in consultation with public . . . television licensees or permittees, or their designated representatives) that promote the public interest in public broadcasting, and on the basis of a formula designed to—

i. provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve; [and]

ii. maintain existing, and stimulate new, sources of nonfederal financial support for stations by providing incentives for increases in such support . . . ." 47 U.S.C. §396(k)(6)(B). (Emphasis added.)

The next paragraph of the statute further provides that funds distributed through the above mechanism "may be **used** at the discretion of the recipient for purposes related primarily to the production or acquisition of programming." 47 U.S.C. §396(k)(7) (Emphasis added.)

Analysis

In our view, subsection 396(k)(6)(B) does not authorize the Corporation to establish a competitive grant program using project-focused criteria funded in part with CSG funds. Although we often defer to an agency's interpretation of a statute it is charged to administer,[14] in this instance, the Corporation's interpretation of its authority under the statute is neither consistent with the statute's language nor the Congress's policy choice favoring local, not Corporation, control of the expenditure of CSG funds.

[14]As a general proposition, an agency's interpretation of a statute it is charged to administer is entitled to deference. *U.S. v. Mead Corp.*, 533 U.S. 218 (2001); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Deference is not without limits. Deference is not given to an agency interpretation that is inconsistent with the language and objectives of a statute. *Chevron U.S.A., Inc.* at 844.

Moreover, as implemented by the Corporation, some Television Future Fund grants have been awarded to nonstation entities. This is in direct contravention of paragraph (k)(6)(B) directions that these funds be distributed to eligible licensees and permittees of public television stations.

The difference between our view and that of the Corporation focuses on whether the "eligibility criteria" the Corporation may adopt includes project-focused criteria that would govern the competitive award of funds for a particular project or whether the "eligibility criteria" the Corporation may adopt includes only station-based criteria that distinguishes among public television licensees on the basis of such factors as financial needs, audience satisfaction, or fundraising effectiveness. According to Corporation officials, the term "eligibility criteria" is broad enough to allow them, in consultation with the station community, to adopt not only station "qualification" criteria but also "selective" project criteria. We disagree. There are, in our view, several reasons why the Congress did not intend the Corporation's authority to establish "eligibility criteria," and the formula under which CSG funds are disbursed, to mean that the Corporation may take a portion of CSG funds, pool them with System Support funds, and use them to make competitive grants only to applicants submitting project proposals acceptable to the Corporation after review and recommendation by an advisory panel. First, the language of subsection 396(k)(6)(B) does not readily support such a reading. Second, the statutory construct governing the Corporation's distribution of funds indicates that the Congress specifically identified a limited source of funding for Corporation-approved project-specific grants, which by necessary implication is the exclusive source of funding for such grants. And third, the Television Future Fund program runs contrary to the Congress's expressed policy favoring local, not Corporation, control of the expenditure of these discretionary funds. These reasons for our conclusions are discussed more fully below.

First, with respect to the statutory language, section 396(k) provides an allocation formula directing the Corporation, after deducting about 11 percent of amounts appropriated to the Public Broadcasting Fund for administrative and System Support expenses, to distribute 75 percent of the remaining balance to public television stations. 47 U.S.C. §396(k)(3)(A). The statute further provides that 75 percent of the 75 percent reserved for public television stations "shall be available <u>for distribution among the licensees and permittees of public television stations</u> pursuant to paragraph (6)(B)." Paragraph (6)(B), in turn, provides two directions to the Corporation. It must first "make a basic grant . . . to each licensee and

permittee of a public television station that is on the air." 47 U.S.C. §396(k)(6)(B). Second, paragraph (6)(B) directs the balance of the portion reserved for public television stations to "be distributed to licensees and permittees of [public television] stations in accordance with eligibility criteria . . . that promote the public interest in public broadcasting." Id. In addition, the distribution of such balance shall be "on the basis of a formula designed to" honor station-focused considerations such as their "financial needs and requirements . . . in relation to the communities and audiences they serve or the level of, and increases in, nonfederal financial support received by the stations. The point of paragraph (6)(B) is to direct the Corporation's distribution of CSG funds to the licensees and permittees of public television stations. While paragraph (6)(B) provides only that the "eligibility criteria" are to "promote the public interest in public broadcasting," the Congress nonetheless directed the distribution of such funds on the basis of a formula with a pronounced focus on station-based considerations. Hence, in the context of paragraph (6)(B)'s distribution mechanism, we believe the phrase "eligibility criteria . . . that promote the public interest in public broadcasting" can best be read to mean criteria focusing on the eligibility of licensees and permittees of public television stations, not project eligibility criteria.[15]

An additional and perhaps more glaring defect in the Corporation's interpretation of "eligibility criteria" is that it changes the basic nature, and control over the expenditure of the grant funds. To read paragraph (6)(B), as the Corporation does—as authorizing competitive grants for specific projects—introduces an element into the CSG funds allocation that the Congress did not appear to intend. We have two reasons for this view. First, as pointed out above, the language of paragraph (6)(B) makes no reference to funding specific projects. By contrast, the Congress has provided the Corporation with express authority to fund projects using System Support funds. 47 U.S.C. §396(k)(3)(A)(i)(II). In 1988, the Congress amended the system support provision and specifically authorized the Corporation to use such funds "if the available funding level permits, for projects and

[15]The legislative history supports this view. The House Report accompanying the legislation that added the distribution mechanism provided:

"The balance of the amount reserved for television stations would be distributed among licensees . . . of such stations as are eligible to receive additional grants under criteria established by the Corporation in consultation with stations. These additional grants would be apportioned among eligible stations . . . . "H. Rep. No. 245, 94th Cong., 1st Sess. 22, See, also, S. Rep. No. 447, 94th Cong., 1st Sess. 11-12 (1975), reprinted in 1975 U.S.C.C.A.N. 2006, 2217. (Emphasis added).

activities that will enhance public broadcasting." Public Telecommunications Act of 1988, Pub. L. No. 100-626, 102 Stat. 3207 (1988). As stated above, by identifying a specific source of funds to be used for project-based grants, the legislative language suggests that other funds would not be used for the same purpose. The legislative history supports the view that the Congress anticipated that these funds would be used for systemwide projects that benefit the public broadcasting community.[16]

Second, the statute and its legislative history reflect a clear division of roles vis-à-vis the Corporation and licensees and permittees of public television stations. Under the statutory scheme, it is the Corporation that is responsible for distributing funds to the licensees and it is the recipients of these funds that decide how they are to be used. From the time that the Congress first established the Corporation, one of the Corporation's functions was to distribute funds to licensees of public television stations who, in their sole discretion, decide how to use them.[17] In 1975, when the Congress established the subsection (6)(B) statutory distribution mechanism, the Congress, in another subsection, also specified that the discretion over how funds are to be used rests with the stations receiving the funds. Specifically, as amended, the statute provides that "[t]he funds distributed . . . may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming." 47 U.S.C. §396(k)(7). Not surprisingly, the legislative history of the distribution mechanism is replete with references to the funds flowing "directly" to the

[16]When this language was added, the Senate Report explained that:

"Funds remaining after payment of the costs set forth in the statute should be spent on services that public radio and television stations cannot efficiently perform themselves. CPB currently uses funds allocated to system support for professional development, training, research, and promotion of public radio and television programming among other things. The Committee supports these activities but also recognizes that CPB, in consultation with, the public broadcasting community, is in a position to determine which of these services public broadcasting needs. The Committee does not intend that the CPB must perform these activities itself, but should support activities within the public broadcasting community and their national organizations where that is an efficient way to proceed." S. Rep. No. 444, 100th Cong., 2nd Sess. 27 (1988).

[17]The 1967 House Report provided that one of the purposes of the Corporation was "to make grants to local educational broadcasting entities so that they may in their sole discretion produce or otherwise acquire appropriate programs and obtain the personnel required to make their own production staffs adequate to fulfill local audience program needs. . . ." H. Rep. No. 572, 90th Cong., 1st Sess. 16, reprinted in 1967 U.S.C.C.A.N. 1799, 1806 (1967).

licensees and the licensees having "discretion" over the use of the funds.[18] The Corporation's creation of a competitive grant program where it decides not only who receives a grant but also more importantly the specific purposes for which the grant funds can be used alters the fundamental balance of discretion over the use of the funds.[19] Under the Corporation's process, in effect prior to the end of fiscal year 2003, the Request for Proposal Submission Guidelines and Application (RFP) establishes the funding initiatives that guide awards for project support.[20] However, the Corporation reserves the right to fund "otherwise outstanding proposals based on their individual merits, though they may not necessarily respond to these priorities but demonstrate a clear response to Fund objectives."

[18]When the distribution mechanism was first added, the Senate Report explained that one of the purposes of the legislation was "[t]o assure that a portion of Federal funds is distributed directly to local noncommercial educational . . . television broadcast stations." Sen. Rep. No. 447, 94th Cong., 1st Sess. 1, reprinted in 1975 U.S.C.C.A.N. 2206. A 1978 House Report noted, "A significant aspect of that support has been the funds CPB passes through to local stations for their discretionary use for local or national purposes." H. Rep. No. 1178, 95th Cong., 2nd Sess. 8, reprinted in 1978 U.S.C.C.A.N. 5345, 5352. The Senate Report in explaining amendments to subsection (k) stated that "Section 396(k) otherwise continues the provisions of existing law regarding the distribution of discretionary funds (Community Service Grants) to public . . . television stations." S. Rep. No. 858, 95th Cong., 2nd Sess. 31 (1978). A 1988 Senate Report stated that "In the early 1970's, the CPB began distributing a substantial percentage of its funds to stations in the form of grants (now called Community Service Grants (CSGs)) to be used as the stations deemed appropriate. In 1981, Congress codified the CPB's practice of giving stations unrestricted CSGs." S. Rep. No. 444, 100th Cong., 2nd Sess. 18 (1988). (Emphasis added).

[19]Prior to 1995, all section (6)(B) funds were allocated to stations through the CSG mechanism, with one exception. For one year, in the early 1990's, the Corporation used CSG funds to make education grants. When the Corporation allocated the education grant funds, there was a stipulation that the recipients use the funds for education projects. However, the recipient, and not the Corporation, selected the education project.

[20]The Corporation did not issue an RFP for fiscal year 2003 because it was reviewing the Television Future Fund operations and it temporarily suspended accepting Television Future Fund proposals during that review. The Corporation recently reactivated the Future Fund grant program under different procedures. According to Corporation officials under the new process, the Corporation will be issuing more directed RFPs for more large-scale Television Future Fund projects, instead of open calls for proposals.

Fiscal Year 2002 RFP.[21] By setting forth what recipients could spend funds on, the Corporation transferred discretionary authority from each individual licensee to itself.

Faced with the statute's clear division of roles, the Corporation's outside counsel attempts to justify first, the Corporation's use of CSG funds to make project-specific grants and second, that the Television Future Funds grants are not primarily designated for programming.[22] In our view, the outside counsel's conclusion that the Corporation, in consultation with the stations, "may" spend funds on projects that will be financially beneficial to the stations and that will stimulate nonfederal funding is based on two unsupported assumptions. First, the outside counsel reads paragraph (k)(6)(B) as providing the Corporation with authority to "spend" CSG funds. Second, the outside counsel contends that the goals of the formula design are in essence mandates on how the CSG funds are to be used. We see no support for either proposition. Paragraph (k)(6)(B) directs the Corporation on how CSG funds are to be distributed not on how they are to be spent. The goals of the formula design also provide guidance on what criteria the Corporation should consider in distributing funds, but does not constrain a recipient's use of CSG funds. Moreover, although the Corporation's outside counsel reads paragraph (k)(7) in terms of its permissive direction, this does not recognize that the subsection emphasizes the discretion of the recipient to use CSG funds for purposes related primarily to programming, i.e., for purposes chosen by the recipient. (Emphasis added).

Finally, the Corporation has implemented the Television Future Fund to make it open to "all public television stations and station consortia, and to

[21]The Corporation also reserved the discretion to not fund a project even if the proposal meets all of the funding criteria. According to the Corporation, it is possible that a complete and valid application proposing a project that is consistent with Future Fund eligibility criteria might not receive a grant. Specifically, the Corporation states:

"In an effort to put limited funds to the best use, evaluators accord higher priority to projects that are replicable or otherwise likely to result in more widespread benefit to public broadcasting. In addition, a grant may be denied where a proposal consistent on its face with Future Fund goals involves an unacceptably high level of risk or produces benefits too insignificant to justify the cost involved." Memorandum from Donna Gregg, Vice President, General Counsel and Corporate Secretary to Mindi Weisenbloom, GAO Senior Attorney, July 11, 2003.

[22]Letter from Stephen A. Weiswasser, Covington & Burling, to Donna Gregg, Vice President, General Counsel, and Corporate Secretary, dated July 9, 2003.

any person, foundation, institution, partnership, corporation, or other business whose project is expressly intended to benefit public television." Fiscal Year 2002 RFP. Thus, some CSG funds have been awarded to entities other than licensees or permittees of public television stations.[23] According to the Corporation, so long as the purpose of the grants is to benefit public television stations, the award of grants to consultants or other third-party entities is consistent with the statute. Since consultants and stations often work together to generate project proposals that are reviewed by a panel representing a diverse group of stations, the Corporation's outside counsel concludes that the statutory purposes are being fulfilled, regardless of whose name appears as payee on the Corporation check. Letter from Stephen A. Weiswasser, July 9, 2003. The difficulty with this approach is that paragraph (6)(B) directs the Corporation to distribute the balance of funds reserved for television stations, after deduction of the basic grant, "to licensees of such stations." 47 U.S.C. §396(k)(3)(A)(ii)(I) (Seventy-five percent of 75 percent remaining after deduction of administrative and system support funds "shall be available for distribution among the licensees and permittees of public television stations pursuant to paragraph (6)(B).") Accordingly, in our view, the Corporation may not distribute CSG funds to a nonstation entity (other than one acting as the agent for a station or group of stations).

Conclusion

For the reasons noted above, we find that the Corporation's funding and distribution of the Television Future Fund program is not consistent with the underlying statutory authority under which the Corporation operates.

[23]For example, in fiscal year 2001, a consultant group received a $259,500 Television Future Fund grant to determine how the public television industry is perceived within a larger and ever more competitive environment and to understand the present and changing attitudes of current and potential individual financial supporters of PBS member stations. In another example, in fiscal year 2001, two consultants receive a $90,000 grant to create and implement a communications plan to disseminate Future Fund project information throughout the public television community. Memorandum from Robert Coonrod, Corporation's President and CEO to the Corporation's board of directors on Future Fund Project Report dated November 29, 2001.

Digital Transition Regulatory Issues of Concern to Public Television

Licensees and others in the public television community maintain that the ability of licensees to provide a full range of digital services depends, in part, on regulatory issues related to digital carriage by cable and satellite system providers. Many in the public television community believe that how mandatory carriage obligations are applied to their digital signal is at the heart of public television's future. Cable systems are required to carry local noncommercial educational television stations based upon a cable system's number of usable activated channels.[1] Satellite carriers are required to carry all nonduplicative noncommercial educational television stations in markets where they provide local-into-local service.[2] These mandatory carriage requirements are often referred to as "must carry" obligations.

There are two key issues on how to apply the mandatory carriage obligations in the digital arena that are of importance to the public television community. The first is whether the "must carry" requirements apply to both the digital and analog signal during the transition period. In other words, would a cable provider be required to carry both the analog and digital signal until the analog spectrum is returned. In a January 2001 Order concerning the carriage of digital television broadcast signals by cable operators, FCC tentatively concluded, based on the existing record evidence, that during the transition, a dual must-carry requirement would burden the cable operator's First Amendment interests more than is necessary to further the government's interests. In this regard, the record was found insufficient to demonstrate the degree of harm that broadcasters, including public television stations, would suffer without carriage of both signals.[3] In order to ensure that it had sufficient evidence to fully evaluate this issue, FCC issued a Further Notice of Proposed Rulemaking.

The second key issue involves the specific content of a digital television signal that is subject to mandatory carriage. Most analog broadcast stations have only one video broadcast product. However, digital television will

[1]*See*, 47 U.S.C. §535(b) and (e); 47 C.F.R. §76.56(a).

[2]*See*, 47 U.S.C. §338 Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues, 16 FCC Rcd 1918, 1954 (2000) ("DBS Broadcast Carriage Report & Order").

[3]Carriage of Digital Television Broadcast Signals, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001) ("Digital Must Carry Order and FNPR").

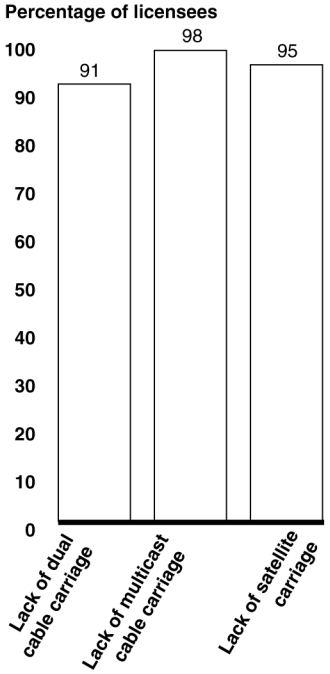
operate on a much more flexible basis that could allow for multiple streams, or "multicasting," of standard definition digital television programs. Under the statute, a cable operator is required to carry in its entirety the "primary video" of the commercial broadcast station.[4] According to FCC, largely parallel provisions are contained in the statute relating to carriage of noncommercial stations.[5] Although FCC recognized that the term "primary video" was susceptible to different interpretations, FCC concluded that, based on the available record, the term "primary video" means a single programming stream and other program-related content. In its Further Notice of Proposed Rulemaking, FCC sought comment on the appropriate parameters for "program-related" in the digital context. FCC also raised questions concerning the applicability of the rules and policies it adopted in the above cited Order to satellite carriers. Public television stations and other broadcasters have asked FCC to reconsider its ruling, and a decision on this request is pending.

As our own survey of licensees shows, there is a very strong consensus among licensees that the lack of dual carriage of analog and digital signals by cable companies, as well as a lack of cable carriage of the entire digital over the air stream such as multicast offerings are seen as factors impeding public television's digital transition. Additionally, there is a strong consensus that lack of carriage of local stations' digital signals by direct broadcast satellite (e.g., DISH Network, DIRECTV), would produce similarly negative results (see fig. 23).

[4]The cable operator is also required to carry the "accompanying audio" and line 21 closed caption transmission for each station. Additionally, the operator must carry "to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. 47 U.S.C. §534(b)(3).

[5]*See*, 47 U.S.C. §535(g)(1).

Figure 23: Issues Cited by Licensees As Impeding Public Television's Digital Transition



Source: GAO survey responses of public television station licensees.

Note: Percentages reflect the licensees responding "yes" to our questions whether each issue would impede their transition to digital. N=147 licensees for "Lack of dual cable carriage"; N=148 licensees for "Lack of multicast cable carriage;" and N=148 for "Lack of satellite carriage."

However, opponents of these mandatory carriage obligations, including the cable television industry, have maintained that in the absence of dual cable carriage, broadcasters, including public television, will not be negatively affected. The cable television industry also pointed out that some cable television providers have managed the need for dual carriage by voluntarily entering into a number of agreements with local public television stations to carry their digital signals in addition to their analog signals during the transition period. Additionally, they have noted that adoption of mandatory carriage requirements for multicasting would impose unconstitutional

freedom of speech restrictions and a governmental limitation on cable television providers' right to decide what services they provide.[6]

Absent changes to FCC's ruling on these issues, some in the public television community have taken the position that they "must convince" cable and satellite providers that the digital services offered by public television are valuable additions for their customers and, therefore, should be carried by them.

[6]*See* for example Reply Comments of the National Cable and Telecommunications Association: In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, (Washington D.C.: May 21, 2003). *See also* National Cable and Telecommunications Association, Ex Parte Letter to the Federal Communications Commission Regarding CS Docket 98-120, (Washington D.C.: July 9, 2002).

Underwriting Acknowledgments on Public Television

One of the distinguishing features of public television is, by definition, its noncommercial character. Unlike commercial television stations, public television stations are prohibited from airing advertisements. However, public television stations are permitted to acknowledge station support[1] and, without interrupting regular programming, may acknowledge underwriters on the air.[2] Dating back to the initial decision to reserve spectrum for noncommercial educational broadcast television, FCC rejected proposals to allow noncommercial educational licensees the ability to generate revenues through advertising sales and frequency sharing with commercial broadcasters. In 1981, as part of a "major" reevaluation of the noncommercial educational broadcast service, FCC reaffirmed its rejection of advertising on public television, concluding that advertiser-supported programming of any kind could harm the service. FCC's 1981 policy statement on the nature of public broadcasting states that the Commission's interest in creating a noncommercial service in 1951 was to remove the programming decisions of public broadcasters from the normal kinds of market pressures faced by commercial broadcasters. FCC noted, however, that acknowledgments of funders are "proper" and possibly necessary to ensure continued funding from such sources.[3]

In 1981, the Communications Act was amended to authorize licensees the ability to offer services, facilities, and products in exchange for remuneration, provided that nonfederal funds are used to subsidize such activities and that such activities would not interfere with the provision of public telecommunications services.[4] In addition, the amendments included a provision establishing a "Temporary Commission on Alternative Financing for Public Telecommunications" to identify funding options for

[1]Under separate requirements related to sponsorship identification, broadcasters must "fully and fairly disclose the true identity of all program sponsors" where specific program material is sponsored. The sponsorship identification requirement applies to all broadcasters who air specifically sponsored program material. In the case of noncommercial educational stations, that requirement may be satisfied through properly worded underwriting acknowledgments that identify the sponsor or sponsors.

[2]As required by law and FCC rules, the scheduling of any announcements and acknowledgments may not interrupt regular programming. See, 47 U.S.C. §399a(b), 47 C.F.R. §73.621(e).

[3]*See* Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting, Second Report and Order, FCC 81-204, 86 FCC 2d 141, 141-43 (1981).

[4]The Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, §1221-34, 95 Stat. 725, 736 (1981).

public broadcasting, and to conduct demonstrations of limited advertising for the purpose of "reduc[ing] the uncertainty about the advantages and disadvantages accompanying public broadcast station's use of limited commercial advertising or expanded underwriting credits." In its 1983 Report to the Congress, the Temporary Commission concluded that potential revenues from advertising were limited in scope and that the avoidance of significant risks to public broadcasting could not be ensured. In addition, it recommended that the Congress continue to provide federal funding for public broadcasting until or unless adequate alternative financing becomes available.[5]

Under current law, the Communications Act defines a "noncommercial educational broadcast station" and "public broadcast station" as a television or radio broadcast station that under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed as a station that is "owned and operated by a public agency or nonprofit private foundation, corporation or association" or "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes."[6] For our purposes here, the act defines "advertisements" as any message or other programming material that is broadcast or otherwise transmitted "in exchange for any remuneration" and is intended to "promote any service, facility, or product" of for-profit entities. As noted above, the act permits public broadcasting stations to provide facilities and services for remuneration so long as those uses do not interfere with stations' provision of public telecommunications services; the act also prohibits stations from making their facilities "available to any person for the broadcasting of any advertisement."[7]

Under FCC rules and policies, noncommercial educational stations have the discretion to air announcements acknowledging station support.[8] A station's financial contributors may receive on-air acknowledgements for

[5]*Temporary Commission on Alternative Financing for Public Telecommunications*, Report to the Congress (October 1, 1983).

[6]47 U.S.C. §397(6).

[7]47 U.S.C. §399b(a) and (b).

[8]As noted above, noncommercial broadcasters may satisfy the requirement that they disclose the true identity of all program sponsors where specific program material is sponsored through properly worded underwriting acknowledgments that identify the sponsor or sponsors.

identification purposes only.[9] Such acknowledgments may not promote the contributors' products, services, or business, and may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease. No limitation, however, was adopted on the length of acknowledgments.[10] Recognizing that it may be difficult to distinguish between language that "promotes" and language that merely "identifies" an underwriter, broadcasters must make "reasonable good faith judgments" to exclude language or visual elements in their acknowledgments that promote the contributors' products, services, or business. Consistent with the identification of underwriters, FCC has determined that acknowledgments may include, in addition to the underwriter's name, the following identifying information:

- logo-grams or slogans which identify and do not promote,
- location information and telephone numbers,
- value neutral descriptions of a product line or service, and/or
- brand and trade names and product or service listings.

According to FCC, enforcement primarily occurs through self-policing by licensees of public television stations and also by the Commission's response to complaints. For the period from January 2000 through early February 2004, FCC had 43 complaint cases. Thirteen of the complaints were denied or dismissed, 17 complaints resulted in admonishments or cautions, and 2 resulted in notices of apparent liability. Eleven others were under investigation.

The statutory and regulatory provisions on underwriting acknowledgments are supplemented by guidelines and policies developed by PBS, by other national distributors of public television programming, and by licensees themselves. For example, PBS guidelines govern how underwriters of PBS

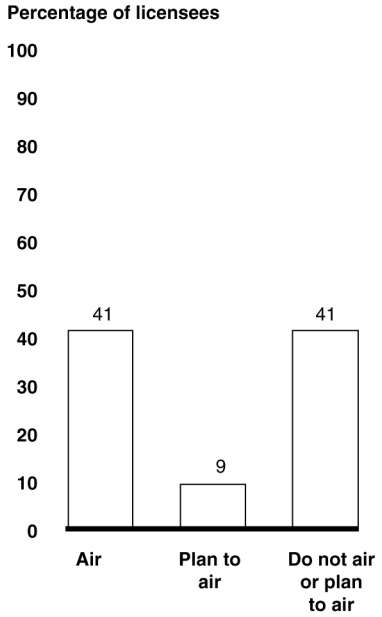
[9]*See* Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Public Notice (1986), republished 7 FCC Rcd 827 (1992).

[10]Although there is no limitation on the length of acknowledgments, the Commission has stated, the longer announcements are, the more likely they are to be promotional, and licensees should avoid placing them with such frequency so as to constitute "commercial clutter." See Board of Education of New York (WNYE-TV), 7 FCC Rcd 6864, 6865 (MMB 1992) and Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting, 90 FCC 2d 895, 902-03 (1982).

distributed programs may be identified on air. The acceptance of program funding from third parties, the guidelines state, are intended to ensure that editorial control of programming remains in the hands of program producers, that funding arrangements will not create the perception that editorial control has been exercised by someone other than the producer, and that the noncommercial character of public broadcasting is protected and preserved. PBS guidelines also specify that the maximum duration for all underwriter acknowledgments may not exceed 60 seconds and generally that the maximum duration for a single underwriter not exceed 15 seconds. Other national distributors of public television programming, such as American Public Television and the National Educational Telecommunications Association, also have guidelines with similar acknowledgment length limitations. The PBS Board adopted an exception to its guidelines in February 2003. As modified, the maximum duration for one underwriter may not exceed 30 seconds within a 60-second maximum interval for all acknowledgments. This applies only to underwriters that contribute $2.5 million or more per year for the production of PBS's prime time programming and the *NewsHour with Jim Lehrer*.

In our survey of licensees, we asked several questions related to the airing of 30-second underwriting acknowledgments by licensees themselves and not those aired as part of PBS programming. The percentage of licensees that said they are currently airing 30-second acknowledgments (41 percent) was equal to the percentage of licensees that said that they neither air, nor plan to air, 30-second underwriting acknowledgments. An additional 9 percent of the licensees responded that they intend to air 30-second acknowledgments in the future. Figure 24 illustrates the responses of licensees to this question.

Figure 24: Licensees that Air, Plan to Air, and Do Not Air or Plan to Air Their Own 30-Second Underwriting Acknowledgments



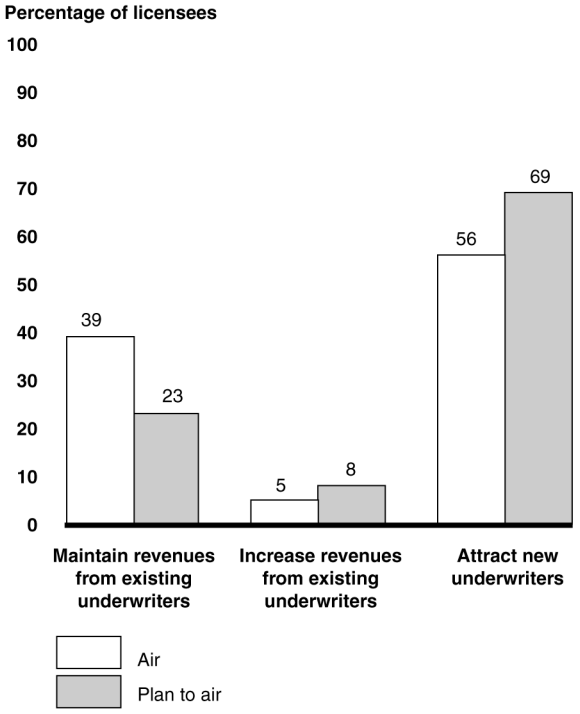
Source: GAO survey responses of public television station licensees.

Note: N=149 licensees. Percentages have been rounded and do not equal 100 percent.

Of the respondents who told us that they are currently airing 30-second acknowledgments, the earliest date provided for the first airing of such acknowledgments was 1982.

We also asked licensees who currently air or plan to air 30-second acknowledgments to prioritize the reasons for such decisions. For both groups of licensees, the highest priority identified was to attract new underwriters—56 percent of those that already air 30-second acknowledgments and 69 percent of those that plan to air 30-second acknowledgments. For both groups, maintaining revenues from existing underwriters was the second most frequently identified top priority. Only 5 percent of those that currently air such acknowledgments and 8 percent of those that plan to air such acknowledgments identified increasing revenues from existing underwriters as their highest priority. These responses are illustrated in figure 25.

Figure 25: Reasons Identified by Licensees as the Highest Priority for Airing or Planning to Air Their Own 30-Second Underwriting Acknowledgments

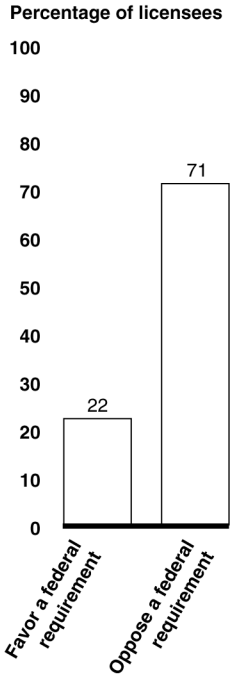


Source: GAO survey responses of public television station licensees.

Note: N=57 licensees that "Air" and N=136 licensees that "Plan to Air" 30-second underwriting acknowledgments. Percentages have been rounded.

In response to our question as to whether licensees would favor or oppose a federal requirement that limits the length of underwriting acknowledgments, 71 percent said they oppose a requirement, and 22 percent said they favor a federal requirement (see fig. 26).

Figure 26: Views on the Need for a Federal Requirement Limiting the Length of Underwriting Acknowledgments



Source: GAO survey responses of public television station licensees.

Note: N=147 licensees. Percentages have been rounded and do not equal 100 percent.

Licensees' commentary on underwriting acknowledgements addressed both the use of longer acknowledgments and views on a federal requirement limiting their length. A few of the comments provided to us were critical of the use of 30-second acknowledgments and supportive of a federal requirement. Specifically, some expressed concern that longer underwriting acknowledgments threaten the noncommercial nature of public television. One licensee noted, for example, that the length of acknowledgments and the images of underwriters' messages directly affect viewers' experience watching public television. Another licensee said longer acknowledgments undermine viewer perceptions of public television as a unique noncommercial service. However, many more comments were provided suggesting that the length of acknowledgments is a matter that should be left to the discretion of licensees, not the federal government, based on local judgments and response of local viewers. In particular, some licensees indicated that flexibility is needed with respect

to the length of acknowledgments in order to attract underwriting support and to further the mission of public television.

Survey of Public Television Licensees

Our survey of public television licensees consisted of objective questions and the option to include narrative comments in each section of the survey. The aggregate results of objective questions are presented below. We received completed surveys from 149 out of 176 licensees—an overall response rate of 85 percent. The number of respondents answering individual questions may be lower, however, depending on the number of licensees who were eligible to answer a particular question or who chose to do so. Each question indicates the number of licensees responding to it.

Q1. Do you think the current 75% / 25% allocation of the federal funds supporting public television should remain the same or be changed?

Allocation should remain the same (percent)	Allocation should be changed (percent)	Don't know (percent)	Number of respondents
61.5	33.8	4.7	148

Q2. Please provide the reasons for your answer and, if you think the allocation should be changed, describe what the allocation should be.

Writing comment (percent)	Number of respondents
77.2	149

Q3. Were you aware of the consultation process that was conducted in 2001 to review the eligibility criteria for Community Service Grants?

Yes (percent)	No (percent)	I was not associated with a station during the 2001 consultation process (percent)	Don't know (percent)	Number of respondents
83.8	10.8	4.1	1.4	148

Q4. During the 2001 consultation process, to what extent did CPB solicit input from your station(s) on the Community Service Grant eligibility criteria?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
24.6	32.5	26.2	8.7	7.9	126

Q5. During the 2001 consultation process, to what extent did your station(s) provide CPB with input on the Community Service Grant eligibility criteria?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
20.0	30.4	27.2	12.8	9.6	125

Q6. To what extent do you think CPB considered input from your station(s) on the Community Service Grant eligibility criteria?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
18.6	36.1	25.8	8.2	11.3	97

Q7. Overall, are you basically satisfied with the process used by CPB to periodically review the eligibility criteria for Community Service Grants or do you think changes are needed?

Basically satisfied, no changes are needed (percent)	Only minor changes are needed (percent)	Substantial changes are needed (percent)	Don't know (percent)	Number of respondents
48.0	28.8	20.8	2.4	125

Q8. Please explain what changes you think are needed.

Writing comment (percent)	Number of respondents
41.6	149

Q9. To what extent do you know about the outcomes or findings of CPB Television Future Fund projects?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
16.9	40.5	37.2	5.4	0.0	148

Q10. How have you learned about the outcomes or findings of CPB Television Future Fund projects?

	Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
a. From CPB (e.g. website, mailings, emails)	84.8	12.9	2.3	132
b. From the Association of Public Television Stations	69.0	25.4	5.6	126
c. From the Public Broadcasting Service	43.9	44.7	11.4	123
d. From a public broadcasting publication (e.g. Current)	82.9	14.7	2.3	129
e. From a public broadcasting meeting or conference	89.2	8.5	2.3	130
f. From Future Fund project grantees (e.g. other stations, consultants)	71.5	24.4	4.1	123
g. Other (please describe below)	47.5	45.0	7.5	40

Q10a. Please describe other ways, if any, you have learned about outcomes or findings of CPB Television Future Fund projects.

Writing comment (percent)	Number of respondents
27.5	149

Q11. Have the outcomes or findings of any CPB Television Future Fund project provided your station(s) with practical methods for either reducing costs or enhancing revenues?

	Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
a. Reducing Costs	36.4	50.3	13.3	143
b. Enhancing Revenues	37.1	49.7	13.3	143

Q11a. If you answered yes to either above, please provide examples or the name(s) of one or more project(s).

Writing comment (percent)	Number of respondents
44.3	149

Q12. Do you agree with CPB's current approach of using the funds allocated for distribution among public television licensees to fund the Television Future Fund or would you prefer an alternate approach, such as using funds from a different source?

I agree with CPB's current approach of using funds allocated for distribution among public television licensees to fund the Television Future Fund (in addition to System Support funds). (percent)	I prefer using only the System Support account as an alternate approach of funding the Television Future Fund. (percent)	I prefer using other sources of funds as an alternate approach of funding the Television Future Fund (please describe below). (percent)	CPB should not fund the Television Future Fund. (percent)	Don't know (percent)	Number of respondents
29.7	27.0	15.5	21.6	6.1	148

Q13. Please provide the reasons for your answer to Question 12.

Writing comment (percent)	Number of respondents
72.5	149

Q14. To what extent do the children's programs offered by PBS's National Program Service help you to meet the mission of your station(s)?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	My station is not a member of PBS (percent)	Number of respondents
86.6	8.7	1.3	0.7	0.0	2.7	149

Q15. Please provide the reasons for your answer to Question 14.

Writing comment (percent)	Number of respondents
84.6	149

Q16. To what extent do the prime-time programs offered by PBS's National Program Service help you to meet the mission of your station(s)?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
60.4	36.1	3.5	0.0	0.0	144

Q17. Please provide the reasons for your answer to Question 16.

Writing comment (percent)	Number of respondents
83.2	149

Q18. To what extent do the children's programs offered by PBS's National Program Service help you to build local underwriting and membership support?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
22.9	38.9	34.0	2.8	1.4	144

Q19. Please provide the reasons for your answer to Question 18.

Writing comment (percent)	Number of respondents
80.5	149

Q20. To what extent do the prime-time programs offered by PBS's National Program Service help you to build local underwriting and membership support?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
47.9	43.1	9.0	0.0	0.0	144

Q21. Please provide the reasons for your answer to Question 20.

Writing comment (percent)	Number of respondents
79.2	149

Q22. Do you believe that changes are needed to the processes involved in selecting programming for PBS's National Program Service?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
58.0	22.4	19.6	143

Q23. Please provide your comments on any program selection issues that are of concern to you.

Writing comment (percent)	Number of respondents
74.5	149

Q24. Should CPB continue to provide direct funding to support the PBS National Program Service (as it exists today)?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
72.2	18.8	9.0	144

Q25. Please provide the reasons for your answer to Question 24.

Writing comment (percent)	Number of respondents
75.2	149

Q26. Is the amount of local programming that you produce sufficient to meet the needs of your community?

Yes, the amount of local programming is sufficient to meet the needs of our community. (percent)	No, the amount of local programming is not sufficient to meet the needs of our community. (percent)	Don't know (percent)	Number of respondents
18.2	79.1	2.7	148

Q27. Please provide the reasons for your answer to Question 26.

Writing comment (percent)	Number of respondents
93.3	149

Q28. In addition to CPB's current statutory authority to support the production of national programming, should CPB have explicit statutory authority to award station grants for the production of local programming?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
53.0	39.6	7.4	149

Q29. Assuming CPB's statutory authority to award station grants for local programming would require the use of funds that currently support national programming, would you still favor this authority?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
59.5	30.4	10.1	79

Q30. Please provide the reasons for your answer to Question 29.

Writing comment (percent)	Number of respondents
56.4	149

Q31. In addition to or in conjunction with television broadcasting, do you currently provide each of the following local services to your community?

	Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
a. Services to support pre-school through 12th grade education	94.6	5.4	0.0	149
b. Services to support higher education	88.6	11.4	0.0	149
c. Services to support workforce training, professional development, and/or continuing education	84.5	15.5	0.0	148
d. Television program-related outreach (e.g., additional program-related material on station's own website, sponsoring workshops and discussion groups about programs, community partnerships, PBS toolkits)	97.3	2.7	0.0	149
e. Services to support local, state, and/or federal government agencies (e.g. National Weather Service, Homeland Security)	77.0	22.3	0.7	148
f. Sponsorship of local community events	93.9	6.1	0.0	147
g. Other (please describe below)	80.3	15.2	4.5	66

Q31a. Please describe other services, if any, you provide to your community in addition to or in conjunction with television broadcasting.

Writing comment (percent)	Number of respondents
52.3	149

Q32. What types of services does (at least one of) your station(s) currently provide, or plan to provide after transitioning to digital?

	Currently provide (percent)	Plan to provide (percent)	Don't provide and don't plan to provide (percent)	Don't know (percent)	Number of respondents
a. A high-definition channel	51.4	39.2	3.4	6.1	148
b. A standard definition channel	60.1	37.1	1.4	1.4	143
c. Multiple channels (i.e. "multicasting")	34.7	61.9	2.0	1.4	147
d. Data broadcasting (i.e. "datacasting")	10.3	82.9	1.4	5.5	146
e. Other (please describe below)	10.9	40.0	0.0	49.1	55

Q32a. Please describe other services, if any, you plan to offer.

Writing comment (percent)	Number of respondents
30.2	149

Q33. Do you currently provide, or are you likely to provide after transitioning to digital, revenue-generating ancillary and supplementary non-broadcast services to nonprofit entities?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
50.7	10.8	38.5	148

Q34. Do you currently provide, or are you likely to provide after transitioning to digital, revenue-generating ancillary and supplementary non-broadcast services to for-profit entities?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
38.3	16.1	45.6	149

Q35. Were you aware of the consultation process conducted by CPB on the allocation of fiscal year 2003 digital television funding?

Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
89.3	6.7	4.0	149

Q36. To what extent did CPB solicit input from your station(s) on the allocation of fiscal year 2003 digital television funding?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
28.8	28.8	28.8	10.1	3.6	139

Q37. To what extent did your station(s) provide CPB with input on the allocation of fiscal year 2003 digital television funding?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
16.3	30.4	31.1	16.3	5.9	135

Q38. To what extent do you think CPB considered input from your station(s) on the allocation of fiscal year 2003 digital television funding?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
26.2	30.8	20.6	8.4	14.0	107

Q39. Overall, are you basically satisfied with the consultation process used by CPB to allocate fiscal year 2003 digital television funding?

Basically satisfied, no changes are needed (percent)	Only minor changes are needed (percent)	Substantial changes are needed (percent)	Don't know (percent)	Number of respondents
61.9	13.4	11.9	12.7	134

Q40. Please explain what changes you think are needed.

Writing comment (percent)	Number of respondents
25.5	149

Q41. How would you currently prioritize the use of any additional federal funding to support your station(s) during the digital transition?

	% Ranking 1 (percent)	% Ranking 2 (percent)	% Ranking 3 (percent)	% Ranking 4 (percent)	% Ranking 5 (percent)	Number of respondents
a. Digital content	22.1	24.3	22.1	20.7	10.7	140
b. Digital transmission equipment	14.3	5.7	7.9	20.0	52.1	140
c. Digital production equipment	19.3	27.9	25.7	21.4	5.7	140
d. Digital operating costs (i.e. energy costs)	16.4	19.3	25.7	17.1	21.4	140
e. Digital master control/content management automation	27.9	22.9	18.6	20.7	10.0	140

Q42. Is your digital master control equipment fully compatible with the EIOP (for all of your stations)?

Yes, fully compatible (percent)	No, not fully compatible, but our capabilities won't be materially affected (percent)	No, not fully compatible, and our capabilities will be materially affected (percent)	Don't have digital master control equipment (percent)	Don't know (percent)	Number of respondents
18.2	22.3	13.5	28.4	17.6	148

Q43. Is your digital production equipment fully compatible with the EIOP (for all of your stations)?

Yes, fully compatible (percent)	No, not fully compatible, but our capabilities won't be materially affected (percent)	No, not fully compatible, and our capabilities will be materially affected (percent)	Don't have digital production equipment (percent)	Don't know (percent)	Number of respondents
9.6	16.4	10.3	43.2	20.5	146

Q44. Is your digital storage equipment fully compatible with the EIOP (for all of your stations)?

Yes, fully compatible (percent)	No, not fully compatible, but our capabilities won't be materially affected (percent)	No, not fully compatible, and our capabilities will be materially affected (percent)	Don't have digital storage equipment (percent)	Don't know (percent)	Number of respondents
14.9	23.0	17.6	24.3	20.3	148

Q45. Please use the box below to describe any other comments on the Next Generation Interconnection System or the Enhanced Interconnection Optimization Project.

Writing comment (percent)	Number of respondents
52.3	149

Q46. To what extent will completion of the digital transition improve the ability of your station(s) to provide local services to your community?

To a great extent (percent)	To a moderate extent (percent)	To a little extent (percent)	Not at all (percent)	Don't know (percent)	Number of respondents
58.4	26.8	7.4	2.7	4.7	149

Q47. Please describe how the ability of your station(s) to provide local services will or will not improve with the digital transition.

Writing comment (percent)	Number of respondents
87.2	149

Q48. Could any of the following digital carriage issues impede your station's future if not resolved during the digital transition?

	Yes (percent)	No (percent)	Don't know (percent)	Number of respondents
a. Lack of dual cable carriage of analog and digital signals during the transition	91.2	8.2	0.7	147
b. Lack of cable carriage of the entire digital over-the-air stream (i.e. HDTV and multicast offerings)	98.0	2.0	0.0	148
c. Lack of cable carriage of multiple digital public television stations in a single market	60.4	35.4	4.2	144
d. Lack of carriage of local stations' digital signals by direct broadcast satellite (e.g. Dish Network, DirecTV)	94.6	4.1	1.4	148
e. Other (please specify below)	66.7	3.7	29.6	27

Q48a. Please list other digital carriage issues, if any, that will impede your station's future if not resolved during the digital transition.

Writing comment (percent)	Number of respondents
29.5	149

Q49. Aside from acknowledgements included as part of PBS's National Program Service, do you currently run or plan to run 30-second underwriter acknowledgements on your station(s)?

Yes, I currently run 30-second underwriter acknowledgements (percent)	Yes, I plan to run 30-second underwriter acknowledgements (percent)	No, I do not run and do not plan to run 30-second underwriter acknowledgments (percent)	Don't know (percent)	Number of respondents
40.9	9.4	40.9	8.7	149

Q50. In what year did you begin to run 30-second underwriter acknowledgements? (Enter a 4 digit number only. Letters and symbols will be deleted.)

Mean	Median	Minimum	Maximum	Number of respondents
1998	1999	1982	2003	60

Q51. How did you prioritize your reasons for deciding to run 30-second underwriter acknowledgements?

	% Ranking 1 (percent)	% Ranking 2 (percent)	% Ranking 3 (percent)	Number of respondents
a. To maintain revenues from existing underwriters	38.6	21.1	40.4	57
b. To increase revenues from existing underwriters	5.3	54.4	40.4	57
c. To attract new underwriters	56.1	24.6	19.3	57

Q52. How would you prioritize your reasons for your plans to run 30-second underwriter acknowledgements?

	% Ranking 1 (percent)	% Ranking 2 (percent)	% Ranking 3 (percent)	Number of respondents
a. To maintain revenues from existing underwriters	23.1	23.1	53.8	13
b. To increase revenues from existing underwriters	7.7	46.2	46.2	13
c. To attract new underwriters	69.2	30.8	0.0	13

Q53. Would you favor or oppose a federal requirement that limits the length of underwriter acknowledgements?

Favor a federal requirement that limits the length of underwriter acknowledgements (percent)	Oppose a federal requirement that limits the length of underwriter acknowledgements (percent)	Don't know (percent)	Number of respondents
22.4	70.7	6.8	147

Q54. Please provide the reasons for your answer to Question 53.

Writing comment (percent)	Number of respondents
87.2	149

Q55. If there are other issues that you would like to raise, or if you would like for GAO staff to be in contact with you to discuss in greater detail issues included in this survey, please use the space below to identify those issues and/or provide your contact information.

Writing comment (percent)	Number of respondents
35.6	149

Comments from the Corporation for Public Broadcasting

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

Corporation
for Public
Broadcasting

March 12, 2004

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
United States General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Goldstein:

Thank you for allowing the Corporation for Public Broadcasting ("CPB") the opportunity to review a draft of the report by the General Accounting Office ("GAO") entitled "Issues Related to Federal Funding for Public Television by the Corporation for Public Broadcasting." The GAO's draft report contained two recommendations: that CPB should seek statutory authority before making any further expenditure of funds from the Future Fund; and that CPB should broaden the scope of its digital transition funding support to include digital production equipment and digital content. In brief, CPB respectfully disagrees with the recommendation that CPB needs to obtain statutory authority before continuing to expend funds from the Future Fund. As to the second recommendation, CPB agrees it should broaden the scope of its digital funding to include production equipment and content, consistent with congressional directives and station needs after consultation with the system.

Future Fund

While CPB appreciates the effort GAO committed to this review and values the GAO's analysis of the complex issues facing public broadcasting, CPB disagrees with the first recommendation regarding further expenditure of funds from the Future Fund. In establishing and continuing the Future Fund mechanism, CPB relied not only on its own judgment, but also on extensive consultation with the system and the advice of two highly respected law firms with nationally recognized expertise in interpreting the provisions of the Communications Act of 1934, as amended (the "Act"). As the draft report noted, CPB obtained an opinion from Skadden Arps Slate Meager & Flom before establishing the Future Fund in 1995, and more recently consulted Covington & Burling with respect to the ongoing validity of the original 1995 opinion. Based on this advice, CPB believed and continues to believe that it has acted consistently with the law in establishing and administering the Future Fund.

After reviewing the draft report, CPB requested that Covington & Burling prepare a memorandum of law that specifically responds to the GAO's legal opinion attached to the draft report. The Covington & Burling memorandum, attached hereto for incorporation in the GAO's final report, reaches the same conclusion as the previous advice – namely that in establishing and administering the Future Fund, CPB has acted consistently with the relevant provisions of the Act.

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The Television Future Fund has supported over 200 projects that have benefited public television stations across the country. As the attached document describes, CPB has annually informed Congress of the work of the Future Fund since 1996. Without the flexibility to aggregate funds allocated by Section 396(k)(3)(A)(i)(II)[1] and Section 396(k)(3)(A)(ii)(I)[2], CPB would be severely constrained in its ability to respond to the needs of the public broadcasting system and to support projects designed to improve the system as a whole. The Act states:

> "6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English or for assistance in the provision of affordable training programs for employees at public broadcast stations, and if the available funding level permits, for projects and activities that will enhance public broadcasting."[3]

Given the many competing demands on these system support funds, CPB's ability to support large scale projects is dependent on its ability to aggregate funds from the CSG pool when necessary to match the system support funds for the stations' benefit. If CPB were to use only the system support funds for projects historically funded using the Future Fund mechanism, CPB would be forced to either scale back the projects in order to pay for the items listed in Section 396(k)(3)(A)(i)(II) or scale back on its full payment of the expenses listed in that section. For example, CPB could be forced to reduce support for training programs or fund only part of the programming royalty fees on behalf of the system in order to pay for other system support projects. Clearly, without aggregation of funds through efforts like the Future Fund mechanism, support for system-wide efforts from CPB could decrease to the detriment of the entire system.

See comment 1.

In order to support critical needs of all of the public broadcasting stations – including royalties, interconnection operating costs and system-wide research, planning, training, and development, CPB must have continued flexibility to aggregate funds and set criteria based on the prospective needs of the public broadcasting system as a whole *or* realize an increase in its current system support allocation under the statutory formula.

Digital Transition Funds

CPB generally agrees with the GAO's conclusions regarding CPB funding of the digital transition. In addition, CPB recommends that the Public Telecommunications Facilities Program ("PTFP"), under the National Telecommunications Information Administration ("NTIA") of the Department of Commerce, should provide the primary support for equipment needed for digital conversion of both public television and radio, as PTFP has done in the analog era.

CPB has consistently requested federal support for digital transmission and production equipment, content and services in its annual appropriations request to Congress. As the GAO noted, public broadcasting's original revenue plan for supporting the costly mandated transition from analog to

[1] i.e. the "system support funds."
[2] i.e. the "CSG pool."
[3] 47 U.S.C. § 396(k)(3)(A)(i)(II).

digital was for CPB to utilize a small portion of any federal dollars for content (programming) and to rely upon PTFP support for the larger portion of equipment needs. Estimates by CPB and PBS recognized that equipment needs would be significant as digital transmission requires entirely new equipment for transmission as well as for production, including transmitters, translators, antennas, master control, cameras, video libraries and digital converters. The NTIA, which has administered analog grants for public broadcasting since 1962, was thought to have the experience and personnel to administer such grants for the acquisition, maintenance and replacement of digital equipment for both public television and radio. This was the strategy behind the original request to Congress for the federal share of the estimated $1.7 billion total cost of the digital conversion.

It was necessary to alter this original plan, however, because congressional support consisted of limited additional appropriations that were not actually received by CPB until 2001. Further, CPB faced constantly changing technology and shifting regulatory policy concerning the mandates of the digital transition.[4] These limited and intermittent installments of congressional support, combined with the significant number of stations in need and the looming mandated deadline for conversion, led stations and congressional representatives to ask CPB to give priority to funding transmission equipment.[5] Subsequently, CPB, in consultation with stations as required by statute, agreed to this priority for utilizing the digital conversion dollars granted by Congress in FYs 2001-2003. Currently, the stations are in varying degrees of conversion and have voiced support for more dollars for digital production, content, services, master controls and additional equipment. As such, all station needs are being given careful consideration in the system consultation for the distribution of the FY 2004 digital conversion dollars, which were not received by CPB until March 4, 2004.

In order to meet America's need for quality noncommercial educational programming and services, CPB believes that it must be allowed to respond to the demonstrated needs of its grantees and that Congress should maintain a strong PTFP program under the Department of Commerce.

Other Issues

Congressional Commitment. CPB also must respond to the following passage of the draft report relating to CPB's history:

> In passing the 1967 act [sic], the 90th Congress did not intend that annual authorizations and appropriations for the Corporation would serve as a permanent process for funding support of public broadcasting. Rather, they were seen as temporary measures pending the

[4] Congress opted to provide only $10 million in FY 1999 and $15 million in FY 2000. Moreover, both amounts were contingent upon an authorization of digital and were diverted to the Treasury when authorization was not realized. Congress finally passed an authorization in 2001, and $20 million was not released until August, near the end of the fiscal year. Congress soon followed with an appropriation of $25 million for FY 2002. In addition, the Federal Communications Commission issued an Order in November 2001 that adopted a policy allowing television stations to begin initial digital operations at decreased power levels. In the matter of Review of the Commission's Rules and Policies, Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, Adopted November 8, 2001, Released November 15, 2001.

[5] The Conference Report states "[t]he conference agreement also includes $25,000,000 for equipment and facilities to enable public broadcasters to meet the statutory deadline for digital conversion as proposed by the Senate." H.R. Conf. Rep. No. 342, 107th Cong. 1st Sess., 164 (2001).

> development and adoption of a long-term financing plan for public broadcasting. Although various financing proposals for public broadcasting have since been suggested, the Corporation continues to receive nearly all of its budget in the form of an annual federal appropriation.[6] [internal footnotes omitted]

See comment 2.

We are concerned that this paragraph might be interpreted to question Congress's intention to support public broadcasting in the long term. If so, we believe that this paragraph presents a misleading characterization of early congressional intent regarding federal funding of public broadcasting. Congress's cautious approach did not indicate a lack of long-term commitment to public broadcasting. It was always Congress's intent that federal support would only make up part of the total revenue for public broadcasting, but Congress did intend to fund public broadcasting through CPB. There was a purposeful determination to revisit the issue of long-term financing after experience bore out how successful attracting other forms of financing would be. This should not, however, be confused with a lack of commitment to public broadcasting.

In passing the Public Broadcasting Act of 1967, Congress determined to fund CPB initially in the short-term so that the Administration and Congress could analyze how the public reacted to public broadcasting before committing itself to a long-term funding plan. The May 1967 Senate Report for the Public Broadcasting Act of 1967 refers to the initial authorization of $9 million for CPB as "seed" money "designed to get the Corporation off the ground."[7] However, the Senate Committee also noted that long-term financing for CPB would have to be revisited as President Johnson intended to issue recommendation on the matter in the following year.[8] Additionally, in August 1967, the House Report for the Public Broadcasting Act of 1967 echoed the Senate's plan to revisit long-term financing for CPB when it stated that "[t]he committee believes it is perfectly workable to establish the Corporation this year with 1 year's financing and resolve the issue of long-range financing after further study and experience."[9]

Since then, Congress has reaffirmed its support for federal funding for public broadcasting. In fact, in 1975, when the Act was amended, Congress reiterated and quantified its commitment to funding public broadcasting by recognizing that the federal government should contribute an amount equal to 40 percent of the yearly total non-federal financial support ("NFFS") raised by the public broadcasting system.[10]

In the 35-year history of public broadcasting, continued federal support has been vital to public broadcasting's continued success. The Act still authorizes a federal appropriation for CPB that is pegged to 40 percent of the total annual NFFS raised by the public broadcasting system.[11] The 1967 legislation was, to be sure, a grand plan to better the lives of the American public — full of optimism, but unsure of how long-term financing would be achieved.

Survey Interpretation. Finally, we must note the survey that the GAO conducted of the public broadcasting stations and their views toward the programs that CPB administers. The survey

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[6] Page 9 of the draft report.
[7] S. Rep. No. 222, 90th Cong. 1st Sess. 8 (1967).
[8] Id.
[9] H.R. Rep. No. 572, 90th Cong. 1st Sess. 21 (1967).
[10] Public Broadcasting Financing Act of 1975, Pub. L. No. 94-192, Sec. 3 (1975).
[11] 47 U.S.C. § 396(k)(1)(B).

results certainly are helpful and present a snapshot of how public television stations feel about the status quo. However, CPB must inject a cautionary note. The Act states that "it is in the public interest for the Federal Government [sic.] to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies…."[12] As such, CPB is authorized by the Act to:

> (A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;
> (B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of public telecommunications services so that all public telecommunications entities may disseminate such services at times chosen by the entities;
> (C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and
> (D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities.[13]

CPB's most important constituency is the American public. CPB is uniquely tasked with facilitating and developing[14] a public broadcasting system consisting of over 1,000 independently owned and operated public television and public radio stations, hundreds of producers, several national program distribution organizations, and various affinity groups of all sizes. Yet our responsibility under the Act is to ensure that this system serves all Americans in accordance with the universal service mandate in the Act.[15] Therefore, CPB engages in constant forward-thinking exercises to improve the service provided by the public broadcasting system. Producing a survey that demonstrates the system, as a whole, is satisfied with CPB's current allocation of funds[16] seems to CPB to prematurely end the analysis of our work. Over the past year, CPB has undertaken extensive efforts to help public television stations better manage their operations and improve service to their communities. CPB, with our partners throughout public broadcasting, must continuously strive to improve public broadcasting's value to the nation. The survey's results showing the system's general satisfaction with CPB's current work, while gratifying, are not the end of this exercise. We must always do more to better serve our constituency, the American public.

CPB takes its responsibilities to consult with the system[17] very seriously, and we faithfully discharge these duties by seeking the input of stations whenever CPB perceives a need to change its allocation of funds. Given CPB's responsibility to the public, however, we also take issue with the draft report to the extent that it seems to imply that CPB should base its policies primarily on their popularity with stations. Administration by plebiscite misses the intent of the statute.

See comment 3.

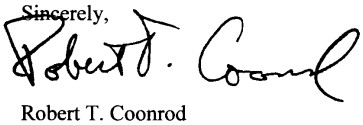
[12] 47 U.S.C. § 396 (a)(9).
[13] 47 U.S.C. § 396 (g)(1).
[14] 47 U.S.C. § 396 (a)(10).
[15] 47 U.S.C. § 396 (a)(9).
[16] Page 4 of the draft report.
[17] 47 U.S.C. § 396 (k)(6)(B).

Congress created CPB to encourage the growth and development of public television and radio broadcasting for the benefit of the American public.[18] As the GAO's survey of stations has demonstrated, there is a multiplicity of opinions and views within the public broadcasting community on how best to serve the public. CPB values the opinions of station leaders because they have an important perspective on the needs of the communities they serve. CPB also endeavors to be responsive to the needs of the public broadcasting affinity groups as they develop and distribute services to the public. While CPB considers their views, in the final analysis it is CPB that must use its judgment to proceed in a manner that best serves the goals of the Act, not necessarily in a way that is the most popular with any one particular group.

Conclusion

While CPB may disagree with some of the draft report's language, recommendations, and conclusions, we believe that this exercise has been helpful in clarifying how the public television community feels about the support it receives from the federal government through CPB. The exercise was a constructive forerunner to reauthorization. We commend the GAO review team members on their professionalism and courtesy throughout the review. While such an undertaking is certainly an arduous task for everyone, we appreciate the team's cooperation when interacting with CPB.

Sincerely,



Robert T. Coonrod
President & Chief Executive Officer
Corporation for Public Broadcasting

[18] 47 U.S.C. § 396 (a)(1).

COVINGTON & BURLING

March 12, 2004

MEMORANDUM

To: Donna Gregg, Vice President, General Counsel and Corporate Secretary

From: Stephen A. Weiswasser

Re: Statutory Support for the Future Fund

The General Accounting Office (the "GAO") has provided the Corporation for Public Broadcasting ("CPB") with a draft report regarding the statutory basis for the CPB's Future Fund program, which was created in 1995. Nothing in that draft report changes the conclusion we previously reached in a memorandum to CPB dated July 9, 2003 -- that the Future Fund program is fully consistent with the Communications Act of 1934, as amended (the "Act").

See comment 4.

The Future Fund provides strategic financial and other assistance to public stations that is designed to help them improve the efficiency of their operations and increase their support from non-federal sources. These are the two statutory purposes set out by Congress for the use of funds distributed under the so-called Community Services Grants ("CSG") section of the Act. *See* 47 U.S.C. § 396(k)(6)(B). CPB has established eligibility criteria for the distribution of Future Fund project grants following consultation with an advisory panel made up of a diverse and rotating group of station representatives. And it works with a separate review panel to select among specific projects for funding -- seeking to identify those that offer the greatest likelihood of successfully supporting the achievement of the program's goals in a way

that effects systemwide benefits.[1] Proposals are funded from two sources -- partially by so-called System Support funds, *see* § 396(k)(3)(A)(i)(II), and partly by the CSG funds program, whose statutory goals are, as noted, those specifically followed by the Future Fund. *See* § 396(k)(3)(A)(ii)(I).

See comment 5.

Immediately following the Fund's inception in 1995, CPB explicitly advised Congress that the program was project-based and would be supported by these two statutory funding sources. *See* CPB 1996 Annual Report at 5. And in a 2001 Report regarding allocation of System Support funds, CPB once again described the two statutory sources from which Future Fund financial support is drawn. *See* Summary (December 2001), 2001 CSG Review and Recommendations. In the time between those two Reports (and since), CPB regularly detailed the projects supported by the Future Fund in its Annual Reports, all of which were submitted to Congress. *See, e.g.*, CPB 2001 Annual Report at 38-40. Throughout this period, Congress has continued to appropriate funding for CPB without limiting its use of CSG funds for the Future Fund Program.

See comment 6.

The Future Fund plan has also been regularly placed before the constituent elements of public broadcasting. As the GAO Report itself notes, for example, last year a cross-section of the public broadcasting community convened to make recommendations regarding the Future Fund's priorities. *See* GAO Report at 28-30. While a number of proposed changes in those priorities were approved, significantly that group issued recommendations that neither questioned the legality or propriety of CPB's funding plan nor suggested changes to the basic

[1] As the GAO has recognized, the current criteria for Future Fund grants look to support proposals that: show clear evidence that the project would meet a demonstrated need; actively involve and benefit multiple stations; demonstrate that concepts could be widely implemented and lead to economies of scale; reflect a shared risk through funds provided by the applicant; and are sustainable after funding for the project is concluded. *See* GAO Report at 23.

funding structure. Indeed, of the more than 350 public television stations, it appears that very few have ever raised a question about the legality of using CSG money to support the Future Fund.[2]

In sum, the Future Fund has functioned in its current form in a very public way for over eight years under the watchful eyes of CPB's congressional oversight and appropriations committees and with the focused support of the public broadcasting community. Moreover, Congress has repeatedly ratified the program by re-appropriating CPB's funding expenditures without limiting its authority to administer the Future Fund program.

Despite this record, the GAO now suggests that CPB's use of CSG funds in support of the Future Fund is improper.[3] Specifically, the GAO asserts that (1) the eligibility criteria for distribution of CSG funds cannot include what the GAO terms "project-focused criteria"; (2) the Act provides that CSG funds may not be used to fund specifically selected projects, but only may be distributed as direct grants to public broadcasting stations; (3) CPB is simply a pass-through entity that is not permitted to have any substantive role in deciding how, once distributed, CSG funds are to be spent; and (4) all funds must be distributed directly to stations, rather than to third-party consultants acting in their stead, even if such a station-by-station distribution would impede the achievement of the Fund's goals and limit the systemwide impact of the program. With due respect, we believe that this is a misreading of the plain language of the Act and the relevant legislative history, which authorize CPB to establish

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[2] Four stations did express this position in a joint August 8, 2003 letter to Robert Coonrod, the President and Chief Executive Officer of CPB.

[3] The GAO does not challenge the use of System Support funds under § 396(k)(3)(A)(i)(II) for this purpose. Nor does it question CPB's use of CSG funds in any other respect.

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eligibility criteria for the distribution of CSG funds and give it considerable discretion to expend the funds in ways that achieve statutory goals.

I. The role that Congress envisioned for CPB with respect to the statutory goals that the Future Fund is intended to fulfill is a good deal more direct and active than the GAO appears to contemplate, and it is spelled out in the very section of the Act on which the GAO focuses. The Act's requirements with respect to CSG funds are clear. It requires that CPB award every station a basic grant from the CSG funds. *See* 47 U.S.C. § 396(k)(6)(B). Thereafter, the remaining CSG funds

> shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria (which the Corporation shall review periodically in consultation with public radio and television licensees or permittees, or their designated representatives) that promote the public interest in public broadcasting, and on the basis of a formula designed to:
>
> > (i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve; [and]
> >
> > (ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support . . . .

47 U.S.C. § 396(k)(6)(B) (emphasis added). The legislative history leading to the addition of paragraph (k)(6) to the Act confirms the breadth of CPB's discretion to adopt and implement these criteria in the distribution of the CSG funds to eligible stations. Thus, the Committee Reports accompanying the bill state:

> Paragraph 6 sets forth the method for distributing the funds . . . Each licensee or permittee of an on-the-air educational television station would receive a basic grant . . . The balance of the amount reserved for television stations would be distributed among licensees and permittees of such stations as are eligible to receive additional grants under criteria established by the Corporation in consultation with the stations. These additional grants would be apportioned among eligible stations on the basis of a formula designed to (a) provide for the financial needs of stations in relation to the communities and audiences they

- 5 -

> undertake to serve and (b) stimulate non-Federal financial support for station activities. The bill does not prescribe a precise formula for the distribution of additional grants, but rather states these two objectives that the formula is to achieve. The details of the formula, as well as the weight assigned to each factor, would be determined by the Corporation in consultation with the stations.

House Report No. 245, 94th Cong., 1st Sess. 22 (1975); S. Rep. No. 447, 94th Cong., 1st Sess. 11-12 (1975) (emphasis added).[4]

See comment 7.

Nothing in the statute suggests that the CPB role is passive. To the contrary, the statute reposes in CPB (following adequate consultation) the task of establishing eligibility criteria for providing funding to some, but not all, stations pursuant to a formula established and implemented by CPB. And nothing in this statutory language suggests limitations on the form of the support or distributions; the only limitations appear to be that grants must fall within the two statutory criteria for funding and that CPB must establish standards only after consultation with the stations. The clear statutory mandate is that CPB is to determine the eligibility criteria for distribution of the CSG funds and apportion the money on the basis of a non-quantitative formula whose factors are weighed and applied by CPB.[5]

See comment 8.

The GAO suggests nonetheless that the only criteria CPB may adopt in distributing CSG funds are "station-based criteria." GAO Report at 31. We understand the GAO's position to be that CPB may make grants directly to qualifying stations, which may use the funds in any way that they want, but CPB may not fund specific projects that help stations or the system as a whole achieve the goals -- efficient operation and non-federal funding -- for

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[4] Although the GAO does cite and quote from the House and Senate Reports, it excised the specific language explaining that the "details of the formula [for distribution], as well as the weight assigned to each factor, would be determined by the Corporation in consultation with the stations." *See* GAO Report at 72 n.64.

[5] *See* GAO Report at 22-23, 66 (discussing CPB's discretion to modify the eligibility criteria and the effects of such modification on stations).

See comment 9.

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which the CSG program was created. *See* GAO Report at 70, 71. Thus, the GAO suggests that CPB should focus on such "station-based" criteria as "financial needs, audience satisfaction, or fundraising effectiveness" and pick and choose stations for grants on the basis of how well they do (or fail to do) against those standards. *Id.* at 70. The GAO criticizes the Future Fund for not employing such station-based criteria, but instead employing "project-focused criteria" -- which presumably means identifying and funding projects that will further statutory goals -- which are, in its view, impermissible under the Act. *Id.* at 70, 72.

While it is true that Congress could have established the system that the GAO outlines, the fact is that Congress did not do so. The distinction between "station-based criteria" and "project-focused criteria" urged by the GAO simply does not exist; the Act does not even use those terms. Nor does the Act constrain CPB to adopt criteria based on "financial needs, audience satisfaction, or fundraising effectiveness." These are the GAO's terms, not those of the statute. To the contrary, paragraph (k)(6)(B) of the Act permits CPB, in consultation with the stations, to establish "eligibility criteria" that "promote the public interest in public broadcasting," so long as they fulfill the two statutory goals that Congress -- not the GAO -- spelled out, namely (1) "to provide for the financial needs and requirements of the stations in relation to their communities and audiences" and (2) "to maintain existing, and stimulate new, sources of non-Federal financial support." 47 U.S.C. § 396(k)(6)(B).

As we have noted, the official Committee reports left the task of defining how to achieve these goals to CPB. Both houses of Congress recognized that the Act "does not prescribe a precise formula for the distribution of [CSG] grants" and that "[t]he details of the formula, as well as the weight assigned to each factor, <u>would be determined by the Corporation</u> in consultation with the stations." H. Rep. No. 94-245 at 22; S. Rep. No. 94-447 at 11-12

(emphasis added). Indeed, in a subsequent amendment to the Act, the Senate Report reiterated that "CPB, in order for it to meet the needs of competing interests and audiences needs some element of discretion" with respect to distribution of the CSG funds. S. Rep. No. 444, 100th Cong., 2nd Sess. 28 (1988). And Congress' consistent replenishment of CSG funds in the face of reminders that a portion of the CSG funds would be used for the Future Fund constitutes legally cognizable ratification of the way that CPB has understood its discretion and implemented the statute. *See ,e.g., Society of Plastics Indus. v. Interstate Commerce Comm'n*, 955 F.2d 722, 728-29 (D.C. Cir. 1992).[6]

See comment 10.

II. The GAO also suggests that CSG funds cannot be used to support the Future Fund because Congress intended that "projects" be funded only through the System Support fund segment of its funding. *See* GAO Report at 72. The System Support provision requires CPB to allocate 6% of its appropriation for:

> expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English or for assistance in the provision of affordable training programs for employees at

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[6] The "doctrine of ratification holds that when Congress reenacts, without change, statutory terms that have been given a consistent judicial or administrative interpretation, Congress has expressed an intention to adopt that interpretation." *Society of Plastics*, 955 F.2d at 728-29; *see also Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986) ("It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress."); *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 600 (1981) (explaining that "[i]n the 15 years during which the Commission has consistently [taken the current approach] . . . Congress has never expressed its disapproval, and its silence in this regard suggests its consent to the Commission's practice"); *Harris v. James*, 127 F.3d 993 (11th Cir. 1997) (same).

> public broadcast stations, and if the available funding level permits, for projects and activities that will enhance public broadcasting.

47 U.S.C. § 396(k)(3)(A)(i)(II) (emphasis added). Significantly, the final clause -- making clear that CPB could use surplus funds for any projects or activities beneficial to public broadcasting -- was added in 1988. *Id.*; *see also* S. Rep. No. 100-444 at 27. At its most common-sense level, this 1988 addition recognized the desirability of providing CPB with discretion to use any excess funds authorized under this section, after the spending criteria are met, for any purpose or project that supports public broadcasting.

See comment 11.

The GAO appears to treat language clearly designed to expand CPB's discretion as evidence of an intention to narrow that discretion for other purposes. But as we have noted, in the very next section of the Report adopting the 1988 amendments, the Committee made clear with respect to the CSG funds that it "did not make any major changes in this section because it believes that the CPB, in order for it to meet the needs of competing interest and audiences needs some element of discretion." S. Rep. No. 100-444 at 28.

See comment 12.

The GAO appears to believe that the permission to use System Support funds for projects must negate the comparable discretion to use other funds for projects, because Congress would not have intended that CPB could use different statutory sources to support similar programs or similar methods of making grants. GAO Report at 72. But nothing in the statute suggests that Congress intended to limit programs like the Future Fund to one particular funding source or that it intended to compartmentalize the funding methods so as to require CPB to limit its grants to one or another type. *Compare, Matter of: Payment of SES Performance Awards*, 68 Comp. Gen. 337 (Mar. 20, 1989) (use of funds from multiple sources to support a single program would be improper only "if it were clear that the Congress intended. . . [one particular] appropriation to be the exclusive source of funds"). The Future Fund grants are consistent with

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the criteria for the System Support funds -- "projects and activities that will enhance public broadcasting" -- and they satisfy the specific substantive statutory elements for the distribution of CSG funds. Accordingly, the text of the Act, as well as Congressional intent, permit both sources to be tapped to support the Future Fund. The GAO's assertions to the contrary find no warrant in the text or the legislative history of the Act.

III. At its base, the GAO is suggesting that CSG funds cannot be used to support the Future Fund because only stations may decide how such federal funds should be used. In essence, the GAO appears to view CPB as a mere conduit -- a pass through -- without a role in defining or requiring the most effective use of funds.

As we have suggested, there is no way to construe the language of the statute that would achieve that result. Moreover, the approach would severely curtail CPB efforts to coordinate or orchestrate any collective or centralized focus on large-scale systemwide projects, even if such projects offer the best ways to help stations solve the problems they face in common and achieve systemwide benefits of the kind contemplated in the Act. We suggest that it should require a very clear direction from Congress to preclude CPB from acting as a centralizing and coordinating clearinghouse for such purposes or to prevent it from funding projects designed to achieve maximal systemwide programmatic benefits in which all stations would share. No such direction exists. To the contrary, § 396(k)(6)(B) clearly provides CPB with broad discretion in funding projects capable of solving problems covered by or furthering the goals set out in the section.

See comment 13.

See comment 14.

IV. Finally, the GAO challenges situations in which CPB project funding has involved outside consultants or other entities, who are selected to manage or operate projects

being funded. It suggests that CSG funds must be paid directly to stations.[7] The GAO's interpretation, if followed, would give rise to needless inefficiency.

Consultants and stations often work together to generate project proposals that would benefit individual stations or groups of stations, and a review panel of stations convened by CPB typically recommends which of these projects should be funded. This approach recognizes that it is occasionally more efficient for CPB to issue funds directly to a consultant, and to manage consultants and the projects to ensure both that the funds are used within the scope of the grant and that the intended results are achieved. Regardless of what entity the funds are channeled through, Future Fund project grants are designed with and for the benefit of the stations, as specified in the statutory criteria. Under these circumstances, the statutory purposes are being fulfilled without regard to the identities of the payees on CPB's checks.

V. In sum, the GAO reads restrictions into the Act where they do not exist and overlooks the governing legislative history. In doing so, it reaches a conclusion inconsistent with numerous congressional appropriations of CSG funds and the longstanding concurrence of the public broadcasting community with respect to the current funding structure. It is entirely appropriate for CPB to utilize CSG funds to support the Future Fund program, and the GAO's contrary conclusion is without support in the governing statute, in the law, or in sound policy.

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[7] In the great majority of cases, as we understand it, Future Fund money is in fact paid to stations directly, to consultants at one or more stations' specific direction, or to both stations and consultants working together on the same project. Even in the smaller percentage of projects where funds are paid solely to consultants (perhaps 30% of the projects), stations nevertheless remain intimately involved in the projects, either as research subjects or by lending their facilities to host consultants, and in most cases were involved in the design of the project being funded. Future fund grants, in short, are always premised on the active involvement of one or more stations, even in the minority of cases where stations are not direct recipients or co-recipients of grant money. And CPB assumes overall management responsibility for all Future Fund projects.

The following are GAO's comments on the Corporation for Public Broadcasting's letter dated March 12, 2004.

GAO Comments

1. Our legal opinion on this issue remains unchanged. See our comments below on the attached legal memorandum from Covington and Burling. The Corporation notes that its ability to support projects designed to improve the system as a whole could decrease if it had to depend only on system support funds. We recognize the Corporation's concern. However, we continue to believe that this is a matter that should be addressed to the Congress.

2. The point of the cited paragraph of our report is limited to historical background and is not a characterization of congressional commitment to public television. To restate, when the Public Broadcasting Act of 1967 was passed, annual congressional appropriations were seen as a temporary measure pending the development and adoption of a long-term financing plan for public broadcasting. Absent the development of such a plan, the Congress has in fact continued to support public broadcasting with annual appropriations at the levels indicated in figure 3. We agree with the Corporation that when the Congress deferred the development of a long-term financing plan at the time the 1967 act was passed, it did not intend that federal funding for the Corporation would be discontinued. Congressional committee reports accompanying the 1967 legislation and subsequent reauthorization legislation suggest the need for ongoing federal funding to enable the Corporation to fulfill its mission.

3. We do not agree with the Corporation that our report implies that its policy decisions should be made on the basis of our survey of licensees. Although we recognize that the views of licensees are, by statute and in practice, central to the making of policy decisions by the Corporation, the survey served as only one source of evidence for our review. We determined that it was important to ascertain the views of licensees because we believe they are integral to the discussion of the statutory framework for federal support of public television and the Corporation's funding programs and processes. The findings, conclusions, and recommendations in this report are based on several methodologies we employed to review the Corporation's activities in support of public television (as described in app. I) including, but not limited to, the survey of public television licensees.

4. We are not taking a position on the desirability or efficacy of the goals of the Television Future Fund. Rather, our opinion rests on the Corporation's legal authority to use section 396(k)(6)(B) funds for this purpose. The Corporation misconstrues the plain meaning of section 396(k)(6)(B). This provision does not authorize the Corporation to *use* funds designated for distribution to public television licensees. Rather, section 396(k)(6)(B) sets out a distribution mechanism under which the Corporation *distributes* funds to public television licensees. Moreover, section 396(k)(6)(B) does not set out two statutory purposes for the use of these funds. Rather, section 396(k)(6)(B) provides two goals for the design of the formula under which the funds are to be disbursed. The formula is to be designed to provide for the financial needs and requirements of stations and to maintain existing, and stimulate new, sources of nonfederal financial support. The Congress has provided directions on the use of section 396(k)(6)(B) funds. Specifically, section 396(k)(7) provides that these funds "may be used at the discretion of the recipients for purposes related primarily to the production or acquisition of programming."

5. While the Congress has been provided with some information on the Future Fund, the information does not clearly and consistently identify the funding sources for the Television Future Fund. For example, in testimony before the Committee on House Energy and Commerce, Subcommittee on Telecommunications and the Internet, the President and CEO of the Corporation made no reference to the Future Fund in his comments about grants to stations. However, the President and CEO did mention Future Funds when speaking about the System Support account (statement of Mr. Robert Coonrod, President and CEO of the Corporation for Public Broadcasting, July 10, 2002).[1] During the course of our review, we pointed out to the Corporation that the 2002 annual report could be confusing because it defines TVRFF (Future Fund, Collaboration Fund and Small Station Fund Grants) as "Television and Radio Future Funds and System Support." We were advised that the Corporation agreed that the definition might lead to confusion and that they would consider modifying the definition for future annual reports. Letter from Donna Coleman Gregg, Vice

[1]Specifically, Mr. Coonrod stated: "As advised by the stations, CPB established Future Funds for both television and radio. These are also funded through the System Support account, as the Future Fund programs are intended to improve the system of stations and its services overall." (Statement of Mr. Robert Coonrod, President and CEO of the Corporation for Public Broadcasting, July 10, 2002.)

President, General Counsel and Corporate Secretary of the Corporation for Public Broadcasting to Mindi Weisenbloom, Senior Attorney, General Accounting Office, dated August 11, 2003.

6. Our review did not examine whether the make-up of the Television Future Fund advisory panels have adequately represented a cross-section of the public broadcasting community. We note that the Corporation intends to change the composition of the advisory panel to ensure a greater representation from across the station community. It also appears that the Corporation envisions that the panel will operate more as an investment board than as a consultation panel. Although the Corporation contends that the Future Fund plan has been regularly placed before the constituent elements of public broadcasting, our survey of public television licensees indicates a number of concerns about the program. For example, 42 percent of the respondents to our survey indicated that they had little or no knowledge about the findings and outcomes of Television Future Fund projects. Overall, only 41 percent of licensees responding to our survey indicated that the projects had provided them with practical methods for reducing costs and/or enhancing revenues. The Corporation's approach for funding the Television Future Fund program was another area identified in our survey as a concern for licensees. Only 30 percent of the responding licensees indicated that they favored the current funding approach, and one-fifth of our survey respondents indicated that the Corporation should cease all funding for the program.

7. We agree that nothing in the statute suggests that the Corporation's role is passive. Section 396(k)(6)(B) provides the Corporation with discretion to establish eligibility criteria and a formula for the distribution of funds reserved by the Congress for public television to the licensees. However, this discretion must be exercised within the constraints of the provision. The Corporation must periodically review its eligibility criteria with the station community, and the formula must be designed to provide for the financial needs and requirements of stations and to maintain existing, and stimulate new, sources of nonfederal financial support. More importantly, the provision provides that the funds are to be *distributed* to licensees. Thus, under the plain meaning of the provision, these funds are not available for the Corporation's use or for the Corporation to decide how the licensees may use the funds. Nor are the funds available for distribution to entities other than the licensees themselves.

8. The statute specifies that it is the recipients of the funds, in other words the public television licensees, who have discretion over the use of these funds. Specifically, section 396(k)(7) provides that these funds "may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming."

9. GAO is not suggesting that the Corporation "pick and choose" stations for grants. Rather, under the plain meaning of section 396(k)(6)(B), the Corporation is to distribute the funds reserved to television stations on the basis of eligibility criteria and a formula. And under the plain meaning of section 396(k)(7), it is the licensees who have the discretion over the use of these funds within the constraints of the statute. The Congress has directed that the 396(k)(6)(B) funds be used "for purposes related primarily to the production or acquisition of programming."

10. We disagree that the Congress has ratified the Corporation's use of section 396(k)(6)(B) funds for the purposes of the Future Fund by continuing to make funds available for distribution under section 396(k)(6)(B). "Ratification by appropriation" is the doctrine by which the Congress can, by the appropriation of funds, confer legitimacy on any agency action that was questionable when it was taken. However, this doctrine is not favored and will not be accepted where prior knowledge of the specific disputed action cannot be demonstrated clearly. GAO summarized the test courts have used to find ratification by appropriation in B-285725, September 29, 2000.

    "To conclude that Congress through the appropriations process has ratified agency action, three factors generally must be present. First, the agency takes the action pursuant to at least arguable authority; second, the Congress has specific knowledge of the facts; and third, the appropriation of funds clearly bestows the claimed authority."

    All three elements are missing here. The Corporation does not have the authority to use funds designated for distribution to public television licensees to support the Future Fund. The Congress has not clearly been informed that the Future Fund is supported in part with section 396(k)(6)(B) funds. Finally, the Congress has not in any way indicated that the funds it has provided to the Corporation for public television licensees may be used to support the Television Future Fund. Accordingly, "ratification by appropriation" is not applicable in this instance.

11. As noted in the report, in 1988, the Congress specifically authorized the use of system support funds "if the available funding level permits, for projects and activities that will enhance public broadcasting." We are not reading this provision to "narrow" the scope of section 396(k)(6)(B). At the time that the amendment was enacted, the Future Fund did not exist, and the Corporation was not attempting to fund projects and activities through section 396(k)(6)(B) but was appropriately distributing funds under this section directly to the public television licensees. In our view, section 396(k)(6)(B) funds were not then and are not now available to be pooled with System Support funds and used to support the Television Future Fund program.

12. The Corporation cites to a GAO decision for the proposition that multiple sources of funding to support a single program would be improper only if the Congress had intended one particular appropriation to be the exclusive source of funds. *Matter of: Payment of SES Performance Awards*, 68 Comp. Gen. 337 (Mar. 20, 1989). That analysis is inapplicable here. As a general rule, an appropriation for a specific object is available for that object to the exclusion of a more general appropriation unless there is something in the general appropriation to make it available in addition to the specific appropriation. *See*, *e.g.*, B-272191, Nov. 4, 1997. 68 Comp. Gen. 337 involved a case where an agency had two appropriations that were available for an expenditure. In those situations, an agency may charge either appropriation and must consistently follow that choice. Here, the Corporation is not faced with deciding between two of its accounts equally available for the purpose of the Television Future Fund. Rather, the Congress has specified that under certain circumstances, system support monies are available to the Corporation to fund projects and activities that will enhance public broadcasting, such as the Television Future Fund. As explained above, section 396(k)(6)(B) funds are not available for such purposes. Thus, the Corporation does not have the choice of selecting both accounts to pay for the Television Future Fund.

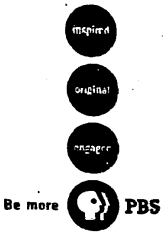
13. As noted above, under the plain meaning of section 396(k)(6)(B), funds designated by the Congress for distribution to licensees are not available to the Corporation to fund projects and activities. This does not mean that the Corporation could not coordinate or orchestrate any collective or centralized focus on large-scale systemwide projects. Clearly, to the extent that funding levels permit, System Support funds are available for such projects. Additionally, individual licensees could

exercise their discretion over the use of their funds to contribute to such efforts.

14. As stated in the report, under the plain meaning of the statute, section 396(k)(6)(B) directs the Corporation to distribute the balance of funds reserved for television stations, after deduction of the basic grant, "to licensees of such stations." Thus, the Corporation does not have the discretion to distribute these funds to other than public television licensees even if the purpose of the grant is to ultimately benefit public television stations.

Comments from the Public Broadcasting Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Appendix VIII: Comments from the Public Broadcasting Service

March 15, 2004

VIA FACSIMILE AND U.S. MAIL

Mr. Mark Goldstein
Director, Physical Infrastructure Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Goldstein:

Thank you for sharing the draft report entitled, "Issues Related to Federal Funding for Public Television by the Corporation for Public Broadcasting" prepared by the General Accounting Office ("GAO").

We appreciate the time and effort that the GAO has dedicated to this effort on behalf of public broadcasting. It is gratifying that nearly two-thirds of respondents to GAO's survey of public television licensees favor continuing the current statutory allocation of federal funds which makes 25% of the federal monies appropriated to the Corporation for Public Broadcasting ("CPB") for public television available to fund national programming. We are particularly pleased that nearly three-quarters of respondents favored CPB's continued annual support for the National Program Service ("NPS") distributed by PBS, with 96% of respondents finding that PBS's children's and primetime NPS programs enable them to meet their mission to a great or moderate extent and 91% of respondents finding that primetime NPS programs help them build membership and underwriting support within their local communities.

Given the importance of these services to the ability of PBS member stations to meet their mission serving local audiences, we are appropriately concerned about GAO's finding that just over half of respondents indicated that changes were needed in the process for selecting programs for the NPS, with some licensees commenting that the current selection process limits the ability of new producers to produce for the NPS.

Currently, PBS seeks input from its members in a variety of ways, including an annual survey of stations soliciting feedback regarding the performance of programs in local markets. The NPS also receives input from and is advised by the following committees and task forces consisting of more than 100 educators, station managers, programmers and others: the Programming Services Committee, Group of 20 (major market programmers), PBS Kids Advisory Group, Pledge Advisory Group, PBS/NPR NewsBrief Advisory Committee and Ready To Learn Station Advisory Council. The programming division produces live, interactive teleconferences at least

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monthly to communicate with member stations regarding programming decisions and related initiatives. Until this year, PBS has also produced a meeting for programmers and the PBS annual meeting which attracts roughly 1200 system representatives and provides very productive information-sharing opportunities. Regarding NPS programs receiving federal funds from CPB, CPB informs PBS of its programming priorities and objectives and the parties jointly work to ensure that federal funding is used to meet those programming priorities. In addition, the Content Policy Committee of the PBS Board provides guidance through its evaluation and approval of PBS's annual programming plan.

With respect to production opportunities, there are a number of factors influencing the selection of producers and programming, including: the extent to which the programming meets the needs of the national schedule, with an emphasis on limited and continuing series; the production experience of the producer and its ability to deliver a quality production on-time and on-budget; the ability of the producer to raise the underwriting support necessary to fund the production; and the ability of the producer to carry the production deficit during what is usually an extensive development and production period while full funding is being secured. While many stations, because of the risks involved in developing national production capabilities, choose to devote their production resources to local programming, over 32 stations have contributed programs or series to the NPS and other PBS program services over the past few years. To help less-experienced stations and independent producers develop the skill-set necessary to increase their ability to compete for national production opportunities, PBS and CPB have supported a Producers' Academy which is designed to train the next generation of national producers. Many of our major producing stations have lent their time and talent to this effort.

PBS values GAO's analysis and recognizes that PBS must do more to communicate the input it currently receives from member stations regarding programming decisions and must determine whether more effective methods for securing input can be developed. PBS management will analyze its current mechanisms for generating programming input from member stations and will review that analysis with the Content Policy Committee of its Board, seeking counsel from the committee on how best to improve its systems for securing member input.

GAO recommends that CPB broaden the scope of its digital grant programs to include support for digital production equipment and digital content. Recognizing that GAO's survey of licensees revealed a significant number of licensees reporting a shift in digital priorities from transmission equipment to digital master control, digital content and digital production equipment needs. PBS supports CPB having the flexibility to increase the scope of its grant program.

At the same time, PBS notes that many licensees will need assistance with transmission equipment: upgrades from low-power to full power transmitters and the purchase of digital translators. Translators serve over 10 million public television households, many in rural parts of

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the United States. The draft GAO report notes that PBS is seeking CPB funds to complete the Enhanced Interconnection Optimization Project ("EIOP") at a cost of $12-15 million. To clarify, the $12-15 million is needed to build out a digital technical operating center ("TOC") redesign for the purpose of more efficiently managing digital content from the point initially received from the producer through editing and traffic management to delivery to the interconnection system. This money is not for the purchase of the next generation interconnection system ("NGIS") which is the satellite and terrestrial system through which material will be received by the local public television station. NGIS is the subject of a separate federal appropriation request.

See comment 1.

In addition, PBS acknowledges the comments in the draft GAO report regarding the concern of some licensees over the potential for stranded investments from their purchase of digital master control equipment prior to the announcement of the EIOP project. It should be noted that licensees may elect to purchase the EIOP master control solution or a solution of their own choice. Every station will be able to seamlessly interface with the redesigned PBS TOC regardless of the master control solution they choose. Since last Fall, PBS has increased its communications efforts with stations through presentations at round robin discussions around the country and at various meetings of affinity groups, as well as by offering demonstrations to general managers and others visiting PBS.

Based on its survey of licensees, GAO notes that nearly all of the respondents either now have or plan to offer multiple digital channels to their communities for the delivery of programming and other digitally-based services, including those supporting educational needs (e.g. on-demand instructional content to K-12 classrooms) and governmental needs (e.g. emergency response services and Amber alerts for child abductions). It should be noted that there is compelling evidence that public television stations would deteriorate to a substantial degree, and might not survive, if cable operators were to refuse to carry multicast programming. PBS, CPB and the Association of Public Television Stations ("APTS") will continue to advocate for full must-carry rights for public television stations.

As noted in GAO's draft report, CPB undertook a system-wide planning study to, among other things, improve the financial sustainability of public television. PBS applauds the work that CPB has done in this regard and pledges to continue to support CPB in those efforts.

Finally, GAO recognizes in its draft report that, in passing the Public Broadcasting Act of 1967, Congress viewed annual appropriations and authorizations as temporary measures pending the development and adoption of a long-term financing plan for public broadcasting. PBS hopes that the GAO report will highlight the need for a national dialog on a permanent funding solution to ensure that public television is able to continue providing vital programming and educational services in communities across America.

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I commend the GAO for its professionalism and thoroughness in preparing this report and assure you that PBS has received constructive guidance for future action from GAO's analysis.

Very truly yours,

Wayne Godwin
Executive Vice President
& Chief Operating Officer

The following are GAO's comments on the Public Boardcasting Service's letter dated March 15, 2004.

GAO Comments

We have edited language in the report to clarify that the funds needed to complete the Enhanced Interconnection Optimization Project of $12 million to $15 million are separate from those to purchase the Next Generation Interconnection System.

Key Contacts and Staff Acknowledgments

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Staff Acknowledgments

In addition to those named above, Dennis Amari, Alan Belkin, Edda Emmanuelli-Perez, Colin Fallon, Michele Fejfar, Kevin Heinz, Logan Kleier, Randall Lennox, Omari Norman, Tina Sherman, Mindi Weisenbloom, and Alwynne Wilbur made key contributions to this report.

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